



**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE MISCELLANEOUS APPLICATION NO.117 OF 2023**

*(Arising from Labour Dispute Reference No. 281 of 2021 and LDC/KCCA/GEN/LC/124/2021)*

**EQUITY BANK UGANDA LTD:.....APPLICANT**

**VERSUS**

**MUGISHA NICHOLAS:.....RESPONDENT**

**Before:**

The Hon. Justice Anthony Wabwire Musana,

**Panelists:**

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Can Amos Lapenga.

**Representations:**

1. Mr. Patrick Mugalula of M/s. Katende, Ssempebwa & Co. Advocates for the Claimant.
2. Mr. Timothy Okoth of M/s. Neptune Advocates for the Respondent.

**RULING.**

- [1] On the 19<sup>th</sup> of April 2023, this Court<sup>12</sup> declared that the Respondent was unfairly dismissed for the Applicant's service, awarding monetary compensation of UGX 117,000,000. Dissatisfied, the Applicant avers that it intends to appeal the award. Seeking to realize the award, on the 5<sup>th</sup> of June 2023, Neptune Advocates, acting for the Respondent, applied for execution of the award by way of attachment of the Applicant's property. On the 7<sup>th</sup> day of June 2023, the Registrar of this Court issued a notice to show cause why execution should not issue against the Applicant.

<sup>1</sup> Labour Dispute Reference No. 281 of 2021



- [2] By motion under Sections 40(2) of the Labour Disputes(Arbitration and Settlement) Act 2006(*from now LADASA*), Section 98 of the Civil Procedure Act Cap.71,*(from now CPA)* Section 33 of the Judicature Act Cap. 13, and Orders 52(1) and (3) of the Civil Procedure Rules S.I 71-1(*from now CPR*), the Applicant seeks an order for stay of execution of the award, interlocutory orders and all other supplemental proceedings from Labour Dispute Reference No. 281 of 2021 and any applications thereunder be stayed pending the hearing and determination of the Applicant's appeal of the said matter to the Court of Appeal.
- [3] The grounds in support of the motion were elaborated in the affidavit of Isha Baguma. He deposed to the Applicant's intended appeal on the question of law as to whether the statements made by the Respondent to the Applicant amounted in law to an admission. It was deposed that the Respondent had taken steps to execute the award. The deponent was deposed to the traditional grounds for a stay grant because the decretal amount was substantial. Its execution would render the Applicant's appeal nugatory. The application had been brought without undue delay; it was just and equitable that the application be granted, the applicant would suffer irreparable loss, and the Applicant was willing to deposit security.
- [4] In his affidavit in reply, Ms. Genevieve Kampiire Esq opposed the application. She confirmed the filing of an application for execution and issuance of a notice to show cause. She also averred to Mr. Mugalula informing the Registrar of this Court that the Respondent had satisfied the award by depositing the decretal amount in the Respondent's bank account. She also deposed to the Respondent attempting to transfer the said funds out of the account and the Applicant having refused to do so. She further deposed to the Learned Registrar of this Court, ordering the Respondent to deposit the decretal amount in Court within seven days from the 12<sup>th</sup> of July 2023. She averred that the intended appeal had no likelihood of success.
- [5] Ms. Kampiire also deposed to the claim of UGX 290,000,000/= to be unrelated to the matter before the Court, together with the issues of the sale of the Respondent's house to which the Respondent was entitled to a defence. It was further deposed that the deposit onto the Respondent's account was in bad faith, and the application was intended to defeat the course of justice. In paragraph 11, she is deposed to losing her job and house. We think that Counsel Kampiire was not a party to the Labour Dispute Reference No 281 of 2021 but appeared as Counsel. This deposition is somewhat inaccurate. Alternatively, it was deposed that the Applicant deposits security for costs.
- [6] In rejoinder, Fahim Matovu suggested that the Commissioner for Oaths, Dorothy Bishagenda, did not have a valid practicing certificate. Mr. Matovu further deposed to the intended appeal against the decision of this Court on various grounds, including the award being excessive and inconsistent with previous awards of the Industrial Court and the



import of **Section 66 of the Employment Act** and that there existed a holding that the award and decree of this Court was unsatisfied.

- [7] On the 5<sup>th</sup> day of September 2023, when this matter came up for hearing, Mr. Patrick Mugalula, appearing for the Applicant, sought a schedule for submissions. We directed Counsel for the Applicant to file the affidavit in rejoinder and written submissions by the 19<sup>th</sup> of September 2023. The record reflects that the affidavit in rejoinder was filed on the 27<sup>th</sup> of September 2023, which was the date fixed for coram. There is no record of the Applicant's written submissions. The Respondent filed his submission on the 2<sup>nd</sup> of October 2023. In the submissions, Counsel for the Respondent raised three issues, and we propose to resolve the issues as raised.

#### **Analysis and decision of the Court**

- [8] Our first order of business is to deal with the flouting of filing directives. The directions for the Applicant were to file an affidavit in rejoinder and written submissions by the 19<sup>th</sup> of September 2023. The Applicant filed an affidavit in rejoinder eight days late on the 27<sup>th</sup> day of September 2023 at 1:18 p.m. Further, on the evening of the 1<sup>st</sup> of November 2023, the Registry of this Court received the Applicant's Submissions in Rejoinder. The submissions were entered into the electronic Court record system on the 2<sup>nd</sup> of November 2023, at 11:27 a.m. By the intitulation, it would be assumed that there were submissions in the main. Indeed, paragraph 1.1 of the rejoinder stated, "We reiterate our main submissions." Counsel for the Respondent complained of non-service of any main submissions by the Applicant. The Court also did not benefit from reading the main submissions on the date of coram and at the final preparation of this ruling. It only follows that, for some unfathomable reasons, the submissions cannot be located.
- [9] There was no application for an extension of time to file documents or submissions made under Rule 6 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012. In our view, this was a flippant disregard of the Court directive. Court orders and directives are not made in vain. They are to be obeyed. In the case of **Granada Hotel (U) Ltd v Ntwatwa Jackson**,<sup>3</sup> the Honourable Mr. Justice Musa Ssekaana observes that it is contempt of Court to refuse to do an act required by a judgment or ruling or order of Court within the time specified therein. In these circumstances, the Court would strike these documents off the record. Be that as it may, and for the justice of the case, we will exercise discretion and consider the contents of the affidavit in rejoinder and the submissions in rejoinder.

#### **Whether the Affidavit in reply is admissible:**

- [10] Mr. Matovu deposed that Dorothy Bishagenda Esq did not have a valid practicing certificate when she commissioned Ms. Genevieve Kampiire's affidavit on the 4<sup>th</sup> of

<sup>3</sup> H.C.M.A 206 of 2023



September 2023. Under Section 1(4) of the Commissioner for Oaths Act. Cap. 5 provided that each commission shall terminate on the holder ceasing to practice as an advocate. In the case of **Apama Amato Boroa v Obiga Kania and Another**,<sup>4</sup> the Honourable Mr. Justice Boniface Wamala concluded that an affidavit commissioned by an Advocate who does not possess a valid practicing certificate is invalid. This Court was provided with a copy of Ms. Dorothy Bishagenda's practicing certificate serial no. 20430, valid from the 4<sup>th</sup> day of April 2023 until the 31<sup>st</sup> day of December 2023. In the circumstances, we find that the affidavit of Genevive Kampirre commissioned by Commissioner Dorothy Bishagenda Esq on the 4<sup>th</sup> day of September 2023 was valid and commissioned by a duly licensed Advocate.

***Does the application have any merit?***

[11] The principles governing a grant of stay of execution are well settled, having been set by the Supreme Court in the case of **Lawrence Musiitwa Kyazze v Eunice Busingye**<sup>5</sup> and with the grounds expanded by Kakuru J.A(*as he then was*) in **Kyambogo University v Prof Isiah Omolo Ndiege**<sup>6</sup>. An Applicant seeking an order of stay of execution must meet the following threshold:

- There is proof of lodgment of an appeal,
- Their appeal is not frivolous or has a likelihood of success,
- They will suffer substantial loss if the stay is not granted,
- The appeal will be rendered nugatory if a stay is not granted,
- The application was instituted without undue delay.<sup>7</sup>
- There is a serious or imminent threat of execution of the decree and
- The refusal to grant the stay would inflict more hardship than it would avoid.<sup>8</sup>
- The appellant has given that security for due performance of the decree or order.

**Lodgment of the appeal**

[12] A review of the appeal files shows that on the 2<sup>nd</sup> day of May 2023, the Applicant's Counsel M/s. Katende, Sempebwa & Co Advocates lodged a Notice of Appeal in the Registry of this Court, and the Learned Registrar of this Court endorsed the notice. What is the procedure for commencing an appeal from the decisions of the Industrial Court?

[13] Under Rule 23(2) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012, appeals from the decisions of the Industrial Court are governed under the Judicature (Court of Appeal) Directions<sup>9</sup> S.I 12-10. Under Rule 76(1) and (2)

<sup>4</sup> H.C Election Petition No. 002 of 2021

<sup>5</sup> S.C. Civil Appeal No. 18 of 1990.

<sup>6</sup> C.A.C.A No 341 of 2013

<sup>7</sup> S.C Constitutional Application No. 06 of 2013 Hon. Theodore Ssekikubo and 3 Others Vs AG & 4 Others

<sup>8</sup> H.C.M.A No. 12 Of 2017 John Baptist Kawanga Vs Namyalo Kevina & Anor

<sup>9</sup> Under Rule 23, reference is made to "Rules" while the citation is for "Directions".



thereof, an appeal is commenced by way of a notice of appeal filed within fourteen days after the date of the decision against which it is desired to appeal. The award of this Court against which it is desired to appeal was entered on the 19<sup>th</sup> day of April 2023. The notice of appeal was lodged on the 28<sup>th</sup> day of April 2023 and endorsed by the Registrar of this Court on the 2<sup>nd</sup> of May 2023. These timelines were well within the fourteen days, and we find proof of lodgment of an appeal.

### Likelihood of success

- [14] It was submitted for the Applicant in rejoinder that this Court should be satisfied that there is an arguable appeal with sufficient merit on the disparate decisions of this Court on the reading of **Section 66 of the Employment Act**. We did not benefit from a reading of the intended grounds of appeal. The Respondent submitted that the intended appeal was frivolous, had no iota of merit, and had no chance of success. In **Diamond Trust (U) Ltd and Anor v Ham Enterprises Ltd & 2 Ors**,<sup>10</sup> the Honourable Principal Judge Justice Dr. Flavian Zeija took the approach of delving into some skeletal arguments on the appeal's success instead of raising questions of appeal. We found this approach very helpful in the case of **Security Group Uganda Ltd v Samuel Kigozi**.<sup>11</sup>
- [15] However, in this case, no grounds of appeal were framed. In **Lwanga Ben Mbereganya v Kakande Aloysious and Another**,<sup>12</sup> the Court observed that it can only look at the proposed grounds of appeal and determine if they pass the test of not being vexatious and frivolous as we did not benefit from the proposed or intended grounds of appeal. It would have been helpful for the Applicant to point to precedent if it wished to amplify the disparate decision of this Court in the subject award from which the Applicant now prefers an appeal. Based on the material before this Court, assessing the likelihood of success is impossible. Therefore, we are not satisfied with the likelihood and probability of success of the intended appeal.

### Substantial loss

- [16] In **Uganda Bookshop Ltd. & Another v Willington S.K Makumbi**<sup>13</sup> it was observed that substantial loss is beyond ordinary loss. The supporting affidavit of Isha Baguma states that the amount of UGX 117,000,000 is substantial. Counsel for the Respondent counters that the Applicant has already appropriated and committed funds to the satisfaction of the decree and cannot now turn around and claim irreparable damage. In paragraph 9 of the affidavit in rejoinder, Mr. Matovu avers that this Court has held that the decree is unsatisfied. This is contained in the ruling **Miscellaneous Application No. 091 of 2023 Mugisa Nicholas v Equity Bank(U)LTD**,<sup>14</sup> where Her Worship Sylvia Nabaggala, Registrar of this Court, observes that the Judgment Debtor (the present Applicant) had adduced

<sup>10</sup> H.C.M.A No. 846 of 2020

<sup>11</sup> L.D.M.A No 36 of 2022

<sup>12</sup> S.C.C.A NO. 13 of 1994

<sup>13</sup> H.C.M.A No. 101 of 2018

<sup>14</sup> The ruling is Annexure E to Ms. Kampiire's affidavit in reply.



proof that it deposited the decretal sum of UGX 117,000,000 onto the Judgment Creditor's Account but he could not access it. In these circumstances, we are not satisfied that the Applicant has demonstrated substantial loss if the stay is not granted.

#### **Will the appeal be nugatory?**

- [17] In the case of **Solomon Champlain Lui and Another v Stanbic Bank(U)Ltd**<sup>15</sup> the High Court found nugatory to mean "of no force or effect; useless; invalid, worthless, futile, invalid, trifling, and irreversible. The Court also observed that satisfaction of a money decree does not ordinarily pose the danger of rendering a pending appeal nugatory. In this case, we have not been persuaded that a failure to grant a stay will render the intended appeal irreversible as there are remedies for recovery of monies.

#### **Undue delay**

- [18] Regarding filing the application without undue delay, the procedural history of this application is that the award was delivered on the 19<sup>th</sup> day of April 2023. On the 28<sup>th</sup> day of April 2023, the Applicant filed a notice of appeal and applied for a typed copy of the proceedings. On the 31<sup>st</sup> day of May 2023, the Respondent applied for execution. On the 12<sup>th</sup> day of July 2023, the Registrar of this Court ordered the Applicant to deposit the decretal sum in Court within seven days. Six days later, the Applicant filed the present motion. Based on these historical facts, we are satisfied that the Applicant filed this application without undue delay.

#### **Threat of Execution**

- [19] By paragraphs 9 and 10 of Mr. Matovu's affidavit in rejoinder, it is shown that the decree remains unsatisfied. The Registrar's ruling in Miscellaneous Application No. 091 of 2023 is to the effect that Applicant deposits the decretal sum within seven days from the 12<sup>th</sup> of July 2023, failing which the Respondent would be at liberty to proceed with execution of the same by attachment of the Applicant's property. This is definitively true, and we are satisfied with the existence of an imminent threat of execution. The danger of execution is impending or hovering over the Applicant's property. An application was indeed filed, and the decretal amount remains unsatisfied.

#### **Inflicting of hardship**

- [20] The parties did not address this Court on this point. In the *Lui* case (*supra*), the Honorable Mr. Justice Mubiru observes that in assessing whether granting the stay would inflict hardship, the Court must balance or weigh the scales of justice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his or her judgment. His Lordship further

<sup>15</sup> H.C.M.A 587 of 2021.



observes that it would be wrong to order a stay of proceedings pending appeal where the appeal is frivolous or where such order would inflict greater hardship than it would avoid. Following this particularly apt dictum, this balance weighs heavily against an applicant where the Court has not found the appeal particularly meritorious. In other words, the Court must maintain in its sights the need to enable a successful party to enjoy the fruits of his or her litigation. The notion is inextricably linked to the potential merit of the appeal.

- [21] In the matter before us, the Applicant has provisioned for the satisfaction of the decree. It was suggested that the decretal amount had been deposited in the Respondent's Account. Coupled with the fact that this is an ordinary monetary decree and because we are not satisfied with the prospects of the appeal, we would not find that not granting the stay would inflict more hardship than not.

#### Security for due performance

- [22] On security for the due performance of the decree, the Applicant offers to provide security in paragraph 18 of Mr. Baguma's supporting affidavit and paragraph 17 of the motion should the Court so order. For the Respondent, it was argued on the authority of **Crown Beverages v Okot Omoya & Ors LDMA 110 of 2022** and **Sanyu Fm (2000) Limited v Ben Kimuli**,<sup>16</sup> where the Court sought to balance the fear of substantial loss if it is impossible to recover money after execution with the delay in enjoying the fruits of litigation if the appeal were to delay.<sup>17</sup>
- [23] In the case before us, the Applicant is on record for having half suggested that it had deposited the decretal amount on the Respondent's Account held in the Applicant Bank. It was found that the Respondent cannot access the said monies. By the Learned Registrar's order of the 12<sup>th</sup> of July 2023, the Applicant was ordered to deposit the decretal amount in Court. The Applicant has not offered a quantum of security for due performance in this application. The Respondent has asked for the entire sum. In the **Kawanga case (supra)**, the Honourable Dr. Justice Flavian Zeija observed that the provision of security was never intended to fetter the right of appeal but to ensure that Courts do not assist litigants to delay the execution of decrees by filing vexatious and frivolous appeals. Therefore, the decision on whether to order security for due performance must be made in consonance with the probability of the appeal's success and the facts of each case, as the situations vary from case to case. Further, this Court has adopted a practice to order to deposit between half and two-thirds of the decretal amount. In the **Security Group Africa case (supra)**, we ordered the Applicant to deposit one-half of the decretal amount.

<sup>16</sup> LDMA 248 of 2019

<sup>17</sup> This Industrial Court has maintained this rationale in several other cases. See LDMA. No. 005 Of 2020 Absa Bank (Formerly Barclays Bank of Uganda) Vs Aijukye Stanley, LDMA No 008 Of 2021 Busoga Forestry Company Vs Batabane Anatole and LDMA No. 170 Of 2019 Stanbic Bank (U) Ltd Vs Okou R. Constant.



[24] Objectively considering all circumstances and particularly the Applicant provisioning for the decretal amount, we order the Applicant to deposit with the Registrar of this Court the decretal amount in Labour Dispute No. 281 of 2021, being UGX 117,000,000/=, within 14 days of this ruling.

[25] There shall be no order as to costs.

It is so ordered this 3<sup>rd</sup> day of November, 2023.

  
Anthony Wabwire Musana,  
Judge, Industrial Court

**The Panelists Agree:**

1. Hon. Jimmy Musimbi,
2. Hon. Robinah Kagoye &
3. Hon. Amos Can lapenga.

  
  


**3<sup>rd</sup> November 2023**  
**10.07 a.m.**

**Appearances**

1. **For the Applicant:** None.
2. **For the Respondent:** Mr. Timothy Okoth.  
Respondent in Court.

**Court Clerk:** Mr. Samuel Mukiza.

**Mr. Timothy Okoth:** Matter for ruling, and we are ready to receive it.

**Court:** Ruling delivered in open Court.

  
Anthony Wabwire Musana,  
Judge, Industrial Court.