

A PAPER PRESENTED DURING THE INDUCTION/ORIENTATION TRAINING FOR NEWLY APPOINTED JUDICIAL OFFICERS: By Hon Lady Justice Margaret Mutonyi. JHC.

TOPIC: EXECUTION OF COURT ORDERS: ROLES OF STAKEHOLDERS AND CHALLENGES.

1. INTRODUCTION:

This presentation highlights the execution process as provided for under the laws particularly pertaining to enforcement of court orders to enable the successful litigants enjoy the fruits of litigation.

It will cover the role of the responsible officer's right from the judicial officers, advocates, the court bailiffs and other law enforcement officers like the police and the prisons and the challenges that surround enforcement. Because of the legal right of appeal, you will realize that the successful party does not immediately get the fruits of litigation.

There is always some sort of resistance from the losing party.

It becomes more complicated when execution is against Government.

As judicial officers responsible for ensuring justice, it's very important to follow Provisions of the Civil Procedure Act and the rules there under and the relevant laws to ensure proper and successful executions of Court Orders. If you are not in control of the entire process, the blame will always be on court. Judicial

officers are therefore responsible for the supervision of the entire execution process.

2. WHAT IS EXECUTION?

“The word execution in its widest sense signifies the enforcement of or giving effect to the judgements or orders of courts of justice”. Halsbury’s Laws 4th Edition paragraph 401.

In basic terms, it is a 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 prescribed by the law.

3. TYPES OF JUDGMENTS.

Basically we have two types of judgments to execute.

- a) Local Judgments
- b) Foreign Judgments.

EXECUTION OF LOCAL JUDGMENTS:

These are the most common judgments our courts deal with.

Before execution of any judgment, a litigant must extract a decree which is **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 the matters of controversy in the suit finally or if the suit ended through a preliminary hearing.** (Section 2 of the CPA defines both the decree holder and judgment debtor).

So before you sign for any execution, the applicant must attach a Decree of court. It is important to look at the Decree and judgment to ensure that the decree is a true reflection of the judgment in as far as the rights of the successful party is concerned. **(We have had cases where judicial officers have signed execution warrants ordering for demolition or eviction when the judgment did not mention it at all). Be very careful.**

In the High Court, the successful party is mandated to prepare the decree in consultation with the other party before submission to the registrar.

In the Magistrates court, the decree is drawn and signed by the trial magistrate who pronounced it or her/his successor.

It is also important to ensure that by the time court is issuing an execution order, taxation and extraction of decree is complete. In the case of **Corporate Insurance Co Limited VS Samex Insurance Brokers Ltd. E.A 2002 41**. It was held that **execution before extraction of the Decree and taxation is premature**

A successful litigant must apply to have the Decree executed promptly as there is a limitation after 12 years unless it can be proved that the judgment debtor fraudulently frustrated execution. (Section 35 of the CPA refers)

Generally Order 22 of the civil procedure Rules lays down clear guidelines on how executions should be handled.

The decree holder is the only person who may apply for execution against the judgment debtor but under exceptional circumstances, an assignee or transferee may apply and execution may also be against the legal representatives in case of death of the judgment creditor. **(O.22 rule 13 of CPR)**

The court must ensure that it is dealing with the legally authorized transferee or assignee and the administrator of the estate.

O.22 rule 4 and 6 Provides for situations where Magistrate or High court may have to transfer its decree to another court for execution.

Ensure that relevant information is given to the court where execution is to be handled like certified copy of decree and information that the trial court has not executed.

EXECUTION OF FOREIGN JUDGMENTS.

With the increased international commercial transactions turning the world into a global village not only in terms of social media but in International Trade, we may get foreign judgments against litigants who have properties in Uganda or Ugandans.

Foreign judgments are enforced based on reciprocity or participation in treaty. To the best of my knowledge Uganda is not a signatory to any existing International Conventions on Enforcement of foreign judgments, like the Hague Convention of 2019.

We however have **The Reciprocal Enforcement of Judgments Act Cap 21** which caters for enforcements of judgments in Uganda from UK and other commonwealth countries and the Republic of Ireland.

Section 2 specifically provided for judgments obtained in superior courts and not magistrates courts in the UK or Ireland.

The Foreign Judgments (Reciprocal Enforcement) Act Cap 9 which applies to applications for enforcement in Uganda of judgments given in foreign countries which accord reciprocal treatment to judgments in Uganda which countries are not members of the Common Wealth. The Act however allows the minister under section 8 by statutory order to direct otherwise.

We have **The Foreign Judgment (Reciprocal Enforcement) Rules S.I 9-1** which prescribes the form and procedure for application for registration of execution.

The Judgment Extension Act. CAP 12

This Act specifically provides for execution in Uganda of Decrees and Warrants issued by the courts of Kenya, Malawi and Tanzania for debts, damages and costs.

The Maintenance Orders Enforcement Act Cap 17, prescribes the manner and mode of enforcement of maintenance orders made in England, Northern Ireland, the Common wealth countries and Republic of Ireland. The minister also has powers by statutory Instrument to extend its operation in other common Wealth countries.

This act has its rules; **The Maintenance Orders Enforcement rules S.I 17-1** which provides for the procedure on how local courts receive the maintenance orders through the Minister (Rules 2 and 3) refers and how the court will deal with such orders on receipt (Rules 4,5,6,7,8 and 9) with Rule 9(2) providing that the Attorney General is deemed to be the legal representative to the Applicant for the enforcement of the maintenance order. The Maintenance Orders Enforcement (Extension) order S.I 17-2 was further issued extending the application of the Act to the list of the countries contained in the order.

Always remember that it is only the High Court that has jurisdiction to preside over these applications for execution of foreign judgments.

4. THE ROLES OF DIFFERENT STAKEHOLDERS.

I am not going to delve in each and every mode of execution because you know execution can be by way of attachment and sell of the judgment debtors property, attachment of his funds in the bank through garnishee proceedings, eviction and handing over vacant possession, demolition of structures, arrest and detention as civil debtor, distress for rent which has its own procedure. Whatever form is used, different stake holders in the criminal justice system play an important role.

1) COURT / JUDICIAL OFFICER.

In execution proceedings, the Registrar of Court or the Chief Magistrate or Magistrate who issues the warrant of execution is expected to do the following:

- I. Apply the law pertaining to the execution proceedings.
- II. Follow the process judiciously to avoid miscarriage of justice at this last stage of litigation.
- III. Before issuing any warrant in execution, must look at the decree and ensure that what is appearing in the warrant is the same as what the trial court decreed.
- IV. Ensure that the bailiff is licensed to carry out the execution.
- V. Indicate on the file and have it brought out on the date the warrant is supposed to be returned.
- VI. In case the warrant is not returned, the judicial officer is under a duty or obligation to summon the bailiff as to why the warrant is not returned.
- VII. In case it is returned on the due date, depending on the outcome of the execution whether it was successful or not;
 - a) May renew the warrant if there are sufficient reasons for failure of the bailiff to execute.
 - b) Demand the deposit of the proceeds if he was successful of the recovery in case of money.
- VIII. In case of attachment of immovable property, the Judicial officer should ensure;
 - a) Lawful acquisition and ownership of that property by the judgement debtor and if there is a certificate of title, it has to be deposited in court.

- b) Ensure that there is proper valuation of the property to be auctioned and where the property is grossly undervalued, the valuation report should be rejected by court.
- c) The auctioned date must be properly advertised
- d) Ensure that on the date of the auction, the process is not flawed.
- e) Where necessary, the court should set a reserve value so that auctioneers do not allow any bidder to the property at a ridiculous price to the detriment of the judgement debtor.
- f) After the bailiff has executed the warrant, the proceeds should be deposited in court.
- g) The bailiff should then file his bill of costs and the judicial officer taxes the bill within the ambit of the law pertaining to the remuneration of court bailiffs.
- h) The judicial officer then disburses the proceeds of the auction in accordance with the law and if there is any balance, it should be paid to the judgement debtor.
- i) The Judicial officer should then ensure effective transfer of the auctioned or sold property to the successful bidder who has paid the amount within the prescribed time and within the confines of the law.
- j) In case there is an application for stay of execution or objector proceedings, it should be handled expeditiously.

2) THE ROLE OF THE ADVOCATE

Where a litigant is represented, his duty is to file the bill of costs to enable the litigant recover costs of the suit.

They also help the successful litigant to apply for execution after the judgment debtor's property has been properly identified.

The Court expects the advocate to do due diligence before filing the documentation of execution in court.

As an officer of court, we expect him to help the court in the execution process to avoid flaws.

3) THE BAILIFF

The bailiffs are governed by Judicature (Court Bailiffs) Rules S.I 13-16

The Courts in carrying out their execution duty are assisted by the bailiff who is expected to execute the warrant in a lawful manner and he enjoys immunity in case he does it lawfully as was decided in the case of **Bifabusha V Turyazooka (2000)2 E.A 330**

However, in case he/she unlawfully executes the warrant by either selling to himself, family members or judicial officers or disappears with the proceeds, he is not immune from prosecution.

4) POLICE OFFICERS

The bailiff is assisted by the police officers whenever they are in the field. Therefore, it is the duty of the court to direct that the

police officers assist in the execution process. N.B Avoid use of private security agencies.

5) UGANDA PRISON'S SERVICE

The Uganda Prisons service is involved where the mode of execution is by arrest and detention. (Section 40-42 of the Civil Procedure Act refers).

It should however be noted that the judgment creditor has to pay for the subsistence of the judgment debtor while in prison and if they cannot pay then the judgment debtor should not be detained in prison.

The Court should decide on what the judgment creditor should pay and if not the judgment debtor should not be detained.

The warrant of Arrest and detention should always be the last resort.

6) LOCAL COUNCIL AUTHORITIES

The Local Council leaders can help to identify the ownership of the property especially in customary holdings.

SOME CHALLENGES THAT MIGHT BE FACED IN EXECUTION.

1. Execution against government. (Refer to the Government Proceedings Act Cap 77 and the Rules thereunder).

Execution against Government has a different procedure and O.22 of the CPR is not applicable. Section 19 of the GPA provides for the procedure when executing against Government which makes it difficult. A decree holder has to apply for a certificate of

order and serve it on the Attorney General. If not paid, the Judgment creditor then takes out proceedings for mandamus which is just like a suit and takes time like any other ordinary suit. Even if the order is granted execution is still a problem. No one will hold a government official in contempt for not paying the judgment creditor.

Execution against Government and or its Agencies for vacant possession is next to impossible. No police will assist the bailiff to evict a government institution at least to my knowledge here in Uganda.

2. Execution against Local Government.

Section 6(2) of **The Local Government Act CAP 243** prohibits execution against Local Government for enforcement of a money Decree against its fixed assets and statutory transfers. You cannot attach even any other property until after a notice of 6 months which makes it difficult to execute against it.

3. Execution against Parastatals.

These are considered to be the property of Government.

For example, one cannot easily execute against Uganda Railways Corporation. Section 53 of the Uganda Railways Corporation Act prohibits execution against the property of the Corporation and if the managing Director does not pay, the same procedure of mandamus applies with its challenges.

4. Diplomats.

Diplomatic agents and mission properties are immune from execution under the Diplomatic Privileges Act Cap 201.

5. Objection to attachments and stay of execution can take very long in court thereby delaying the realization of the fruits of litigation.
6. With the requirement of issuing a notice to show cause, under O.22 Rule 19 of the CPR, where the application is made one year after the decree, some fraudulent judgment debtors can organize to make sure any attachable property disappears or funds are withdrawn from the Bank. Attachable property can be transferred in other people's names making the whole process, costly and impossible.

As I conclude let me briefly talk about Distress for rent.

Previously a landlord could adopt a self-help approach and impound property belonging to a tenant and if the rent arrears are not paid, apply to court to have them sold.

This practice was known as distress for rent.

However the Land Lord and Tenant Act of 2021 abolished distress for rent but instead the Land Lord is to apply to court to recover unpaid rent and reasonable costs as provided under Section 29 of the Act and Section 29(4) provides for **The Judicature (small claims Procedure) rules 2011** to apply to any application to recover rent arrears under this section but only if the claim does not exceed the amount specified for small claims in **The Judicature (small claims Procedure) rules 2011**.

Be reminded that execution is at the end tail of litigation. The unsuccessful party may just wish to frustrate the whole process. Remember that appealing against the decision alone is not sufficient ground for stay of execution. So when you have an application for stay, consider the grounds and use your discretion judiciously.

I am glad that it's the trial courts that are now executing their orders. You can ably distinguish between a genuine judgment debtor who deserves a stay of execution and one who just wants to frustrate justice. There must be proof of facts that should persuade you to stay execution.

Without successful execution of court orders, litigation becomes a mockery.

Case references: Find time and read the following cases.

They explain very well when the stay of execution should be granted and when it should be denied.

- 1. Kyambogo University v Prof Isaiah Omolo Ndiege (Court of Appeal Civil Application No. 341 of 2013 UGGC. 13**
- 2. Attorney General V Walugembe Daniel CACA NO. 390 OF 2018**
- 3. Rukikaire v Incafex Ltd CA Civil Application no. 11/2015 UGSC**
- 4. Hwan Sung industries ltd V Tajdin Hussein & 2 others Civil Appeal 08/08 [2009] UGSC 17/2009.**

5. **Formula Feeds limited, Gichohi Ngari Vs KCB BANK UGANDA LTD AND 2 OTHERS HCT EMA NO. 390 OF 2020 where the mortgages were illegal and unenforceable**
6. **Total Uganda Ltd versus Rosebell Twinamatsiko were application for stay was denied because applicant just wanted to abuse the court process through the application, thereby avoiding payment.**

THANK YOU FOR LISTENING TO ME