



4. *The cheques purportedly deposited by the purchaser / 2<sup>nd</sup> respondent bounced, and therefore the sale was void for lack of consideration.*
5. *The sale was conducted in defiance of the communicated views of the applicant who was a secured creditor as mortgagee of the lands and property that was sold.*

5 The application is supported by an the affidavit of Stephen Kuria Njinu, a Legal Officer of the applicant, and a supplementary affidavit sworn by Sarah Nansamba Kisubi, who indicated that she was the applicant's Advocate.

It was the deposition of Stephen Kuria Njinu that in 2005, the applicant/judgment creditor advanced to the 1<sup>st</sup> respondent/Judgment Debtor, a sum of US\$ 1,500,000, which was secured by  
10 a legal mortgage. The 1<sup>st</sup> respondent breached the terms of the loan agreement by defaulting in the payment of the amounts that became due for payment and the applicant issued a Statutory Notice to the 1<sup>st</sup> respondent in that regard. Further, that the 1<sup>st</sup> respondent then instituted HCCS No.397 of 2009, against the applicant but the suit was later withdrawn and a schedule for repayment was agreed upon, which was also not honored by the 1<sup>st</sup> respondent. It was the further deposition of  
15 Stephen Njinu that the 1<sup>st</sup> respondent subsequently filed HCCS No.249 of 2010 against the applicant, and a Consent Judgment was thereupon reached and entered wherein the 1<sup>st</sup> respondent admitted that it owed the applicant US\$ 1,473,108.73. However, the 1<sup>st</sup> respondent breached the terms of the Consent Judgment as to payment.

Further, that following the 1<sup>st</sup> respondent's breach of the terms of the Consent Judgment, this  
20 court issued a warrant of attachment and sale to the 3<sup>rd</sup> and 4<sup>th</sup> respondents/bailiffs of the immovable property mortgaged to the applicant by the 1<sup>st</sup> respondent. By Consent Order, it was also agreed that the sale should be by private treaty and that the sale should not take place below the reserve value indicated in the valuation report by M/S Knight Frank dated June 2010.

Subsequently, the applicants received several offers including those from Arcadia Investments for  
25 UGX 1,700,000,000/=, Urban Utility Consults Ltd for UGX 1,800,000,000/= and the 2<sup>nd</sup> respondent for UGX 1,900,000,000/=. That upon receipt of the offers, the applicant's Advocates indicated to the applicant that Urban Utility Consults Ltd was a Company owned by the 1<sup>st</sup> respondent and this was confirmed by a Search at the Companies Registry. Further that on

the face of it, the offers by Arcadia Investments and the 2<sup>nd</sup> respondent appeared to be printed by the same printer and their address was the same.

It was his further deposition that considering that the above stated offers were all below the value indicated in the Knight Frank valuation referenced in the Consent Order and that the amount  
5 outstanding and due to the applicant was way below what was offered, the applicant wrote to the 3<sup>rd</sup> and 4<sup>th</sup> respondents rejecting the offers. However, the 3<sup>rd</sup> and 4<sup>th</sup> respondents/bailiffs defiantly proceeded to attach and sell the properties to the 2<sup>nd</sup> respondent. Further, that the 2<sup>nd</sup> respondent/purchaser banked cheques totaling to UGX 117,000,000/= on the applicant's escrow account in Stanbic Bank as part payment of the purchase price but the said cheques bounced and  
10 were returned unpaid.

In the supplementary affidavit sworn on behalf of the applicant by Sarah Nansamba Kisubi, the above averments were repeated, and in addition, she stated that while conducting the sale, the bailiffs based on a schedule titled "Re: Mortgaged properties under attachment" which was unknown to the applicant and also applied a 'forced sale' concept and 'forced sale value' in  
15 breach of the stipulation for a reserve value referred to in the Consent Order.

In reply, an affidavit was sworn on behalf of the 1<sup>st</sup> respondent by its Executive Director Anatoli Kamugisha, Thomas Ndeema, a Managing Director of the 2<sup>nd</sup> respondent swore an affidavit on its behalf and Festus Kamugisha, the 3<sup>rd</sup> and 4<sup>th</sup> respondents herein filed separate affidavits in reply on their own behalf and on each other's behalf.

20 For the 1<sup>st</sup> respondent, it was stated that before the applicant had applied to execute the Consent Decree, the 1<sup>st</sup> respondent had paid some installments to reduce the decretal sum and that the amount owing had already been reduced by over US\$ 743,120.2. Further that the mortgaged properties had been sold over and above the reserve price of the valuation report by Knight Frank, contrary to the averments by the applicant.

25 In the affidavit in reply sworn on behalf of the 2<sup>nd</sup> respondent, Thomas Ndeema stated that on the 10<sup>th</sup> January, 2010, he was approached by a property broker known as Ashaba Anthony who informed him that some properties were being sold by Court, and that the 3<sup>rd</sup> respondent was one of the bailiffs handling the sale. Thereupon, he contacted the 3<sup>rd</sup> respondent and was shown an application for execution and warrant of attachment and he was later advised by his Lawyers to

submit a bid offer, which he did. He further deposed that subsequently, he was informed that the bid was successful and an agreement for sale and purchase was executed. Thereupon, the 2<sup>nd</sup> respondent deposited the first installment on the consideration by cheque amounting to UGX 117,000,000/=. He further stated that it was not true that he was introduced to the 3<sup>rd</sup> respondent  
5 by an employee of the 1<sup>st</sup> respondent and that he was not aware of the relationship between Urban Utility Consults and the 1<sup>st</sup> respondent. Further, that he was not aware of any bounced cheques and had never been notified of the same.

The 4<sup>th</sup> respondent, on his own behalf and on behalf of the 3<sup>rd</sup> respondent, deposed that they were appointed as bailiffs in execution of the warrant of attachment and sale in the present matter, and  
10 the parties agreed and entered a Consent Order to sell the properties by private treaty. The 2<sup>nd</sup> respondent was one of the bidders who were submitted to Counsel for the applicant for approval but that all the offers were rejected. He contended that however, on 14<sup>th</sup> March 2012, Counsel for the applicant indicated to the bailiffs that their client had accepted that the property under attachment be sold as long as the offer was equal or above the value ascertained by Knight Frank.  
15 That on the 23<sup>rd</sup> March, 2012, the bailiffs/3<sup>rd</sup> and 4<sup>th</sup> respondents wrote to the 2<sup>nd</sup> respondent and by their letter dated 30<sup>th</sup> March, 2012, the 2<sup>nd</sup> respondent retaliated its commitment to pay the purchase price for the properties at UGX 1,900,000,000/=. Following the above, and that considering that this offer was acceptable to the applicant and the same had been accepted by court as the minimum amount, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents went ahead to conclude the sale.

20 It was his further deposition that the properties attached were sold above the reserve price which was satisfying the entire amount recoverable, and in accordance with the valuation reports by Knight Frank. Further, that the bailiffs did not have any special knowledge of the events prior to the attachment and that they did not connive with any of the bidders or employees of the 1<sup>st</sup> respondent. It was his contention that the purchaser could not complete payment as the court  
25 issued an Interim Order halting any further payments until final determination of this application.

The 3<sup>rd</sup> respondent also deposed that the properties were sold over and above the reserve price which was in satisfaction of the entire recoverable amount in the Consent Order. Further, that it was not true that the outstanding balance owed to the applicant was US\$ 1,572, 210.19, because the application for execution and the warrant of attachment and sale indicated the balance of the  
30 decretal sum recoverable as US\$ 743.129.23.

In rejoinder to the 3<sup>rd</sup> and 4<sup>th</sup> respondent's affidavits in reply, affidavits were sworn on behalf of the applicant by Judy Rugasira Kyanda, a Managing Director of M/S Knight Frank Limited, and Sarah Nansamba Kisubi, the applicant's Advocate.

In her affidavit in rejoinder, Judy Rugasira Kyanda stated that on the 13<sup>th</sup> May, 2010, Knight Frank Limited was instructed to value certain properties, which are the subject of this application, and the said valuation was carried out under her supervision. Thereafter, Valuation reports were issued, which were attached to her affidavit. She stated that the valuation report, apparently relied upon by the 3<sup>rd</sup> and 4<sup>th</sup> respondents and indicating a forced sale value for the property in carrying out the sale was not authentic and was impositions to the true valuation reports made by Knight Frank Ltd.

Further, that on 17<sup>th</sup> January, 2012, Knight Frank received additional instructions to value more properties, and an additional report was made in that regard. She indicated that the genuine valuation reports established the following values: Namugongo of June 2010 – UGX 1,534,000,000/=, Kakungulu of June 2010 – UGX 2,488,000,000/=, Namugongo of March 2012 – UGX 488,000,000/=, all totaling to UGX 4,902,000,000. It was her contention that the valuation report relied upon and attached to the 4<sup>th</sup> respondent's affidavit was a falsification of the valuation reports issued by Knight Frank.

In rejoinder, Sarah Nansamba Kisubi, reiterated the averments in the affidavits sworn in support of the application.

At the hearing of the application, the applicant was represented by Mr. Mubiru Kalenge, the 1<sup>st</sup> respondent was represented by Mr. Henry Kyalimpa, the 2<sup>nd</sup> respondent was represented by Mr. Luwum Adoki while the 3<sup>rd</sup> and 4<sup>th</sup> respondents were represented by Mr. Kandebe. Either Counsel filed written submissions in support of and in opposition of the application respectively.

In their written submissions, Counsel for the 2<sup>nd</sup> respondent and Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents raised a preliminary objection that the affidavit in rejoinder by Judy Rugasira Kyanda should be expunged from the record because she was not available in Court for cross examination on her affidavit. I shall first address this preliminary objection before considering the substance of the application.

On the above point of law, Counsel for the 2<sup>nd</sup> respondent submitted that when this application came up for hearing, this court directed the applicant to avail Judy Rugasira for cross examination on her affidavit. Further, that when Judy Rugasira first appeared in court and Counsel for the respondent was prepared to cross examine her, the applicant instead sought for discussions in order to reach a settlement. However, that the applicant declined to sign the Consent Settlement for a period of more than 2 years, and after that period, the applicant hurriedly filed submissions; thus denying the respondents a chance cross examining the said witness. Counsel relied on ***Kipoi Tonny Nsubuga Vs R.Wetaka & ors, Election Petition Appeal No.07 of 2011***, where the court stated that the right to cross examine a witness is one of the essential ingredients to a fair hearing. In that regard, Counsel prayed that the affidavit of the witness should be expunged from the record.

Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents also affirmed the above facts stated in the submissions of Counsel for the 2<sup>nd</sup> respondent and further submitted that the said witness ought to have produced the report referred to in the Consent, which was stamped by court and had a reserve price stated therein. Counsel contended that the said witness and Counsel had mutilated and edited the report by removing the reserve price. In Counsel's view, every valuation report must have the actual value and a forced sale value. Counsel relied on ***Kipoi Tonny Nsubuga Vs R.Wetaka & ors (supra)***, to submit that the affidavit of Judy Rugasira Kyanda should be struck off the record for failure by the applicant to avail her for cross examination.

On the other hand, and in reply to the above preliminary objection, Counsel for the applicant submitted that the above point of law was raised out of context and error. Counsel contended that Judy Rugasira was summoned to appear in court for cross examination, and on the first time of her appearance, the matter was adjourned and on the second occasion, the matter was further adjourned to enable the parties to explore a possibility of settlement. After several mention dates, the court was informed that negotiations had failed, and when the parties were directed by court to file submissions, Counsel did not raise the issue of cross examination.

Counsel further indicated that the applicants Advocates had never been involved in the tampering of a report as alleged by Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents.

I have considered the submissions of Counsel and the law in regard to the above preliminary point of law raised by Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents.

It is not in dispute that this court granted leave to the respondents to cross examine Judy Rugasira Kyanda on the contents of her affidavit in rejoinder dated 19<sup>th</sup> September, 2012. However, it is  
5 apparent that she was not cross examined. According to the submissions of Counsel for the respondents, she was not availed for cross examination. On the other hand, Counsel for the applicant indicates that the witness appeared in court two times, but on all those occasions, the matter was adjourned before the cross examination. Further, that by Counsel for the respondents' failure to raise their intentions of cross examining the witness on the day when court ordered the  
10 parties to file written submissions, it was an indication that they had abandoned the prayer to cross examine the witness.

First, from the record, it is apparent that this court granted leave for the respondents to cross examine the said witness on the contents of her affidavit. In that regard, I do not accept the submission of Counsel for applicant that by Counsel for the respondents not indicating their  
15 intentions of cross examining the witness on the day when court ordered the parties to file written submissions, it would be concluded that the prayer for cross examination had been abandoned. This is for the reason that the leave had been granted by court and it was no longer a mere prayer by Counsel which could be ignored.

It is my view that even after the adjournments, which were apparently sought for by the applicant,  
20 the applicant still had a duty of ensuring that the said witness appeared in court for cross examination. I accept the submission of Counsel for the respondents that the right to cross examine a witness is one of the pillars of the right to a fair hearing. In ***Hon. Kipoi Tonny Nsubuga Vs Ronny Wetaka & Ors***, (Supra), it was held that the right to cross examine a witness by the opposite party was one of the essential ingredients of a fair hearing and that it was fatally  
25 erroneous for the trial judge to have let a witness go without being cross examined.

In the present case, I have read the affidavit of Judy Rugasira Kyanda, and it appears to me that her evidence stated therein greatly affects the evidence adduced by the respondents in opposition to this application. In this regard, I find that it was erroneous on the part of Counsel for the applicant failing to avail the witness for cross examination.

In view of the above, this preliminary objection is allowed and the affidavit in rejoinder of Judy Rugasira Kyanda is hereby struck off the record.

In his written submissions, Counsel for the applicant proposed the following issues for determination:

- 5
1. *Whether a sale at a price less than the reserve price is valid.*
  2. *Whether a sale in defiance of the instructions of the Judgment Creditor is valid.*
  3. *Whether there was collusion and / or complicity between the bailiffs and the Judgment Debtor and if so whether the resulting sale be valid.*

10 However, I am of the opinion that issues 1 and 2 seem to make assumptions of fact that the sale in issue was below the reserve price and was done in defiance of the applicant's instructions, which facts are all in dispute. I shall, therefore, rephrase the above issues to state as follows:-

1. *Whether the attachment and sale was conducted below the agreed reserve price and in defiance of the instructions of the applicant.*
  2. *Whether there was collusion and / or complicity between the bailiffs and the Judgment Debtor.*
  3. *Whether the attachment and sale should be set aside.*
- 15

**ISSUE 1:                    *Whether the attachment and sale was conducted below the agreed reserve price and in defiance of the instructions of the applicant.***

20

In regard to this issue, Counsel for the applicant submitted that the sale did not conform to clause 2 of the Consent Order which provided as follows:

25                    *“No sale shall take place below the reserve value indicated in the valuation report carried out on the above described land and property by M/S Knight Frank, Land Valuers dated June 2010 reference No. RES/AKRIGHT/10”*

It was the submission of Counsel that the value that was quoted in the Knight Frank report was above UGX 4,400,000,000/=, yet the offer that was made by the 2<sup>nd</sup> respondent and accepted by



the bailiff's / 3<sup>rd</sup> and 4<sup>th</sup> respondents was UGX 1,900,000,000/= . Further, that the valuation report relied upon by the bailiffs and attached to the affidavit of the 4<sup>th</sup> respondent, stating a 'forced sale value' was a stranger to the Consent Order. Counsel cited *McManus Vs Fortescue [1907] 2 KB 1*, where it was held that where a sale is subject to a reserve, the auctioneer cannot accept a price  
5 below the reserve.

Counsel further submitted that if a reserve was fixed by the vendor and the sale is expressed to be subject to a reserve, there is no contract concluded if the sale by the auctioneer is below the reserve.

With regard to whether the sale was concluded in defiance of the instructions by the Judgment  
10 Creditor/applicant, Counsel made reference to clause 3 of the Consent Order where, apparently, it was indicated that the bailiffs had the obligation of consulting with the applicant before proceeding with the sale. In this regard, that when the bailiffs/ 3<sup>rd</sup> and 4<sup>th</sup> respondents communicated the 2<sup>nd</sup> respondent's offer to the applicant, the same was rejected in writing. However, the bailiff's acting on their own and in clear violation of the instructions given by the  
15 applicant, they went ahead and accepted the offer by the 2<sup>nd</sup> respondent. Counsel relied on *Francis Micah Versus Nuwa Walakira SCCA No.24 of 1994, Masaka Tea Estates Ltd Vs Samalia Tea Estate Limited, HC Civil Suit No.539 of 2011* and *Bobcat of Regina Limited Vs Bruce Schapansky Auctioneers Inc.2010 SKQB 393*, to submit that a court bailiff is a representative of the judgment creditor and that a bailiff must adhere to the instructions of the  
20 judgment creditor.

In view of the above, Counsel prayed that the sale ought to be set aside.

On the other hand, Counsel for the 1<sup>st</sup> respondent submitted that the sale was properly conducted under a warrant and in that regard, this application was misconceived and without merit. Counsel further submitted that the 1<sup>st</sup> respondent was not in any way involved in the sale of the property,  
25 and it was the applicant who prepared the decree and supervised the sale; therefore the applicant could not purport to nullify its own sale.

Counsel for the 1<sup>st</sup> respondent further submitted that the amount of money which the applicant set out to recover was stated in the decree and UGX 1,900,000,000/= was way higher than what the bailiffs were intended to recover on the decree.

No submissions were made by Counsel for the 2<sup>nd</sup> respondent in answer to this issue.

On his part, Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents submitted that considering that the affidavit of Judy Rugasira Kyanda was of no effect, the allegations that there was any other report other than the one relied upon by the bailiffs must fail. Further, that the property was not sold below the  
5 reserve price.

Counsel further submitted that the instructions given by Counsel for the applicant in a letter dated 14<sup>th</sup> March, 2012, were duly complied with by the 3<sup>rd</sup> and 4<sup>th</sup> respondents. Counsel contended that in the said letter, it was indicated that the applicant had accepted the sale of the property under attachment as long as the offer was equal or above the value ascertained by Knight Frank. In that  
10 regard, the 2<sup>nd</sup> respondent made an offer to buy the property at UGX 1,900,000,000/= which was above the reserve price, paying off all the decretal sum that the bailiffs were set to recover, and the same amount was sanctioned by Court as the minimum amount approved. In that regard, Counsel stated that the sale was properly and legally concluded.

In rejoinder, Counsel for the applicant reiterated that the valuation report relied upon by the 3<sup>rd</sup>  
15 and 4<sup>th</sup> respondents was a fabrication.

I have carefully considered the submissions of Counsel and the evidence adduced in support of this issue.

I find that the first point for determination under this issue is whether the sale was conducted below the reserve price. It is not disputed that in a Consent Order dated 15<sup>th</sup> December, 2011,  
20 which was the basis for the execution carried out by the 3<sup>rd</sup> and 4<sup>th</sup> respondents, it was stated that no sale was to take place below the reserve price indicated in the valuation report carried out by Knight Frank, and dated June 2010. In view of that, it is apparent that there was a reserve price which would be the basis upon which the sale would be carried out. I am persuaded by the decision in *McManus Vs Fortescue [1907] 2 KB 1*, where it was stated as follows:

25 *“In a sale by auction, subject to reserve, every offer/bid and its acceptance is conditional. That the public is informed by the fact that the sale is subject to a reserve that the auctioneer has agreed to sell for the amount which the bidder is prepared to give only in case that the amount is equal to or higher than the*

*reserve. That the reserve puts a limit on the authority of the auctioneer. He cannot accept a price below the upset/reserve price... the concept of reserve price is not synonymous with 'valuation of the property'. These two operate in different spheres”.*

5 I have taken into consideration the concerns of Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondents that the above case was in relation to a sale by public auction and yet the sale herein was by private treaty. However, I am of the opinion that the above case is relevant in as far as it relates to sale where a reserve price has been put in place. In the present case, there was a reserve price which was agreed upon by the parties and I find that the 3<sup>rd</sup> and 4<sup>th</sup> respondent’s had the obligation of  
10 adhering to the said reserve price.

The next point for determination is whether the 3<sup>rd</sup> and 4<sup>th</sup> respondents conducted the sale below the reserve price. It is not in dispute that the sale was concluded at a price of UGX 1,900,000,000/=.

In regard to this, while the applicant contends that the reserve price indicated in the valuation  
15 report of Knight Frank Limited, reference No.RES/AKRIGHT/10 was to a tune of UGX 4,902,000,000/=, and that the said report did not contain the ‘forced sale value’ of the property, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents allege that the said report contained a statement as to ‘forced sale value’ of UGX 1,411,200,000/=. It is alleged by either party that the other fabricated the report it seeks to rely upon.

20 I have already made a finding above that the evidence brought on behalf of the applicant by Judy Rugasira Kyobe cannot be relied upon considering that she was not cross examined on her affidavit evidence. In that regard, I shall not take into consideration the valuation reports attached to her affidavit as being the genuine reports from Knight Frank Limited. However, Sarah Nansamba Kisubi, also makes reference to the said report and extracts are attached to her  
25 affidavit. I find that the said extracts are incomplete, not dated and are not signed. I cannot rely on the said extracts of the report to reach a sound decision.

With regard to the valuation report sought to be relied upon by the 3<sup>rd</sup> and 4<sup>th</sup> respondents, while the 4<sup>th</sup> respondent indicates that he had attached the said report as Annexure SA6 and SA7 to his affidavit, the said annexures do not appear on the Court copy of the affidavit. The annexures

attached are marked from SA1 to SA5 and then from SA8 to SA11. I have perused the record and the said annexures do not seem to have been filed by the 3<sup>rd</sup> and 4<sup>th</sup> respondents or they are missing on the Court record.

I have also carefully looked at the court record and I have not found a copy of the valuation report  
5 by Knight Frank. There is no copy of the report attached to the Consent judgment or the Consent Order.

In view of the above, I find that the applicant has failed in adducing evidence to indicate that the sale was conducted below the reserve price.

The next point for determination is whether the 3<sup>rd</sup> and 4<sup>th</sup> respondents conducted the sale in  
10 defiance of the instructions given by the applicant. I agree with the submission of Counsel for the applicant that a bailiff, though an officer of court, is also a representative of the judgment creditor since he directs him on what kind of property to be attached. (***See Francis Micah Vs Nuwa Walakira SCCA No.24 of 1994***). Therefore, I find that although the bailiffs owed a duty of care to the judgment debtor, they also had a duty of conducting the sale while taking account the  
15 interests and instructions of the judgment creditor.

In the present case, it is not in dispute that the bailiffs / 3<sup>rd</sup> and 4<sup>th</sup> respondents, after communicating to the applicant the offers they had received, including the offer by the 2<sup>nd</sup> respondent, the applicant's advocates wrote a letter dated 24<sup>th</sup> February, 2012, rejecting all the offers. The reasons stated for rejecting the offers were that the amount outstanding and owing to  
20 the applicant exceeded the amount of 1,900,000,000/=, and that according to clause 2 of the Consent Order dated 15<sup>th</sup> December, 2011, no sale was to take place below the value indicated in the Knight Frank valuation. It appears that subsequently, by letter dated 14<sup>th</sup> March, 2012, Counsel for the applicant wrote to the 3<sup>rd</sup> and 4<sup>th</sup> respondents, which partly read as follows:-

25           “RE: WARRANT OF ATTACHMENT”

*Please refer to the above subject and your Letter forwarding a list of individual plots for which you received offers for purchase/sale under the Private Treaty arrangement.*

*Our client has reverted to say that as long as an offer is equal to or above the value ascertained by Knight Frank, we can accept and proceed with the transaction of sale.*

*Where the offers made to you are below the value ascertained by Knight Frank to the offeree requesting them to top-up so as to reach the value in the Valuation Reports.*

5 *For value conforming offers, please proceed to inform the offerors and of our client's acceptance thereafter to prepare the Sale Agreements for our approval"*

It was the 3<sup>rd</sup> and 4<sup>th</sup> respondent's argument that the above letter was the acceptance/authority given to them by the applicant to conduct the sale with the 2<sup>nd</sup> respondent who had offered UGX 1,900,000,000; in their view, which was above the reserve price.

10 However, I find that this point also hinges on what the exact reserve price was, which I was unable to resolve above for lack of vital information which was not on court record.

In that regard, I find that there is no sufficient evidence on record to prove the contentions by the applicant on this issue.

Accordingly, this issue is answered in the negative.

15 **ISSUE 2: *Whether there was collusion and / or complicity between the bailiffs and the Judgment Debtor.***

In regard to this issue, Counsel for the applicant made reference to the affidavit of Steven Kuria Njinu, and submitted that Green Village Projects Limited / 2<sup>nd</sup> respondent and Arcadia  
20 Investments Limited, which was also one of the bidders, shared the same phone lines and the same website. Further, that Mr. Thomas Ndeema was a managing director for both Arcadia Investments Ltd as well as the 2<sup>nd</sup> respondent. Counsel also made reference to the affidavit of Sarah Kisubi and submitted that the shareholders and directors of Urban Utility Consults Ltd, which was one of the companies that made an offer to buy the properties in issue, were the same  
25 as the shareholders and directors of the 1<sup>st</sup> respondent company. Counsel indicated that they had tried to conduct a search in the Company Registry to obtain the particulars of the members and directors of the 2<sup>nd</sup> respondent and Arcadia Investments but the files could not be traced.

In Counsel's view, the evidence of the active participation by the Judgment Debtor in the process of the sale of the attached properties, coupled with the acts of the bailiffs ignoring the instructions of the Judgment Creditor was proof of the collusion and connivance by the Judgment Debtor and the bailiffs to enable the Judgment Debtor to acquire back the sureties mortgaged to the applicant  
5 for a value much less than what was owed to the Judgment Creditor.

Counsel further indicated that the fact that the purchase price was never deposited in the escrow account was further confirmation that the intention of the bailiffs and the 2<sup>nd</sup> respondent was not to appropriate money for fulfillment of the Consent, but to enable the 1<sup>st</sup> respondent to reposes the securities without paying the applicant.

10 Counsel cited Order 22 rule 77(1) of the Civil Procedure Rules where it is stated that in a sale of immovable property, the purchaser shall pay immediately after declaration a deposit of 25% on the amount of his/her purchase and on default of the deposit, the property shall immediately be resold. Counsel submitted that in the present case, all the cheques that were banked by the purchaser were returned unpaid and no money had ever been paid since the sale.

15 In reply, Counsel for the 1<sup>st</sup> respondent submitted that the 1<sup>st</sup> respondent was not one of the bidders, nor was it a purchaser of the property. In that regard, that it was unjustly dragged into this application.

On his part, Counsel for the 2<sup>nd</sup> respondent submitted that there was no search that was carried out with the Companies Registry that indicated that the 2<sup>nd</sup> respondent was related to the 1<sup>st</sup>  
20 respondent. Further, that had the applicant wanted to know the proprietorship and shareholding of the 2<sup>nd</sup> respondent, it should have done so by conducting a search in the Company's Registry.

It was counsel's further submission that it was not true that UGX 117,000,000/ was never deposited in the escrow account or that the cheques issued by the 2<sup>nd</sup> respondent bounced, and that there was no evidence to that effect.

25 For the 3<sup>rd</sup> and 4<sup>th</sup> respondents, Counsel made reference to the affidavit of Festus Katerega and submitted that all the applicant's claims that the 3<sup>rd</sup> and 4<sup>th</sup> respondents connived with the Judgment Debtor were false. Further, that whereas Order 22 rule 67 of the Civil Procedure Rules

prohibits the Judgment Creditor from directly or indirectly bidding for property under attachment, there was no law that stops a judgment debtor from bidding for his/her property.

First, I have carefully looked at the offer letters by the 2<sup>nd</sup> respondent and Arcadia Investments Ltd, and it is true that the addresses and telephone contacts indicated are the same. Further, the person who signed as the managing director is the same. However, I find that the above does not indicate that the 2<sup>nd</sup> respondent also has any connection with the 1<sup>st</sup> respondent, in order to impute collusion on the two. While the applicant indicates that it carried out a search to ascertain the shareholding/directorship of the 2<sup>nd</sup> respondent, it is admitted that no results were obtained there from; therefore, there is no evidence to connect the 2<sup>nd</sup> respondent and the 1<sup>st</sup> respondent.

Further, I am not satisfied by the allegations of the applicant that UGX 117,000,000/= which was apparently paid by the 2<sup>nd</sup> respondent was never credited to the escrow account on allegations that the cheques issued bounced. First, there is no evidence of the said cheques which were returned unpaid by the bank. Secondly, on court record I have found an application for funds transfer by the 2<sup>nd</sup> respondent to the said escrow account, there is an RTGS report of Bank of Uganda indicating the said UGX 117,000,000/= and in regard to this transaction, and a bank statement of Stanbic Bank dated 7<sup>th</sup> May, 2012, indicating the credit of the said money on the account. Further, it is apparent that this Court issued an interim order restraining the 2<sup>nd</sup> respondent from making any further payments to the said account.

In regard to the above, I find the argument by the applicant that no consideration was paid by the 2<sup>nd</sup> respondent whatsoever, without merit.

It is my finding that the applicant did not prove any collusion on the part of the respondents.

Accordingly, this issue is also answered in the negative.

**ISSUE 3:                    *Whether the attachment and sale should be set aside.***

It was my finding above that I could not determine with certainty the actual reserve price which the bailiffs ought to have relied upon while conducting the sale. This was owing to the fact that there was no valuation report of Knight Frank, dated June 2010 on Court record which was supposed to be the basis for determining the reserve price. I have already made a finding that

where a sale is subject to a reserve, the bailiff cannot accept a price below the reserve (*See McManus Vs Fortescue Supra*). In the present case, although the Consent Order makes reference to a report by Knight Frank which would be the basis for determining the reserve price, there is no such report on Court record.

5 In view of the above, I find that the sale should be set aside on the following conditions:

1. Another valuation of the properties shall be conducted by Knight Frank or any other firm agreeable to the applicant and the 1<sup>st</sup> respondent, at the expense of the applicant. A copy of the valuation report shall also be filed on court record.
2. The reserve price shall be the price stated in the valuation report arising from the  
10 above stated valuation.
3. The money paid by the 2<sup>nd</sup> respondent to the escrow account shall be paid back to her within 2 months from the date hereof.
4. The applicant shall bear costs of all the respondents in this application.

I so order

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**B. Kainamura**  
**Judge**

20 **05.09.2016**