

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPL. NO. 152 OF 1994

G O D F R E Y O D D Y

B E I J U K A ::

:: A P P E L L A N T

VERSUS

M/S SUNRISE ASSOCIATED

AUCTIONEERS::::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

RULING:

This ruling is in respect of a preliminary objection on a point of law raised at the beginning of the hearing of the application which was brought notice of motion under 046 r 8 of the civil procedure Rules. That application is actually an appeal against the decisions of the Deputy Registrar in Taxation proceedings.

Counsel for the Respondent submitted in the preliminary objection that the appeal is incompetent for having been filed outside the limitation period of seven days required by section 80 (1) (b) of the Civil Procedure Act.

The back ground to the appeal is brief. The Applicant/Appellant one Godfrey Oddy Beijuka was the plaintiff in HCCS No .823 of 1992. It would appear that in the course of the progress of that case, an order for injunction was obtained from court. The injunction order was given to Sunrise Associated Auctioneers to execute. They executed it. Upon that execution, Sun Associated Auctioneers filed their court Bailiff's Bill of cost. The Bill of cost was dated 27/5/93. It was taxed on. 16/7/93 who allowed the sum of shs. 997,925

Somehow additional sum of shs. 288,000/= was again added to be paid to Sunrise Associated Auctioneer as disbursement.

That raised the amount to be paid to sunrise Association Auctioneers to shs. 1,350,925/=. Then the Deputy Registrar issued warrant of Arrest against the Applicant (Appellant to recover that amount).

The appellant claimed that there were irregularities in the taxation proceedings. He was not informed of the taxation proceedings. There was also impropriety in the issuance of the warrant of arrest, against him. He therefore appealed against the decisions of the Deputy Registrar to _____

(1) Award to Sunrise Associated Auctioneer Court

Bailiff's cost of shs. 997,925/= on 16/7/93

(2) Issue Warrant of Arrest against the appellant on 11/8/94 to recover shs. 1,350,925/=

Mr. Lutaakome submitted that the appeal was filed on 29/8/94 well outside the time limitation of seven days allowed by section 80 (1) (b) of the Civil Procedure Act Mr. Byenkya conceded that the appeal was filed out of time. But he submitted that he was intending and was there by making a verbal application under the proviso to section 80 of the CPA. for court to admit the appeal even though it was filed Cut of time because the appellant had good cause.

He relied on HCCS No.282/94 Uganda Exgen Ltd. and 2 others v. Salim Jamal and 2 others. In that case, Ouma J. found the management decision and the consequent precipitation of disturbing trend of events provided good cause to admit under the proviso of section 80 (1) of the CPA Appeal which was filed out of time.

In the instant case, the substance of the supporting

Affidavit of the appellant is that the appellant was not notified of the taxation proceedings and so had no knowledge of the Deputy Registrar's order until when the appellant was arrested. This fact was confirmed by paragraph 8 of the affidavit in Reply which states in effect that the court Bailiff's Bill of cost was taxed exparte surely if the Appellant was not informed of taxation proceeding, how could he be expected know of the order of the taxing master? Without knowledge of the order, how could he appeal within the prescribed period? In my view the failure to notify the appellant of the taxing proceeding denied him the knowledge of the Deputy by Registrar's order. This provided good cause for this court to admit the otherwise invalid appeal filed out of time valid under the proviso to section 80 of the civil procedure Act. The preliminary objection is therefore over ruled.

G.M OKELLO

JUDGE

26/10/94

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