

IN THE HIGH COURT OF SWAZILAND

SWAZILAND BUILDING SOCIETY

VS

SENDERWOOD INVESTMENTS (PTY) LTD.

CIV. CASE NO. 512/97

CORAM S.W. SAPIRE

FOR APPLICANT MR. FINNE

FOR RESPONDENT MR. FLYNN

JUDGMENT

(19/06/98)

This is an application by one Musa Ndzimandze, and Senderwood Investments (Pty) Ltd wherein they seek to set aside a sale in execution of immovable property conducted by the deputy sheriff, the Second Respondent at the instance of the First Respondent which was the judgment creditor. The first Applicant is a director of the Second Applicant

The grounds upon which it is sought to set the sale aside are that, on objection of an attorney who represented the First Respondent, which later purchased the property at the sale, the 2nd Respondent refused to allow the First Applicant to bid for the property. Counsel for the Applicants was unable to show that the First Applicant had locus standi in the matter either as prospective bidder in his individual capacity or as director of the company. His application must therefore be dismissed.

The second applicant however was properly before court. Its application fails for other reasons. It is common cause that the Deputy Sheriff indicated that he would not accept bids from the First Applicant after the First Respondent's attorney had objected to the First Applicant participating as a bidder in the sale. Whether the Deputy Sheriff knew of First Applicant's connection with the Second Applicant or whether he was so informed by the First Respondent's attorney, is of no consequence. The uncontroverted evidence of the Second Respondent is that because the First Applicant was a director of the Judgment debtor, he suspected that he was not

2

a bone fide purchaser. The reasoning seems to have been that if the Judgment debtor was unable to avoid the judgment or satisfy the writ, it was strange that its director was now bone fide in his own private participation as a bidder.

The conditions of sale, following the specimen conditions to be found in the Rule of Court provide

"If the Auctioneer suspects that a bidder is unable to pay the deposit referred to in condition 7 or the balance of the purchase price he may refuse to accept the bid of the bidder or accept it provisionally until the bidder shall have satisfied him that he is in a position that he is in a position to pay both such amounts"

The conditions thus give the auctioneer the power to do as he did. There is no requirement that the suspicion should meet any standard of reasonableness. If he acts male fide causing the judgment debtor

damage or loss he may find a claim being made upon him by the injured party. In this case there is no evidence or suggestion that the deputy sheriff acted otherwise than in good faith

The application is dismissed with costs which are to be paid by the Applicants jointly and severally.

S.W. SAPIRE

ACTING CHIEF JUSTICE

SENDERWO. WPD