**THE REPUBLIC OF UGANDA**

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

**LABOUR DISPUTE MISC. APPLN NO. 123/2020**

**ARISING FROM LDR NO. 315/2015**

 **STANDARD CHARTERED BANK ………………………….. APPLICANT**

**VERSUS**

**GRACE TIBIHIKIRA MAKOKO ………..………. RESPONDENT**

**BEFORE:**

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1.MS. HARRIET MUGAMBWA NGANZI**

**2.MS. ROSE GIDONGO.**

**3. MR. EBYAU FIDEL**

**RULING**

This application is brought by Notice of Motion under section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, and the (Arbitration and Settlement) (Industrial Court Procedure) rules 2012, for orders that:

1. A stay of execution of the award and orders made thereunder do issue pending the hearing and disposal of the intended Appeal to the Court of Appeal.
2. Costs of the application be provided for.

The application is supported by an Affidavit deponed by **Dorothy Masifa Ochola,** the Head legal of the Applicant and is summarised as follows:

1. The Applicant intends to appeal the award of the Court in the Court of Appeal.
2. The Applicant will suffer substantial loss should this honourable Court decline to grant the order for stay of execution.
3. That the application is made without unreasonable delay
4. The Applicant undertakes to provide security for the satisfaction of the award, should this Court order so.
5. It is in the interest of justice that this application is granted as prayed.

**REPRESENTATION**

Mr. Allan Waniala of Sebalu & Lule Advocates, Kampala was for the Applicant and the Respondent was represented by Mr. Patrick Mugalula of M/S Katende, Ssempebwa & Co. Advocates, Kampala.

**BACKGROUND**

The Respondent was employed by the Applicant for 20 years, from 1995 until 2015 when she was dismissed. She sought redress in this Court in 2015 for unlawful dismissal under **Labour Dispute Reference 315 of 2015** and received an award in her favour in July 2020.

The Applicant is dissatisfied with the award and has commenced the Appeal process, hence this application for stay of execution pending Appeal.

**The Applicant’s case**

The Applicant’s case, as contained in the notice of motion and supporting Affidavit is that:

1. The Applicant is dissatisfied with the award and orders of the Industrial Court in Labour Dispute Reference No. 315 of 2015 dated 24/07/2020, where it was condemned to pay general damages of **Ugx. 1,000,000,000/=** and a further payment of **USD$108,750** in uninvested shares.
2. The Applicant has filed a notice of appeal and is applying for the certified record of the proceedings of the Court, but is apprehensive that the Respondent will execute the award before the determination of the appeal, thus rendering the appeal nugatory.
3. The Applicant will suffer irreparable damage from the loss of reputation and colossal sums of damages involved should the Court decline to grant the application.
4. The Applicant undertakes to provide security for the satisfaction of the award by depositing a bank Guarantee for the Value of the award in favour of the Respondent as a condition for the order of stay of execution.
5. It is just and equitable that this application is granted as prayed.

**The Respondent’s case**

The Respondent’s case as contained in the Affidavit in reply deponed by **Grace Tibihikkira Makoko** the Respondent is that:

1. The Application seeks to delay the payment of the award to her.
2. That she has not taken any steps to enforce the award since July 2020 and she was advised by her Lawyers Katende, Ssempebwa & Co. Advocates, which advise she verily believes to be true that the Applicant does not dispute liability for her unfair termination from employment because, she has chosen to appeal against only quantum of General Damages, as shown in the copy of the Notice of Appeal annexed as “A”
3. The Applicant has not demonstrated that substantial loss would arise if the Application for stay is not granted and the Appeal will not be rendered nugatory because, the Applicant does not dispute liability for her unfair dismissal
4. Given that her unfair termination is not disputed, the Applicant should pay the undisputed amount directly to her and the disputed difference to be paid in court, as prayed for in the Applicant’s affidavit.
5. That in the interest of fairness and justice the application should be dismissed with costs.

**DECISION OF COURT**

None of the Parties filed submissions. This notwithstanding, the application shall be resolved.

**The issue for determination by Court is whether the Applicant has adduced sufficient reasons to justify a stay of execution?**

It is trite that, an application for stay of execution is only intended to prevent the Judgement Creditor from putting into operation the legal process for execution but it does not deprive the successful decree holder from enjoying the fruits of his or her Judgement. Order 43(3) of the Civil Procedure Rules which this Court is not barred from applying, provides that, stay of execution may be granted by a Court if the following conditions are satisfied:

1. *Substantial loss may result to the party applying for stay of execution unless the order is made*
2. *The application has been made without unreasonable delay.*
3. *Security has been given by the applicant for due performance of the decree or order as may ultimately be binding upon him or her, as long the execution is made before the expiry of the time within which an appeal from the decree should be filed.*

Upon careful consideration of the Notice of Motion and the Affidavits in support and in opposition of the application on the record and the law applicable, we find as follows:

Regarding the likelihood of substantial loss, the Applicant did not demonstrate how the colossal loss of general damages and loss of reputation would be occasioned. In our considered view this condition was not satisfied by the Applicant.

However, the Respondent under paragraph 9 of her Affidavit in reply, prayed that the undisputed amounts in the award are paid to her directly and she conceded to the payment of the disputed amount in court as prayed for by the in Applicants. We also considered the Copy of the notice of Appeal Marked “A” and established that the Applicant actually intends to appeal against the whole award, contrary to the averment by the Respondent that, her intention was to only appeal against quantum of general damages. However, we were not able to consider the grounds of Appeal which she alluded to under paragraph 7(a) of her Affidavit in reply, to be able to ascertain this assertion, because the memorandum of Appeal was not attached on the record. In the circumstances, it would be premature for this court to order that, the uncontested amounts are paid to the Respondent directly and before the determination of the Appeal.

In any case, the Respondent concedes to the Applicant’s prayer to pay the disputed amounts in court as security for the satisfaction of the award by depositing a bank guarantee for the value of the decretal sum. Given that the notice of Appeal was filed on 30/07/2020, within the time prescribed for filing the Appeal, we have no reason not to grant this prayer.

In conclusion, the Applicant having satisfied the conditions for grant of a stay of execution, we accordingly grant this application and order as follows:

1. The Judgment and decree in **Labour Dispute Reference 315 of 2015,** is hereby stayed until the disposal of the Applicant’s appeal or until further orders.
2. The Applicant shall provide security for the satisfaction of the award by providing a Bank guarantee of the Standard Charted Bank for the whole value of the award in favour of the Respondent within 14 days from this ruling.
3. No order as to costs is made.

Delivered and signed by:

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE …………………**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA ………………..**

**PANELISTS**

**1.MS. HARRIET MUGAMBWA NGANZI …………………**

**2.MS. ROSE GIDONGO …………………**

**3. MR. EBYAU FIDEL ………………..**

**DATE: 21ST MAY 2021**