

THE REPUBLIC OF UGANDA

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

HCT-00-CC-M.A 92-2008

STIRLING CIVIL ENGINEERING LTD.....APPLICANT

VS

PETRO (U) LTD & 2 OTEHRS.....DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE ANUP SINGH CHOUDRY

R U L I N G

(Advertisement in the local vernacular newspaper not proper Notice for sale by auction to the Public and highest Bidder, sale by Bailiffs set aside)

This is an Application by the Applicant Stirling Civil Engineering by way of motion to set aside dismissal of Misc. Application 256 of 2008 which was dismissed by this court on 23rd February as Counsel Mr. Kwemara Kafuuzi for the Applicant was 30 minutes late in the court.

The application to set aside the execution was made in October 2008 but did not come for hearing until 23rd February. During that period the grader which is subject matter of this application seems to have been disposed of by the bailiffs notwithstanding that at an earlier hearing before the Registrar, it was indicated to the Registrar by the Bailiffs that the grader had not been disposed of and it was also indicated that the matter was in the process of being settled.

Mr. Kafuuzi has sworn an affidavit and has been very frank with the court and told the court that it was a genuine mistake on his part. I do accept that mistakes happen, but in any event the court was notified by his manuscript note that he might not attend court and order ought not to have been made. It now brings me to the question of merits of the case in case the execution is to be set aside.

The complaint by Mr. Kafuuzi is that the machine was sold in auction without proper notice given to the world at large; in particular the sale of the machine was advertised for auction in the newspaper called Bukedde; Bukedde is local newspaper in Luganda.

The Applicants are a foreign company Stirling Civil Engineering Ltd. They are aggrieved that they had no notice of such sale by auction. In the court I did indicate to the parties that this was a matter which ought to have been settled because there was a sum of 61 million that remained outstanding and proposals could have been made to settle this balance quite easily. And I am sure the parties would have been amenable to that settlement. However, the Bailiffs went ahead for reasons unknown to this court and disposed of the machine in the sum of 61 million shillings which the Applicants alleged was undersold. There is no evidence that this was the case.

However, in the interest of commercial justice and in the wider interest of giving the public and investors confidence in Uganda's economy and Judicial system it is important that there is transparency. Hence proper notices must be given. A local notice in rural language in a local newspaper is clearly not proper notice. In those circumstances I will set aside the order dated 23rd February made by this court and set aside the sale of the machine by the Bailiffs. And I will further order that sale of the machine is properly advertised in national newspapers and trust that this will serve as a precedent for the future conduct of Bailiffs in similar cases. No orders as to costs.

Anup Singh Choudry

J u d g e

9/03/09