

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**MISCELLANEOUS APPLICATION NO. 242 OF 2009**  
**MISCELLANEOUS APPLICATION NO. 380 OF 2008**  
**ARISING FROM MISCELLANEOUS CAUSE NO. 156 OF 2008**

**PUBLIC PROCUREMENT AND DISPOSAL**  
**OF PUBLIC ASSETS AUTHORITY:::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**CLEAR CHANNEL INDEPENDENT (U) LIMITED ::::::RESPONDENT**

**BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE**

**RULING**

This is an application for an order that this court stays execution of the orders passed in Miscellaneous Application No. 380/08. It is premised on the ground that:

- a). Applicant has lodged an appeal.
- b). The decision and/or orders in Miscellaneous Application No. 380/08 are to be executed immediately.
- c). The appeal has not been set down for hearing.
- d). The execution will render the pending appeal nugatory.

When the application came up for hearing, Mr. Ssempebwa for the respondent raised a point of law. He argued that a prerogative order of certiorari has already been issued and

so has a prerogative order of prohibition. The decision of the applicant was declared a nullity and court ordered that the tender process be repeated. In his view, none of these orders can be stayed against the respondent as they took immediate effect and the respondent is not the one expected to cause repetition of the tender process. Mr. Kallemera has not put before court material showing or tendering to show that a nullity can be sustained pending determination of an appeal against a decision of the court that declared it so.

I am of the view that Mr. Ssempebwa's objection is sustainable. I say so because the respondent caused the decision of the applicant to be reviewed. It was reviewed and declared a nullity. As I stated in that ruling, a nullity is not only bad but incurably bad. There is no need for an order of court to set it aside because it is automatically null and void without more ado, though it is sometimes convenient, as was the case herein, to have the court declare it to be so. On the basis of that ruling the decision was quashed. It was further ordered that the tender process be repeated. It is not the applicant to repeat that tender process but CAA. The said CAA is not party to these proceedings. I'm a little puzzled as to how in these circumstances some life can be breathed into a nullity to allow stay of execution of a consequential order though I could be wrong.

I would have been of a different view if the party ordered to repeat the process, the Civil Aviation Authority, was the one seeking stay of execution, pending determination of the appeal, assuming that it would have the power to sustain the application when it was not party to the proceedings. The applicant herein was proceeded against not because it was involved in the tender process but because it made a decision which court has since declared null and void. This is not to say that the order of this court nullifying the decision of the applicant cannot be challenged. I believe it can be challenged as between the right parties thereto. However, for as long as the decision to repeat the tender process is not against the respondent herein, I think the application for stay of execution against the respondent is misconceived. Looking at it from another angle, I would think that in the event that the respondent wanted to have the decision of this court enforced, that is the order to repeat the tender process, such order wouldn't be directed to the applicant, a

party whose decision was quashed but to CAA, the party that was ordered to act and has not complied.

For the reasons stated above, I would allow the objection and disallow the application as against the respondent.

This is without prejudice to the applicant's right to seek an appropriate relief from the court handling the appeal.

Each party shall meet its own costs herein.

**Yorokamu Bamwine**

**JUDGE**

**15/06/09**