

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 80 OF 2017
IN THE MATTER OF THE INSOLVENCY ACT, 2011
IN THE MATTER OF A PURPORTED SALE TRANSACTION BETWEEN KAYIIRA
ERNEST (BUYER) AND SPENCON SERVICES LTD
AND
IN THE MATTER OF AN APPLICATION FOR COURT’S DIRECTIONS**

**KABIITO KARAMAGI AND DONALD NYAKAIRU
THE RECEIVERS/MANAGERS OF
SPENCON SERVICES LIMITED- IN RECEIVERSHIP:..... APPLICANTS**

VERSUS

MUSISI SAMUEL :..... RESPONDENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

a) Introduction

1. This application is brought under Section 195(1) of the Insolvency Act of 2011, Section 98 of the C.P.A, Section 33 of the Judicature Act and Order 52 Rules 1 and 3 of the CPR. The Applicants seek to be heard for court’s direction that the Dynapac CA511 Vibro Roller sold to the Respondent be returned or restored to the company or in the alternative, the Respondent pays to the Applicants the monetary value of this subject asset as at the time of the purported sale and in the event of failure the Respondent be held in contempt of court and imprisoned until full compliance.

2. Mr. Kabiito Karamagi appeared for the Applicants. On 10th April 2014, after proof of service by way of substituted service was returned to court and the Respondent was absent, the court allowed Mr. Kabiito to proceed *ex parte*.

3. Briefly the background of this application is that the Applicants having been appointed receivers/managers of Spencon Services Ltd (herein after the company) by its creditors took over the management of the company where they reviewed the assets records and found that nearly all the valuable assets of the company had been sold off by the company including the Dynapac CA511 Vibro Roller sold to the Respondent within 12 months before the commencement of receivership.
4. The application is supported by the affidavit of Mr. Kabiito Karamagi the first Applicant. The grounds for the application are briefly that by the time of the said transaction, the company had charged all its assets to creditors as security for repayment of various loan facilities advanced to it and the company was unable to pay its debts. The sale was executed by strangers to the company and the consideration for the sale was not deposited on the company's account but on the account of a one Sanghani Manoj Kumar Godhandas who is completely unknown to the company's staff the Applicants interviewed. There is no evidence to show that the transaction in issue was duly approved by the company. The Respondent participated in this alleged sale with the strangers solely for the purpose of aiding directors of the company to put the assets beyond the reach of creditors.
5. The application was opposed by the Respondent Mr. Musisi Samuel who swore the affidavit in reply to the application. He averred that the said machinery was sold to him as scrap at Ug. Shs. 21,000,000/= at the company premises and he was issued a receipt bearing the company names. The said money was paid to the company and was applied towards the company's operation. He further averred that he was duly instructed by the company to deposit the said consideration to the said account in issue. The people that acted on behalf of the company had authority to do so and he is a bonafide purchaser for value. He has never been part and parcel of the scheme, if any, to strip the company of its assets. In case the Applicants are claiming for restoration of the machinery, the company should refund his purchase price.
6. In rejoinder Mr. Kabiito averred that the allegation that the machinery was sold as scrap for an adequate sum of Ug. shs; 21,000,000/= is false, unconfirmed and unsubstantiated. During his investigations, Mr. Kabiito did not come by any evidence to show that the purported

transaction proceeds were paid to the company, there was no evidence to show that the company advised the Respondent to deposit the purported consideration on the account of the said Manoj and that the persons who purported to act for the company had no authority to do so and were unknown to the company.

b) Law

7. Section 195 (1) of the Insolvency Act provides that on the application of a receiver, court may give directions on any matter concerning the functions of the receiver.

c) Analysis

8. There is no demonstration that the Respondent acquired the property in issue from Spencon at the market value at the time of sale to make it a properly executed transaction. All I see is an alleged transaction in which the property was grossly undervalued to the detriment of Spencon now in receivership. It would therefore be unfair to uphold such transaction.
9. Accordingly the said sale is set aside with the following directives:
 - i. The Respondent shall pay to the Applicant the monetary value of the suit property as at the time of the sale determined by the Applicants.
 - ii. Interest at 10% p.a is awarded on (i) above from the date of this ruling till payment in full.
 - iii. In case of failure to pay within three months of this ruling, the Applicants can execute against the Respondent to recover the same.
 - iv. The Applicant can also apply for committal of the Respondent in case of failure.
 - v. Costs of this application are awarded to the Applicants.

I so order.

Lydia Mugambe.
Judge.
11 June 2020.