**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**MISC. APPLN. NO. 086 OF 2020**

**(ARISING FROM MISC. APPL. No. 085 OF 2020)**

**BETWEEN**

**NATIONAL UNION OF PLANTATION**

**AND AGRICULTURAL WORKERS (N.U.P.A.W. U) ……………………….………..APPLICANT**

**AND**

**KABI GEOFREY…………….……..………………………………………………....……. RESPONDENT**

**BEFORE**

1. Hon. Judge Ruhinda Ntengye
2. Hon. Judge Linda Lillian Tumusiime Mugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Ms. Harriet Mugambwa Nganzi
3. Mr. F. X. Mubuuke

**RULING**

This application seeks stay of Execution of Orders in LDC 52/2015. The application is supported by an affidavit sworn by one Honorable Joram B. Pajobo in which he states that the decision in LDC 52/2015 was reached exparte and that the applicant was surprised on receipt of a demand note for Ugx. 82,450,000/= as a decretal sum.

An affidavit in reply was sworn by the respondent to the effect that the applicant was always served with hearing notices and it was no surprise to them that an Award was entered against them since it was deliberate for the applicant not to attend court proceedings.

The affidavit is also to the effect that there is no substantive application seeking to set aside the court’s Award from which this application arises.

When the matter came up for hearing on 17/03/2021 Mr. Rwabwogo Richard, counsel for the applicant, informed court that the applicant was in discussions as to conditions of Stay of Execution and Mr. Okanya Joshua for the respondent stated that the applicant ought to pay ½ of the decretal sum as security for due performance of the decree. The matter was adjourned to 19/04/2021 for mention and for the parties to reach a common ground.

On 19/04/2021, only Mr. Okanya Joshua appeared and reiterated the original position of payment of ½ the decretal sum.

Whereas the respondent filed submissions on 08/04/2021 the applicant has not to date filed any submissions.

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

It was the submission of counsel for the respondent that the applicant could not rightly claim negligence of counsel where it did not take necessary steps to seek out the advocate whom it had given instructions. It was also contended by the respondent in submissions that the application was premature without any substantive suit to set aside the expert Award.

Although the Notice of Motion states in the first ground that it seeks stay of execution pending disposal of a substantive application for setting aside a judgement and decree of this Court, the affidavit in support does not indicate support of this ground.

In our understanding the basis of an order for stay of execution is that either some other proceedings are pending before the court and execution of the decree may render nugatory such proceedings or substantial loss is likely to occur to the applicant if execution is not stayed.

Nothing in the affidavit supporting the application suggests that any proceedings touching the matter in issue are in court or that any loss is likely to occur to the applicant. Instead the affidavit in support is to the effect that the applicant was not heard in LDC 52/2015 and was surprised to receive a demand for the decretal sum. The Hon. Joram B. Pajobo contended in the affidavit that the applicant had a very good defence but was denied by the conduct of its lawyers to present the same. We do not appreciate the relevance of the conduct of lawyers in an application to stay execution.

It is our considered opinion that the affidavit in support is irrelevant to the instant application. It is only applicable in an application to set aside a judgement/award premised on exparte proceedings or even inter parties which is different from the instant application.

Consequently, in the absence of evidence that any proceedings touching a decree emanating from LDC 52/2015 are pending before this court or any other competent court, and in the absence of any evidence that failure to grant the application will cause substantial loss to the applicant. We do not find any merit in the application which is dismissed with no orders as to costs.

**DELIVERED & SIGNED BY:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye …………….
2. Hon. Lady Justice Linda Lillian Tumusiime Mugisha…………….

**PANELISTS**

1. Mr. Ebyau Fidel ………………………….
2. Ms. Harriet Mugambwa Nganzi ………………………….
3. Mr. F. X. Mubuuke ………………………….

Dated: 04/06/2021