

IN THE HIGH COURT OF UGANDA AT SOROTI

**MISC. APPLICATION NO. 51 OF 2015-09-07 ARISING FROM CIVIL SUIT NO. 16
OF 2014**

WELT MACHINEN ENGINEERING LTD.....APPLICANT

V

1.CHINA ROAD & BRIDGE CORPORATION

2. ILUKOL JOBS LOMENEN

3.UGANDA NATIONAL ROADS AUTHORITY.....RESPONDENTS

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

In this application, the applicant through its advocates Jabo& co. seeks orders:

1. That the 1st respondent show cause why it should not furnish security for its appearance.
2. That the 1st respondent deposits in court money or other property sufficient to answer the claim against it of 8,582,022,000/ or to furnish security for its appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against it.
3. That in the alternative, court orders for the attachment of its payments still pending under a contract with the 3rd respondent.
4. Costs

The application was supported by the affidavit of Felix Apo Oroma that i have carefully considered.

The respondent filed an affidavit in reply of Deng Xiaozhang that i have carefully considered.

At the hearing, the applicant was represented by Mr. Edwin Tumusiime while the respondents were represented by Ms Nyakecho assisted by Mr. Kalikumutima.

Order 40 rr 1,2,6, and 12 under which the application was brought gives the conditions that the applicant must satisfy before orders sought can be granted.

Under rule 1, the applicant has to satisfy the court that

the respondent with intent to delay the applicant or to avoid court process or to obstruct or delay execution of any decree that may be passed against it has absconded or left the jurisdiction ;

is about to abscond or has disposed of property or any part thereof;

that the respondent is about to leave the jurisdiction and that the respondent will be prejudiced in the execution of any decree that may be passed against the respondent.

From my evaluation of the affidavit evidence from both parties, it is apparent that although the 1st respondent is registered in Uganda and has a place of business, the directors seem not to have permanent addresses in Uganda (para. 4 of respondent's affidavit)

Mr. Deng's affidavit is silent on whether the 1st respondent has the capacity to satisfy any decree that may be passed against it.

The applicant's affidavit in support has shown that the 1st respondent is owed money by the 3rd respondent for construction of the Moroto –Nakapiripit road which is 85% complete according to the 1st respondent.

The applicant prays that the 1st respondent deposits in court or furnishes property equivalent to 8.5 billion/= . In its plaint, the applicant seeks orders that the 1st respondent accounts for proceeds of the 1st respondent's alleged unlawful activities on the suit land; and awards of general, aggravated and exemplary damages .

I carefully listened to submissions of both counsel.

An application for attachment before judgment is an interlocutory application. Halsbury's Laws of England fourth edition Volume 37 para. 326 aptly sums up the function of interlocutory applications as follows:

to enable the court to grant such interim relief or remedy as may be just or convenient . Such relief may be designed to achieve one or more of several objectives .’ For purpose of this application for attachment before judgment, such objective may be to

‘preserve a fair balance between the parties and to give them due protection while awaiting the final outcome of the proceedings...’

While the applicant has not shown that the 1st respondent is about to leave the jurisdiction, the latter has not assured this court that it has the capacity to satisfy any decree that may be passed against it .

It is therefore fair that the 1st respondent be ordered to furnish security to satisfy any decree that may be made against it.

Secondly, the fact that the 1st respondent has completed 85% of the road construction implies payment is due anytime. I find that the applicant will be prejudiced if the payment is made before the disposal of the main suit should the suit be resolved in the applicant’s favour.

The third respondent was represented at these proceedings by Mr. Alex Lutaaya who did not contradict the 1st applicant’s deposition that the 3rd respondent holds monies for the 1st respondent . I allow the application and make the following orders:

1. The 3rd respondent will withhold 8.5 (eight billion five hundred million) billion of the money due to the 1st respondent until further orders of this court.
2. The suit from which this application arises must be completed within six months from the date of this order failure of which the 1st respondent is at liberty to apply for this order to be vacated.
3. Costs in the cause.

DATED AT SOROTI THIS 9th DAY OF SEPTEMBER 2015.

HON. LADY JUSTICE H. WOLAYO

