

Enforcement of civil judgements – responsible law enforcement authorities, procedural obstacles and current issues in Uganda

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Abstract

This paper gives an over view of the Execution process in Uganda. Execution is provided by law as a means to realise the fruits of judgment. The Civil Procedure Act and Rules made therein provide a seemingly well structured manner of executing any matters but this is marred by the legal gymnastics that fall in play hence causing unnecessary delays. There are various actors in the process of execution of which may not be ignored by parties to an execution. The court which passes the decree or the court to which a decree is sent for execution plays a critical mandate in helping a successful litigant. The Advocates play the role of choosing the mode of execution, the attachable property and giving a helping hand to the bailiff in the process. The Bailiff whom the law demands should be one registered for that purpose is the foot soldier that carries out the actual execution. The Bailiff is assisted by the Police, Local Council authorities and the prisons authorities who hold the judgment debtor in custody. The principle judge of late has advised that courts should stop sending the judgment debtors to prisons in order to decongest them but again this destroys the very purpose of arrest and detention which is to scare the judgment debtor into paying the said sums of money demanded by warrant.

A. Introduction

Enforcement is the act of compelling observance of or compliance with a law in this case, civil judgment through the process of Execution. The Hon. Lady Justice M. SARACH Amoko in the case of Caltex Oil (U) Limited Vs Petro (Uganda) Limited and Sam Kironde¹ cited with approval the definition of Execution as per 17th Halsbury's Laws (4th Edn) Para 401 as;

"The word execution in its widest sense signifies the enforcement of or giving effect to the judgments or orders of courts of justice. In a narrower sense, it means the enforcement of those judgments or orders by a public officer under the writs of fieri fa-

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1 Miscellaneous Application No.279 of 2004(Arising from Misc. Application No. 86 of 2004 and C.S no. 533 of 2002.

cias, elegit, sequestration, attachment, possession, delivery, fieri facias de bonis ecclesiastics, etc.”

Execution in basic terms is the process of realizing the fruits of a judgment by enforcing the Decree against the unsuccessful party through any one of the various modes of execution as by law prescribed. We have judgments passed locally and those that come from other jurisdictions i.e. foreign judgments discussed below.

B. Enforcement of Local Judgments

I. Decree and Orders

Before execution can issue in Uganda, a successful litigant must obtain a decree. A decree is defined as ‘a formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the suit and may be either preliminary or final...’²

A decree follows a judgment³ and not the other way round. The successful litigant is mandated to prepare the decree if it is in the High Court in consultation with the other parties before submission to the Registrar.⁴ In the Magistrates Court, the decree is drawn and signed by the Magistrate who pronounced it or by his or her successor.⁵ It is a requirement of the law to tax costs before proceeding to execution, however, the High Court may in exercise of its original civil jurisdiction where it deems fit dispense with the requirement to tax costs first and order execution.⁶ Execution before extraction of Decree and taxation is premature.⁷

A successful litigant must execute promptly in order to realise the fruits of his Judgment. There is a limitation of 12 years from the date of the decree sought to be executed among others.⁸

It is only the decree holder⁹ who may apply for execution. A decree is only executed against a judgment debtor.¹⁰ In exceptional circumstances execution may be by an assignee

2 Section 2, Civil Procedure Act (CPA) Cap 7 Laws of Uganda.

3 Section 25 CPA Cap 71, Order 21, rule 6 (1) Civil Procedure Rules (CPR) S.I 7-1.

4 Order 21 rule 7 CPR.

5 Order 21 Rule 7 (3) CPR.

6 Section 95 CPA.

7 Corporate insurance Co. limited vs. Samex Insurance Brokers Ltd (2002) I EA 41.

8 Section 35 CPA.

9 Section 2 CPA defines a decree holder as any person in whose favor a decree has been passed or an order capable of execution has been made, and includes the assignee of such decree or order.

10 S. 2 CPA defines a judgment debtor as any person against whom a decree has been passed or an order capable of execution has been made.

or transferee of the decree holder¹¹ against in certain circumstances like death of judgment debtor against their legal representatives.¹²

II. Mode of Execution

Execution may be ordered by an appropriate court as prescribed by law. The Civil Procedure Act and Rules cater for this. Section 38 CPA prescribes the main modes of execution including;

1. By delivery of any property specifically decreed.
2. Attachment and sale or sale without attachment of property. The judgment debtor cannot be allowed to offer for attachment or a decree holder to deliberately attach and sell property which does not belong to a judgment debtor.¹³ On appeal the same position was upheld at the Supreme Court.¹⁴
3. By attachment of debts; this is basically realised through Garnishee proceedings
4. By arrest and detention in prison of any person;
5. By appointing a receiver or in such manner as the nature of the relief granted may require.

III. Procedure for Execution

A decree holder who desires to execute a decree may apply to the court which passed the decree or where it has been sent to another court, to that other court.¹⁵ Save for where a decree is for payment of money, every application shall be in writing, signed and verified by the Applicant and his or her Advocate.¹⁶ It is more common though to do it in writing for record purposes in a prescribed Form. This procedure also applies to application by arrest and detention, appointment of a receiver and other except Order 23 – Order 22 rule 2.

C. Foreign Judgments

Foreign judgments are enforced based on reciprocity or participation in a treaty. Uganda is not a signatory to any existing international conventions on enforcement of foreign judgments. The enforcement of foreign judgments in Uganda is based on reciprocity. The laws governing enforcement of foreign judgments in Uganda discussed hereunder.

11 Order 22 rule 13 CPR.

12 Section 2, 37, 39 CPA.

13 Immelda Nassanga Vs Stanbic Bank & another (2007) HCB Vol. 1, 57.

14 Immelda Nassanga Vs Stanbic Bank & another Supreme Court Civil Appeal No. 10 of 2005.

15 Order 22 Rule 7 CPR.

16 Order 22 Rule 8 CPR.

I. The Reciprocal Enforcement of Judgments Act cap 21

This caters for Enforcement of judgments in Uganda of judgments given in the UK and other common wealth countries and Republic of Ireland. In S. 2 (1) it is only judgments obtained in superior court in the UK or Ireland which are eligible to be enforced. An extension order for the Act to other jurisdictions was made under statutory instrument No. 21-2.

II. The Foreign Judgments (Reciprocal Enforcement Act, cap.9

This applies to application for enforcement in Uganda of judgments given in foreign countries which accord reciprocal treatment to judgments in Uganda. Foreign countries in this Act mean countries outside common wealth but under section 8 the minister may by statutory order (a general application order) direct that part of this Act applies to a common wealth country and Cap.9 will instead apply to it.

The Foreign Judgments (reciprocal enforcement) Rules S.I 9-1 prescribes the form and procedure for application for registration execution upon registration and other matters akin to those covered in the Reciprocal Enforcement judgment Rules.

The minister invoked the provisions of Cap. 9 on two occasions by S.I 35 and 36 of 2002. S. 1 35/2002 applied part 11 of the Act of territories of common wealth and judgments obtained in the courts of those territories as it applies to foreign countries. It is cited as the Foreign judgments (Reciprocal Enforcement) General application) Order, 2002.S. 1 36 extended the application of part 11 of the Act specifically to the superior courts of Grenada. It also defined those superior courts. It cited as The Foreign judgments (Reciprocal Enforcement) (Granada) Order, 2002.

III. The Judgment Extension Act Cap. 12

This makes provision for execution in Uganda of Decrees and warrants issued by the courts of Kenya, Malawi and Tanzania and courts subordinates thereto. It applies to decrees for the debts, damages and costs.

IV. The Maintenance Orders Enforcement Act Cap 17

This prescribes the manner and the mode of Enforcement of Maintenance Orders made in England, Northern, Ireland, the common wealth and the Republic of Ireland. S. 8 The minister may extend the Act to orders made in other common wealth countries.

V. The Maintenance Orders Enforcement Rules S.I 17-1

This provides for procedure on how local courts receive the maintenance orders through the Minister (Rules 2 and 3), how the court will deal with orders on their receipt (Rule 4,5,6,7,8 and 9). Rule 9(2) Attorney General is deemed to be legal representative to the applicant

for the enforcement of maintenance order. The Maintenance orders Enforcement (Extension) order S. 1 17-2 was issued extending the Act to the list of the countries contained in the order.

D. RESPONSIBLE LAW ENFORCEMENT AUTHORITIES

I. Court

The primary duty to assist successful litigants is placed on court. Once a decree has been obtained by a successful party, it may be executed either by the court which passed it or by the court to which it is sent for execution.¹⁷ The expression, “court which passed the decree”, or words to that effect, shall unless there is anything repugnant in the context be deemed to include; where a decree is passed in the exercise of appellate jurisdiction, the court of first instance.¹⁸ The Court to which the decree is sent for execution is the transferee court. The court to which the decree is transferred for execution shall have the same powers in executing the decree as if it had been passed by itself.¹⁹ The Act prescribes how a decree is transferred to another court for execution and the powers of the transferee court.²⁰ Formal orders for execution and matters related thereto are made by the Registrar High Court or the Magistrates (Magistrates Courts).

II. Execution and Bailiffs division

In order to expedite the process of execution in Uganda, a special court has been established styled as the Execution and Bailiffs division of the High Court. This division is comprised of at least one judge as its head and a Registrar to handle all matters relating to enforcement of court orders. This is a pilot project which is expected to be taken across the country. For now the court handles matters from the Civil, Commercial, Criminal, Family, Land, Anti Corruption and International Crimes Divisions. It also handles magisterial areas of Kampala (Buganda road and Mengo) Nabweru, Nakawa and Makindye. This court handles all matters related to enforcement of judgments in these areas. This is in an attempt to harmonise all enforcement matters which then goes a long way in solving backlog in enforcement.

In the circumstances, all judgments passed in the areas of this court’s jurisdiction must be sent to it for execution. In other areas outside of this court, the court that passed the judgment is the one responsible for execution.

17 Section 30 CPA.

18 Section 29 (a) CPA.

19 Section 33 (1) CPA.

20 Section 31 CPA.

III. The Advocate

The Advocates play a great role in the process of execution. An “Advocate” is any person whose name is duly entered upon the roll.²¹ The roll of Advocates is kept by the Registrar.²² The Advocate is as well an officer of court²³ whose actions are protected except where he/she acts illegally. Other than arguing the case, upon conclusion, the Advocate has duties which among others include assisting the successful litigant to prepare the decree with his colleagues on the losing side. The rules on the preparation of decrees are clearly spelt out by the Civil Procedure Rules as discussed elsewhere in this work. The Advocate must also prepare the bill of costs for taxation by court. The bill of costs is key in the process since it enables the successful litigant to pray for what rightfully was spent by him in prosecuting the case. He/she must then identify the attachable property and forum for execution: choose the mode of execution: applying for execution: ensuring accountability by the bailiff among others.

The role of the Advocate in the circumstances is of paramount importance in the entire process which cannot be ignored.

IV. Bailiffs

The courts in carrying out their duty are assisted by bailiffs. The law designates persons known as Court Bailiffs²⁴ and Auctioneers. The appointing authority may license and appoint any person to be a court bailiff.²⁵ The requirements for appointment as a court Bailiff emphasize good reputation, financial standing, adequate storage facilities, and persons who have not been convicted of any criminal offence involving dishonesty. The rules do not prescribe any minimum level of formal education as a requirement although the rule committee has the power to add to the existing requirements.²⁶

The law protects Bailiffs as officers of court. An officer of court or other person bonded to execute any order or warrant of any Judge or person referred to in subsection 1 acting judicially shall not be liable to be sued in any civil court in respect of any lawful or an authorised act done in execution of any such order or warrant.²⁷ In *Bifabusha V Turyazooka*²⁸ emphasised the immunity of a bailiff as a court officer stating that a bailiff as a court officer was protected from a suit for any lawful or authorised act done in execution of a

21 Section 6 (a) Advocates Act Cap 267.

22 Ibid section 7.

23 Section 46 (2) Judicature Act Cap 13.

24 Rule 4 of the Judicature (Court Bailiffs) Rules S.I 13-16.

25 Rule 5 (1) Judicature (Court Bailiffs) Rules S.I 13-16.

26 Rule 5 (2) Judicature (Court Bailiffs) Rules S.I 13-16.

27 Section 46 (2) Judicature Act, Cap 13.

28 (2000) 2 E.A. 330.

warrant under section 46 (2) of the Judicature Act, the protection was available only when the Bailiff acted lawfully.

The Bailiffs in the circumstances play a significant role in the process of execution in Uganda.

V. Police Officers

The Bailiff is assisted in his/her duties by Police officers whenever they are in the field. The warrant usually given by court directs Police officers to assist in the process. The Bailiff facilitates the police officers for their service which costs he recovers in his/her bill of costs. The duty of police in this case is an extension of their functions to enforce the laws of Uganda.²⁹ In certain instances the Bailiffs have attempted to use private security firms in the process of execution with disastrous results hence it is only wise to engage with the police for purposes of safety of both the Bailiffs and the property during execution.

VI. The Local Council Authorities

The Local councils in this case being the Local Council one. These govern villages in Uganda which are the lowest administrative units in Uganda. They play a minimal yet important role in directing the court officers to the dwelling places of the debtors in the process of execution.

VII. The Uganda Prisons Authorities

The Uganda Prisons authorities play a role when the chosen mode of execution is by Arrest and detention of the judgment debtor. A judgment debtor upon arrest shall be produced before court and his detention may be in any prison of the district in which the court ordering the detention is situate.³⁰ It is worth noting that the judgment creditor pays the subsistence allowance for the Judgment debtor while in prison.

The prison authorities in the circumstances play the custody role of the Judgment debtor, who then may release the debtor if he/she pays the amount stated in the warrant of detention.³¹

E. PROCEDURAL OBSTACLES TO EXECUTION IN UGANDA

Execution is ordinarily the point that the Judgment Creditor is anxious to realise the fruits of his judgment. However, it is sometimes a nightmare to realise the same due to procedural matters that come into play. The obstacles are discussed hereunder.

29 Section 4 (1) (c) Police Act Cap 303.

30 Section 40 (1) Civil Procedure Act Cap 71.

31 Section 42 (1) (c) Civil Procedure Act Cap 71.

I. Execution against Government.

The law creates a different procedure for this execution. The ordinary manner of execution is prohibited since no execution or attachment shall be issued out of any court for enforcing payment by government³² especially attachment of debts and appointment of receivers.³³ Most importantly, Order 22 which is dedicated to execution is as well excluded from applying to government.

A decree holder applies to court for a certificate of order³⁴ which when issued is served on the Attorney General³⁵(the ordinary practice is to serve the Treasury officer of Accounts as well), it acts as a demand for payment. Upon failure to pay, the Judgment Creditor takes out proceedings for mandamus. These applications are in the nature of a suit and their determination due to case backlog is delayed and costly to the detriment of the successful litigant. Upon obtaining the necessary orders like mandamus (see *Shah Versus Attorney General (1970) E.A 543*) enforcement is still a challenge since the state machinery protects these officers from arrest for contempt of court. As if that is not enough, decrees for vacant possession of land by eviction, is near unattainable to execute against the Government and its agencies despite the fact that the courts have held that such decrees can be legally executed against them (See *A.G Vs Osotraco Ltd C.A.C.A.No.32 of 2002 (Unreported)*).

II. Execution against Local Government's

The Local Government Act³⁶ prohibits execution against a Local Government for enforcement of a money decree against its fixed assets and statutory transfers absolutely and in respect of any other property which is attachable, a period of 6 months from the date of judgment is imposed. This causes unnecessary delays for the judgment creditor to realise the fruits of his judgment.

III. Parastatals

The law prohibits execution on property of parastatals since they are considered government owned. For example Uganda Railways Corporation, the Act³⁷ imposes an absolute prohibition on execution against the property of the corporation but imposes the duty to pay judgment debts promptly to the managing Director. If the Managing Director fails to exe-

32 Section 19(4) Government Proceedings Act (GPA) Cap 77.

33 Rule 15 The Government Proceedings (Civil procedure) Rules S. 1 77-1 and orders 23 and order 42 CPR.

34 S. 19 (1) of GPA.

35 S. 19 (2) GPA.

36 Section 6 (2) of the Local Government Act, Cap 243.

37 S. 53 of Uganda Railways Corporation Act, Cap 331.

cute the duty, the judgment creditor's remedy is only to take out Judicial Review proceedings for mandamus, which is slow and costly to the judgment creditor.

IV. Diplomats

Under The Diplomatic Privileges Act Cap 201, diplomatic agents and mission properties are immune from execution.

V. Objection to attachment

This normally occurs as a result of wrong full attachment in the sense of attaching property belonging to a third party not party to a suit which is in the actual or constructive position of the third party.³⁸ The objector proceedings are also in the nature of a suit and may delay and are also costly.

VI. Setting aside attachment or execution

This also takes a form of a suit and is costly and subject to delay the realization of the Judgment Creditor of the fruits of his/her litigation. It occurs when execution is wrongful or contrary to the law as happened in the Kanoonya David Kivumbi Stanely and 2 others HCCS No.2003 (unreported) case.

VII. Stay of execution

This affords the Judgment Debtor opportunity to apply for stay of execution under certain circumstances especially where sufficient cause is shown to warrant such. Stay of execution is therefore a hurdle to execution in similar manner as the above. The judgment debtor may use setting aside and stay of execution proceeding as a delay tactic. Court has suggested that it is not proper to take this procedure where there is no evidence of any application for execution of a decree of this court especially where no decree embodying the decision of the court has been approved.³⁹

VIII. Notice to show cause (NTSC)

It's mandatory for the registrar/Magistrate to first issue a NTSC in the circumstances stated in this rule. i.e. where application for execution is made after one year from the date of the decree and against the legal representative of a party to a decree.⁴⁰ Although O.22 rule 19 (2)

38 Order 22 rules 55 to 60 CPR.

39 Orient Bank Limited Versus Fredrick J.K Zaabwe and Mars Trading Co. Limited, Supreme Court Civil Application No. 19 of 2007.

40 Order 22 rule 19 CPR.

provides for dispensation of NTSC in the circumstances stated therein, it would appear the court with the jurisdiction to do so is the court which passed the decree not the Registrar / Magistrate; This has a similar effect on the process of execution to the Judgment Creditor as the above factors.

IX. Court Bailiffs

The execution process is mostly persons designated as Court Bailiffs⁴¹ and Auctioneers. The appointing authority may license and appoint any person to be a court bailiff.⁴² The requirements for appointment as a court Bailiff emphasize good reputation, financial standing, adequate storage facilities, and has not been convicted of any criminal offence involving dishonesty. The rules do not prescribe any minimum level of formal education as a requirement although the rule committee has the power to add to the existing requirements.⁴³ As a consequence there are several incidences of wrongful attachment and execution e.g. under valuation of property, extortion, misappropriation of proceeds of sale, delays in remission of proceeds of execution, out right theft and appropriation of properties subject of execution etc. the general principle of law that a court bailiff is an agent of court who enjoys immunity in the performance of his execution proceedings does not apply where the court bailiff acts unlawfully.⁴⁴

The Rules create an offence for contravening the rules of which the sentence in financial terms is negligible at Ugx. 3,000/- or imprisonment for a term not exceeding six months or both.⁴⁵ This is not tenable and facilitates the Bailiffs abuse of process.

X. Unprofessionalism

Some Advocates, Registrars/Magistrates sometimes connive with Court Bailiffs to carry out illegal executions and also facilitate the wrongs committed by Bailiffs for their own selfish ends. This expresses itself in the form of Advocates conniving with Bailiffs to sell property under execution to themselves or to under value the same on the face of it such that the buyers pay a higher price than is indicated in the sale papers. This causes great pain to the judgment debtors since they stand to lose much from the process of execution.

41 Rule 4 of the Judicature (Court Bailiffs) Rules S.I 13-16.

42 Rule 5 (1) Judicature (Court Bailiffs) Rules S.I 13-16.

43 Rule 5 (2) Judicature (Court Bailiffs) Rules S.I 13-16.

44 Registrar, Trustees, Kampala Archdiocese and anor V Harriet Namakula and others, (1997-2001) UCLR at page 365.

45 Rule 20, The Judicature (Court Bailiffs) Rules, S.I 13-16.

XI. Interference and or Obstruction

Some actors in the execution process including lawyers (Advocates) and Bailiffs are utilizing government machinery to frustrate the process. It is common to hear people talking of Orders from above or how well connected they are to the powers that be. The machinery includes the Police, Army, Resident District Commissioners, and or other security officers etc. In certain instances, Bailiffs and Advocates have been assaulted by the judgment debtors in the process of doing their work. This is not a good practice on the face of it.

F. CURRENT ISSUES IN UGANDA

I. Establishment of the Execution and Bailiffs division of the High Court

There is established this division comprised of at least one judge as its head and a Registrar to handle all matters relating to enforcement of court orders. This is a pilot project which is expected to be taken across the country. For now the court handles matters from the Civil, Commercial, Criminal, Family, Land, Anti Corruption and International Crimes Divisions. It also handles magisterial areas of Kampala (Buganda road and Mengo) Nabweru, Nakawa and Makindye. This court does not handle matters from up county high court circuits and Industrial court.

This court handles all matters related to enforcement of judgments in these areas. This is in an attempt to harmonise all enforcement matters which then goes along way in solving backlog in enforcement.

II. Imprisonment of Debtors

The Principal Judge Yorokamu Bamwine, has come out to strongly advise that Judgment debtors should not be jailed. This is informed by the fact that there is congestion in the prison facilities across the country. If the courts implement this advice from the Principle Judge then again it will render this mode enforcement redundant in our law books and defeats its purpose which is to force or scare the judgment debtors to pay the monies owed to the successful party.

III. Liability of Bailiffs and Advocates

The courts of law have created mechanisms to reign in on errant bailiffs and Advocates by making them liable where they make obvious errors with intent to defraud judgment debtors. They now have personal liability in the event that the judgment debtor proves to court their culpability. The precedent was earlier set both in Acts of Parliament and case law for example in *Fenekasi Semakula Versus James Musoke, Fred Musoke and the East African General Insurance Co. Limited* (1981) HCB Page 46 wherein it was stated that it was pos-

sible for to sue court brokers for unlawful acts done while executing a lawful warrant in addition to their liability for executing an unlawful warrant.

IV. Case Backlog

The courts are filled up by cases that are yet to be heard which then impacts on execution process. The government is trying to establish the appropriate means to address this through employing more judicial officers, more divisions of the High Court and other courts. This may go a long way in sorting the problem.

G. Conclusion

The execution process in Uganda is clearly laid out in the Statutes and Rules thereto. The Process starts with a litigant that has a cause of action taking it to the Courts of Law for redress. Upon winning the case, he then must realise the fruits through a process of execution which is long and tedious. Various actors play a role at this point including the Court, the Advocate duly appointed, the Bailiff, Police, Prisons and others to ensure a smooth process. Execution in Uganda meets various obstacles both legal and non legal in terms of the rules of procedure that create roadblocks along the way and the state machinery that frustrates the process.

The creation of the Execution and Bailiffs division of the High Court is a positive step that will address the issue of backlog in terms of execution. The law should create stringent terms for the bailiffs in the future to ensure that they play by the rules to avoid unnecessary losses to their clients the successful litigants.

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