

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-MC-0014-2006

IN THE MATTER OF OFFICIAL RECEIVER APPLICANT

VERSUS

THE COMPANIES ACT CAP. 110 RESPONDENT

Legislation referred to:

1. *Companies Act*
2. *Company (winding up) Rules*
3. *Civil Procedure Rules*

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA

RULING:

This is an application or directions by the Official Receiver brought Under Section 347 (3) of the Companies Act, Rule 7 (2) of the Company (winding up) Rules and Order 34 A (now 38) rule 6(r) of the Civil Procedure Rules for Orders that::

- (a) The Official Receiver be granted authority to expend part of the money held on the Companies Contingency Fund Account for activities /items necessary for carrying out more efficiently his duties.

(b) Any other related issues.

The application is supported by an affidavit sworn by Bemanya Twebaze a Senior State Attorney working in the Department of the Registrar General/Official Receiver/Liquidator Section of the Registrar General's Department of the Ministry of Justice and Constitutional Affairs.

Section 347 (I) of the Companies Act authorises the official receiver whenever the cash balance standing to the credit of the Companies Liquidation Account is in excess of the amount which in his opinion is required for the time being to answer claims against the account to place that balance or any part of it on a fixed deposit with a Bank. Under sub-section 3 of the above section all interest accruing from any money so placed on deposit shall be paid by the official receiver to the Credit of a separate account entitled the Companies Contingency Fund. When it appears that it is in the public interest to do so and that other funds are not available or properly chargeable, the Court may on the application of the official receiver, authorise him or her to employ money in the Companies Contingency Fund to meet expenditure which it shall consider necessary or advisable to incur for the purpose of enabling the official receiver to carry out more efficiently the provision of and his/her duties under the Act.

The Official Receiver, in her affidavit in support of this application, is seeking funds for the following activities.-

- (1) Funds for payment of salaries and allowances for secretarial and administrative work. The Officer Receiver has due to increased work engaged a Secretary and an Administrative Assistant for handling the liquidation and bankruptcy matters. Previously, facilitation for the staff was with permission of the Privatisation Unit, from account of Companies in liquidation that they have handled. The deponent avers that such liquidation under the Privatisation Unit is about to conclude. The staff is required by the Official Receiver in several other cases the section handles arising out of Court, Voluntary Liquidation and Bankruptcy cases.
- (2) The maintenance of a motor vehicle and motorcycle acquired through funds authorized by this Honourable Court to be expended under the Order issued on 31st March 2004.

- (3) To train and hire personnel to feed data into the computers using the soft ware programmer developed for computerisation of the Official Receivers Operations so that the initial development and installation cost does not go to waste.
- (4) Funds to affiliate to International Insolvency Practitioners Associations and attend related meetings so as to acquire the training and exposure in the challenging and fast developing field of Insolvency Practice in Uganda and for subscription to the International Insolvency Practitioners Association, an International body bringing together all the worlds' insolvency practitioners.
- (5) Funds to purchase more cabinets, a fridge and a motor vehicle.
- (6) Funds to pay overhead costs for office operations like paying telephone bills and servicing office equipments.

A budget for effective service delivery was attached to the affidavit in annexure B showing a total sum of Shs139, 100,000/=. It is averred that the activities to be undertaken with the authorization of Court, have no corresponding budgetary provisions in the departmental budget as they are procured outside the mainstream budget, thus this application.

It is in the public interest that funds are provided for the items outlined above to enable the Official Receiver more efficiently carry out her duties. It is the Official Receiver's contention that there are no budgetary provisions for the required funds. In paragraph 11 of the affidavit in support the deponent avers that the Official Receiver Operates a Companies Contingency Fund Account with the Crane Bank Ltd on which monies generated as interest are deposited and has accumulated to over 500,000,000/=

Paragraph 11 of the affidavit shows that both monies generated as fees or interest are deposited by the Official Receiver on the Companies Contingency Fund. Subsection 3 of Section 347 requires that funds to be placed on the Companies Contingency Funds is interest which accrues on a fixed deposit as excess from the fixed Companies Liquidation Account. The affidavit does not show how much of the 'Shs500, 000,000/= on the Companies Contingency Funds Account is such interest.

The above withstanding, the authority sought by the Official Receiver is granted. The Official Receiver is authorized to spend a sum of not more than Shs139, 100,000/= from the Companies Contingency Fund for the activities detailed in the Budget annexed to the application and marked B. For the proper administration of the funds authorized as aforesaid the Official Receiver shall follow and adhere to the Government Procurement procedure prevailing in Uganda and exclusively use the funds for the official duties of the Official Receiver within the meaning of Section 347 of the Companies Act.

I so order.

Hon. Mr. Lameck Mukasa

Judge

10/11/2006