

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
COMMERCIAL COURT DIVISION**

**HCT – 00 – CC – MA – 476 – 2008  
(C.S NO 111 OF 2007)**

**SECURITY GROUP (U) LTD:.....APPLICANT**

**VERUS**

**DOSHI HARDWARE (U) LTD:.....RESPONDENT**

**BEFORE: HON MR. JUSTICE ANUP SINGH CHOUDRY**

**RULING**

This is an application brought by way of motion by the Applicants/Defendants to set aside the wasted costs order made against Kasolo and Kiddu Advocates on 10<sup>th</sup> September 2008 for failing to turn up at the hearing when the case was listed for scheduling.

The application was ex-parte application, but the Counsel for the Plaintiff/Respondents Mr. Peters Musoke also appeared in the court.

On 10<sup>th</sup> September the firm Kasolo and Kiddu were represented by Mr. Moses Ibale who was holding brief as the Counsel in-charge of the case Mr. Magellan Kazibwe was not able to appear as the court was informed that he was indisposed of.

I therefore stood over the case until 11 O'clock for Counsel to appear unless Mr. Moses Ibale was able to proceed which he ought to have done as it was merely a scheduling conference. There was

no reason why he could have not proceeded if Mr. Magellan Kazibwe was not able to turn up. Both Counsels came from the same Chambers.

I therefore made a wasted costs order against the firm although I was minded to make order against the lawyer himself in the sum of 200,000 shillings which I assessed as being the reasonable amount. The order was made to ensure that the litigant or the parties did not have to foot the bill in the end because of the wasted cost.

This application has come here today for wasted costs order to be set aside and it has been supported by the affidavit by Moses Ibale. Mr. Magellan Kazibwe has appeared to make the application.

Mr. Kazibwe stated that he was indisposed of and that he had acted with all the due diligence to come to the court and had just managed to appear after 11 O'clock by which time the order had been made.

He also mentioned that there was traffic jam and that the previous night he had instructed his colleague Moses Ibale to appear on his behalf to apply for adjournment. Mr. Peters Musoke for the Respondent pointed out that there was no affidavit sworn by the applicant Mr. Kazibwe nor was there any medical evidence or report attached, so the reasons mentioned were hearsay.

I have no reason to disagree with Mr. Peters Musoke and in any event, this application must fail as it is not supported by any proper affidavit that should have been filed by Mr. Magellan Kazibwe. The affidavit should have given reasons providing medical evidence, the nature of sickness and why the disability or the sickness did not permit him to attend court. Nothing of that sort was adduced in evidence before this court; moreover this was a scheduling conference and it could have easily been substituted by any other members in the firm or Chambers.

The evidence in support of this application simply does not hold and the court has a duty to ensure that wasted costs are not passed on to the parties or Litigants.

In the circumstances, this application is refused and there is an order for costs for today's hearing in the sum of 50,000 shillings to be paid by the Applicant Mr. Kazibwe to the Respondents. The said sum to be paid within 14 days.

Mr. Kazibwe also applied for leave to appeal which was refused on the grounds that there was no evidence before the court to support the application to set aside the order and hence no point of law to raise on appeal.

**ANUP SINGH CHOUDRY**

**JUDGE**

**22/09/2008**