THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

MISC. APPL. NO. 179 OF 2017

ARISING FROM LABOUR DISPUTE CLAIM NO. 14 OF 2015

**AFRICAN FINE COFFE ASSOCIATION**………………………………….…………..**APPLICANT**

VERSUS

**LILLIAN AUDO**……………………………..…………......... **RESPONDENT**

**BEFORE**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

**Panelists**

1. Mr. Rwomushana Reuben Jack
2. Mr. Anthony Wanyama
3. Ms. Rose Gidongo

**RULING**

This is an application for stay of execution of the orders of this court in Labour Dispute Claim No. 14/2015. The application was filed on 2/11/2017 and it is supported by an affidavit of one Martin Maraka.

The respondent in opposition of this application filed an affidavit in reply on 21/05/2018.

We have perused carefully the notice of motion together with the affidavit in support of the motion.

We have also carefully perused the affidavit in reply to the notice of motion.

We have carefully listened to the submissions of both counsel.

The gist of the arguments by counsel for the applicant is that having filed an appeal and having applied for proceedings from this court for purposes of prosecuting the appeal, and the proceedings having not been availed to his client, the application ought to be allowed since in his view the appeal has a high chance of success and to do otherwise would render the appeal nugatory.

The gist of the arguments of counsel for the respondent is that the application was immature, frivolous and abuse of court process since according to him counsel was guilty of dilatory conduct for not following up his appeal and for filing the application when an application for execution was never filed by the respondent.

We appreciate the applicant’s submission that the applicant had no control over the compilation and issuing of this court’s proceedings although we would have loved to see evidence of more steps being taken other than the first step of filing the notice of appeal and requesting for the typed proceedings.

Ordinarily an application for stay of execution is intended to stop the decree being executed, the decree holder having applied for execution of the said decree.

The authority of **MOHAMMED HAMID VS ROKO CONSTRUCTION LTD**, **Supreme Court Application 023/2017** is authority for the legal proposition that the applicant in a stay of execution proceedings ought to show that there was eminent danger of executing the decree of court. The same court did not consider filing of a bill of costs and extraction of a decree as cogent evidence of eminent execution of a decree in the absence of an application for execution of the decree. Applying this principle in the case of **Bank of Uganda Vs Charles** **Abigaba Lwanga labour dispute Misc. Appl. 045/2018,** this court in rejecting the application stated

**“Before the court considers whether or not the applicant will suffer irreparable damage once the application is not granted, and before the court considers whether the appeal will be rendered nugatory, the court must first consider whether in the first place there is eminent danger of execution.”**

Following **MOHAMMED HAMID VS ROKO CONSTRUCTION LTD** (supra) and in the absence of an application for execution, the applicant has not convinced us to exercise our discretion to grant this application which is dismissed.

No order as costs is made.

**Signed by:**

1. The Hon. Chief Judge, Asaph Ruhinda Ntengye …………………………….
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha …………………………….

**Panelists**

1. Mr. Rwomushana Reuben Jack …………………………….
2. Mr. Anthony Wanyama …………………………….
3. Ms. Rose Gidongo …………………………….

Dated: 5th September 2018