**Bifabusha v Turyazooka**

**Division:** Court of Appeal of Uganda at Kampala

**Date of judgment:** 17 October 2000

**Case Number:** 3/00

**Before:** Kato, Okello and Kitumba JJA

**Sourced by:** B Tusasirwe

**Summarised by:** M Kibanga

*[1] Practice and procedure – Court bailiff – Bailiff instructed to sell immovable property – Bailiff selling*

*movable property also – Whether bailiff acted in excess of his power – Whether bailiff entitled to*

*protection under section48 of the Judicature Act.*

*[2] Practice and procedure – Summary dismissal of suit – Order 7, Rule 11(*a*) and (*b*) – Civil Procedure*

*Rules – Appellant filing suit against court bailiff for illegal sale – Court bailiff alleging protection of law*

*– Section 48 – Judicature statute – Whether matter suitable for dismissal under Order 7, Rule 11(*a*) and*

*(*b*) – Civil Procedure Rules.*

**Editor’s Summary**

The Appellant was a registered co-owner of an immovable property. His co-owner sued the Appellant successfully and an order was issued for the sale of the immovable property. The Respondent, who was a court broker, was given the attachment warrant to attach and sell and he attached and sold the property.

The Appellant successfully challenged the decision to sue in the High Court but upon re-entering the property, he found that all his immovable property had been sold, stolen or vandalised.

The Appellant sued the Respondent for general and special damages arguing that by selling the

Appellant’s movable property, the Respondent had exceeded his powers given by the warrant of attachment and his conduct amounted to conversion. The Respondent’s advocate raised a preliminary objection urging that the plaint disclosed no cause of action on the grounds that the Respondent acted lawfully and as a court broker he was protected by section 48 of the Judicature Statute. He prayed that the plaint be dismissed under Order 7, Rule 11(*a*) and (*b*) of the Civil Procedure Rules. The Learned Judge upheld the objection and the Appellant appealed to the Court of Appeal.

**Held** – In an objection to the plaint under Order 7, Rule 11(*a*) of the Civil Procedure Rules the judge had to obsence and construe the plaint carefully and see whether there was inherent defect in the plaint. A distinction must be drawn between an application to reject a plaint and one where a matter of law was set down for argument as a preliminary point. Under Order 7, Rule 11(*a*) of the Rules, an inherent defect in the plaint must be shown, rather than that the suit was not maintainable in law. In the latter case a preliminary point should be set down per hearing on a matter of law. *Wycliffe Kigundu v Attorney-General* (Supreme Court) civil appeal number 3 of 1993 (UR) and *Nurdin Ali Dewji and others v Maghji and others* [1953] 20 EACA 132 followed.

Whenever a court bailiff as a court officer was protected from suit for any lawful or authorised act done in the execution of a warrant under section 48(2) of the Judicature Statute, the protection was available only when the bailiff acted lawfully; *Maria Onyango Ochola v W Hannington Wasswa* [1988-1999] HCB 102 followed. The Appellant’s contention that the Respondent sold some immovable property without authority should have been investigated by way of evidence. The issue of protection under section 48(2) of the Judicature Statute was a point of law suitable for investigation at a full hearing.

The appeal was allowed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Auto Garage and another v Motokov* [1971] EA 514

*Francis Micah v Nuwa Walakira* Supreme Court civil appeal number 21 of 1994 (UR)

*Katikiro of Buganda v AG of Uganda* [1958] EA 765

*Maria Onvango Ochola v W Hannington Wasswa* [1988–1999] HCB 102 – **F**

*Nurdin Ali Dewii and others v Maghji and others* [1953] 20 EACA 132 – **F**

*Wycliffe Kigundu v Attorney-General* Supreme Court civil appeal number 3 of 1993 (UR) – **F**