

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO. 518 OF 2020

(ARISING OUT OF MISC. CAUSE NO. 215 OF 2018)

SMART PROTUS MAGARA ::Applicant

Versus

1. MWESIGWA SAMUEL AND 24 ORS

(The Plaintiffs in Civil Suit No. 132 of 2018)

2. BULIME BOB HENRY & ANOTHER

(The Plaintiffs in Civil Suit No. 115 of 2018) ::::::::::::::: Respondents

3. MICHEAL AKAMPURIRA & ANOTHER

(The Plaintiffs in Civil Suit No. 855 of 2018)

4. FINANCIAL INTELLIGENCE AUTHORITY

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application brought under Section 98 of the Civil Procedure Act, Order 52 Rule 1,2&3 of the Civil Procedure Rules.

The applicant sought for orders that the ruling and orders in Misc Cause No. 215 of 2018:- Smart Protus Magara vs Financial Intelligence Authority & 138 Ors be varied and the following order be granted:

1. The Order for the Learned Judge in Miscellaneous Cause No. 215 of 2018, is varied and the applicant is given USD 84,000 from the money that was removed from his account and in the custody of the official receiver pending the final determination of the verification process.

2. No costs to this application.

The application was supported by the affidavit sworn by the applicant whose grounds are briefly that;

1. The court ordered that all the money held from the applicant's frozen accounts be transferred to the Official Receiver to enable the persons affected be compensated.
2. That following the order of court, it directed and indeed a verification committee was setup between the persons claiming against the applicant with oversight of the Financial Intelligence Authority and Official Receiver-under Uganda Registration Services Bureau.
3. That the Committee has since made verification reports ascertaining the accuracy and genuineness of the claims. Indeed some claims which were deemed genuine have been paid. These were claims of the persons that deposited money on my account.
4. That the Verification Committee has continued to recommend payments and as the applicant I have fully cooperated with the committee in the process of verification.
5. That unfortunately, in the midst of all this, I have become financially constrained and I need money to meet my basic needs and pay off liabilities that have accrued over the years since 2017 when my accounts were frozen.

6. That since my accounts were frozen in 2017, I have not been able to transact at all in the banking system and therefore I have been limited in my livelihood.
7. That accordingly, I have improvised by borrowing some money on several occasions to sustain myself and to provide for my family and the hard times caused by COVID-19 it is important that some money be returned to me in order to feed my family during this pandemic.
8. That I seek the indulgence of this honourable court to vary the order and order that I'm given USD 84,000 of the amount that is held by the Official Receiver to enable me pay my debts and to sustain my family as the verification exercise proceeds.
9. That the amount I have sought is substantial to me but a small portion of the amount in the custody of the Official Receiver and it shall not prejudice the respondents considering that there is still enough money on the account to satisfy the genuine claims.
10. It is just and fair that this application be granted.

The respondent filed an affidavit in reply opposing the application by a one Rose Kabonesa. The said affidavit did not have any substance in opposition except that she tried to make her own case to be paid. The only affidavit that seems in opposition is paragraph 17 which states that:

The applicant has no money to claim by this application because what is available is not enough to fully cover the claims in the event of an order that the claimants should be refunded.

The rest of the respondents never filed any affidavits in opposition or reply.

The parties were instructed to file written submissions that were considered by this court.

The applicant was represented by *Yiga Shafir* while the respondents were represented specifically by *Waiswa Ramathan* and the other advocates although on record never opposed seriously and left it to the discretion of the court.

The only issue for determination is *Whether the applicant has set out any justifiable grounds for variation of the original court order in Miscellaneous Cause No. 215 of 2018.*

Analysis

The applicant brought this application on grounds that he was aggrieved by the orders given in the main application and sought that the order be varied and he be given USD \$84,000 and this would be a variation of the ruling/order in Misc. Cause No. 215 of 2018.

According to Section 98 of the Civil Procedure Act,

Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

This court under section 33 of the Judicature Act is empowered to give any remedies sought in a matter if properly brought before the court. It provides;

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms

and conditions as it thinks just, all such remedies as any of the parties to the cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters are avoided.

The applicant has set out grounds in his application for variation to be allowed to access \$84,000 and this is premised on the hard times that have hit him since 2017 when his bank accounts were frozen and the same have been aggravated by the Covid-19 pandemic.

It is also true that since that time the applicant has been using services of lawyers in the different matters including the present matter and definitely is not on pro bono services or program, and their services must be paid for.

It is very true that the applicant has been cooperative in the entire verification exercise through his current Advocate and it is only fair that the applicant be allowed to access some portion of the money that had been frozen on his account and transferred to the Official Receiver.

This court is also aware that the applicant during the main application hearing had stated in his affidavit evidence that part of the frozen money on his bank accounts were his savings. However the applicant at time never stated any definite amount out of the total amount frozen on his banks accounts that were his personal savings.

This court in exercise of its powers ought to determine what reasonable amount should be given to the applicant. The applicant has not explained to this court how he arrived at \$84,000 and it cannot be assumed to be the total amount of the said savings he claimed or alleged in the original application.

Bearing in mind the role of court in meeting the ends of justice, I find that the applicant has demonstrated sufficient reason or justification for this court to vary its ruling.

I order that the Official Receiver pays the applicant through his current Advocates a sum of US\$54,000

The application is allowed in those terms.

I make no order as to costs.

I so order

SSEKAANA MUSA

JUDGE

22nd January 2021