

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT)

MISC. APPLICATION NO. 323 OF 2002

(Arising out of Civil Suit No. 248 of 2001)

VICTORIA NASSUNA..... APPLICANT

VERSUS

BRITANIA PRODUCTS (U) LTD..... PLAINTIFF

BEFORE: THE HONOURABLE. MR. JUSTICE JAMES OGOOLA

**RULING**

The Court's investigation of the matter in dispute was greatly assisted by the several affidavits of all the parties to this dispute. A crucial affidavit in the matter is the one by LAWRENCE MUWANGA (the LC Chairman of the area and Caretaker of the suit property for over 24 years). In paragraphs 4 and 6 of his affidavit, he deponed to the following key factors:

- (i) The Applicant has never had a 25-room semi-permanent structure on the suit land, from which she could make rental income of Shs.450,000/- per month.
- (ii) The Applicant never reported the alleged loss of the properties listed in paragraph 3 of her own affidavit-in-support (i.e. radios, gomesis and cash). She did not report to him as LC Chairman or Caretaker of the suit plot; nor did she report to the police.

The above crucial averments were not controverted (whether fully or partially) – at any rate not to the satisfaction of the Court. The Applicant herself had plenty of opportunity controvert, contradict or challenge the above assertions – see her own affidavit-in-reply dated 18/07/02 which specifically addressed Mr. Muwanga's above affidavit. But she never challenged or contradicted any of Muwanga's above averments.

In the event, those averments must be taken to be true. In short, the Applicant has not proved either that she had the semi-permanent structure on the suit land as she claimed; or that she lost the radios, gomesis and cash as alleged.

Secondly, if it is true that the Applicant lost items of property set forth above; and if, as averred, that loss was occasioned by the Auctioneer, then it is clear that this was outside the mandate of the Auctioneer – whose authority was to attach the house (not to take the contents thereof). The Auctioneer would, therefore, be answerable for any such loss – and the Applicant would, in that event, have a different and distinct cause of action (presumably in conversion or tort) against the Auctioneer.

Thirdly, as regards the alleged attachment of the Applicant's suit property, one must ask two questions: **First**, was attachment ever effected in relation to the suit property? **Second**, if it was, is such attachment still subsisting? Order 19, rr 56 and 57 of the Civil Procedure Rules (under which the instant application was brought) come into play where a property has been attached in execution of

a Court decree **and** at the time of the application, the property is still under attachment. The remedy in r.57 of O.19 is for the Court to **RELEASE** the property from attachment – whether wholly or to the extent that the Court thinks fit.

In the instant case, Court is satisfied that at the material time, the property was not under attachment. This is so because:

- (1) the registered proprietor of the land had sold it on 04/06/02. But this application was filed on 11/06/02 (i.e. 7 days after the sale);
- (2) although Court gave the Bailiffs powers of sale, the Bailiffs returned their warrant back to Court **UNEXECUTED**. Therefore, the ensuing sale was an Attachment and Sale).

In light of all the above Court has no alternative but to deny the application. Given the rather strange circumstances of this case, each party shall bear its own costs.

**Ordered accordingly.**

James Ogoola

JUDGE

30/09/02