



THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT GULU
LABOUR DISPUTE MISCELLANEOUS APPLICATION NO.002 OF 2021
(Arising from Labour Dispute Appeal No. 001 of 2021)

PAC SpA:.....APPLICANT

VERSUS

OPIO THOMAS:.....RESPONDENT

Before:

The Hon. Mr. Justice Anthony Wabwire Musana

The Panelists: Hon. Adrine Namara, Hon. Suzan Nabirye & Hon. Michael Matovu.

Representation:

1. Mr. Joseph Okia of M/s. BKA Advocates for the Applicants.
2. Respondent is absent.

Case summary

Ruling on principle considerations on application for stay of execution pending appeal. Conditional grant of stay of execution granted Court found that the appeal had a reasonable chance of success and that failing to grant a stay could render the appeal useless. The court considered various factors, including the likelihood of the appeal's success, the timing of the application, and the potential hardship to the applicant if the stay was not granted. The court ordered that a stay of execution be granted on the condition that Applicant deposits UGX 16,500,000/= as security for due performance within 30 days. Costs would be in the cause.

RULING

Background

- [1] On the 1st day of July 2016, the Respondent employed the Applicant as a driver at a monthly remuneration of UGX 600,000/=. On the 2nd of November 2020, the Claimant was terminated for driving a vehicle under the influence of alcohol. The Applicant complained to the Labour Officer at Pader District Local Government, who is authorized to arbitrate such disputes. On the 29th of April 2021, Mr. Okech David Odwong, Labour Officer, delivered a ruling in which he found that the Applicant did not comply with Section 66(1)-(3) of the Employment Act, 2006.¹ He awarded the Respondent UGX 55,000,000/= to be paid within three weeks from his ruling, failing which the Applicant's assets would be attached. Aggrieved by that ruling, the Applicant preferred Labour Dispute Appeal No. 2 of 2021, now pending before this Court.

¹ Following the revised edition of the laws of Uganda, this is now Section 65(1)-(3) of the Employment Act Cap. 226

Ruling Hon. Justice A.Wabwire Musana

- [2] By motion, the Applicant now seeks an order from this Court to stay execution of the award of the Labour Officer, pending hearing and disposal of the Applicants' appeal against the said decision. The grounds in support of the application were contained in the affidavit of Mr. Giambattita Castelnovi, the Applicant's Administrative Manager, where he avers to the dismissal of the Respondent for driving under the influence of alcohol and for placing evidence before the labour officer. He also avers that the Respondent was paid his terminal benefits. Mr. Castlenovi was also deposed to the excessive and illegal award of the labour officer, the threat of execution, and the Applicant's willingness to deposit security for due performance, amongst other grounds, in support of the motion.

Proceedings

- [3] On 30th May 2024, we issued filing directions. On the 5th of July 2024, Mr. Okia informed the Court that he could not find the Respondent. The affidavit of service of Ivan Ssonko² indicated that Messrs. Odong & Company Advocates declined to accept service, and the Applicant had attempted to serve the Respondent through the Labour Officer, Pader District. The Respondent did not file an affidavit of service, attend Court or file any submissions. We set the matter for coram and now deliver the Court's ruling.

Determination

- [4] The law relating to a grant of a stay of execution is very well settled. From a broad range of decisions, there is judicial unanimity that an applicant seeking a stay of execution should satisfy the Court that:
- (i) There is a pending appeal which, prima facie, has a likelihood of success;
 - (ii) The appeal will be rendered nugatory if a stay of execution is not granted;
 - (iii) That if the conditions in (i) and (ii) above have not been established, the Court must consider where the balance of convenience lies;
 - (iv) The Applicant must establish that the application was instituted without delay;
 - (v) There is a serious threat of execution; and
 - (vi) A refusal to grant the stay would inflict more hardship than it would avoid.³
- [5] Regarding the first test, the Notice of Appeal in LDA No. 1 of 2021, filed on 27th May 2021, contains eight grounds of appeal. To test whether the grounds have a likelihood of success, in *Diamond Trust(U)Ltd and Anor v Ham Enterprises Ltd & 2 Ors*,⁴ The Honourable the Principal Judge Justice Dr. Flavian Zeija took the approach of delving into some skeletal arguments on the appeal's success instead of raising questions about the appeal. We have found this approach most helpful.
- [6] Grounds one to three of the appeal relate to the propriety of the labour officer's award. The labour officer ordered payment of the decretal award within seven days, failure of which an order of attachment would issue. We agree with Mr. Okia's argument that specific provisions

² The affidavit of service was filed in Court on 4th July 2024.

³ *Crown Beverages Ltd v Oket Omoya & Ors*[2022] UGIC 23

⁴ H.C.M.A No. 846 of 2020

of the Employment Act Cap.226 and the Labour Disputes(Arbitration and Settlement) Act Cap. 227 governs a labour officer's award. In our view, the propriety of the award would require further judicial inquiry. Therefore, we are satisfied that the appeal is not frivolous and is likely to succeed.

- [7] Because we find the appeal has a likelihood of success, we would be inclined to the view that the appeal would be rendered nugatory or useless if we did not grant the stay of execution.
- [8] Having established the two grounds above, it is unnecessary to consider the balance of convenience.
- [9] As to applying without undue delay, the Labour Officer's award was issued on the 29th of April 2021. This application was filed on the 11th of October 2021, some six months after the award. Mr. Okia argued that the trigger for this application was the filing of Miscellaneous Application No. 071 of 2021 on the 4th of August 2021, which the Applicant only learnt about while following up on other matters. The filing of the present application would, therefore, be two months after the filing of the application for execution. The dicta of Serunkuma J. in *Kajunjube and 3 Others v Kasigwa*⁵ where his Lordship, citing the Constitutional Court in *Ayena Odongo versus Attorney General*⁶ for the proposition that unreasonable delay is a matter of fact, found two months between the decision and the application was not unreasonable. In *Aluma & 2 Ors v Okuti*⁷ Mubiru J. found two years to be unreasonable. In the present case, the application for execution was filed on the 4th of August 2021 and not served on the Applicant. The Applicant applied for a stay on the 11th of October 2021. We do not think this was an unreasonable delay. We are also fortified in taking this view by the dicta in *Orient Bank Ltd v Zaabwe & others*,⁸ where it was observed that courts should not order a stay where there is no evidence of any application for execution of the decree.
- [10] As regards hardship inflicted if the application is not granted, in *Law Development Centre v Assimwe & Ors*⁹ we were persuaded, as we are now, that the absence of certainty of refund should the appeal succeed would inflict more hardship than it would prevent if the stay is not granted. We think that this threshold has been met in the instant case.
- [11] Finally, the Applicant demonstrated a willingness to deposit security for due performance. The approach of this Court has been to grant conditional orders of stay of execution.¹⁰ This Court has ordered the deposit of sums between one to two-thirds of the decretal amount and not the entire decretal amount. In *Security Group Limited v Kigozi*,¹¹ we ordered the Applicant to deposit one-half of the decretal amount. In the present case, we think a one-third deposit of the decretal amount would suffice. Therefore, we direct the Applicant to deposit UGX 16,500,000/= by bank guarantee with the Registrar of this Court within 30 days of this order.

⁵ [2023] UGHCCD 246

⁶ [2021] UGCC 30

⁷ [2017] UGHCLD 28

⁸ HCMA 19/2007

⁹ [2023] UGIC 27

¹⁰ See *Sanyu FM (2000) LIMITED V Kimuli* [2021] UGIC 65


¹¹ [2023] UGIC 4

Final Orders

[12] Overall, we are satisfied that the Applicant has met the threshold for a grant of stay of execution. The Applicant is ordered to deposit a bank guarantee in the sum of UGX 16,500,000/= as security for due performance with the Registrar of this Court within 30 days of this order. The order of stay of execution of the award of the Labour Officer of Pader District Local Government issued on the 3rd of May 2021 in the matter of Opio Thomas V PAC SpA pending the hearing and disposal of Labour Dispute Appeal No. 001 of 2021 now before this Court is conditional upon deposit of the security for due performance.

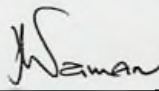
[13] As the application was uncontested, costs shall be in the cause.

Dated, delivered and signed at Kampala on this 16th day of August 2024

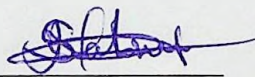

Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

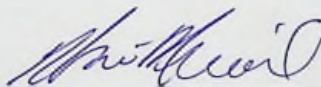
1. Hon. Adrine Namara,



2. Hon. Susan Nabirye &



3. Hon. Michael Matovu.



16th August 2024

10:07 a.m.

Appearances

1. For the Applicant:

Mr. Joseph Okia

2. Respondent absent:

Court Clerk:

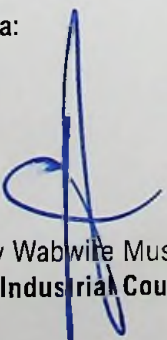
Mr. Samuel Mukiza.

Mr. Okia:

Matter is for ruling, and we are ready to receive it.

Court:

Ruling delivered in open Court.


Anthony Wabwire Musana,
Judge, Industrial Court