



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISCELLANEOUS APPLICATION NO.013 OF 2023

(Arising from Labour Dispute Reference No. 218 of 2015 and H.C.C.S No.44 of 2014)

LAW DEVELOPMENT CENTRE.....APPLICANT

VERSUS

1. ASIIMWE APOLLO B.
2. MWAITA CHRISTINE
3. OJANGULE NELSON
4. TWINAMATSIKO ENOTH.....RESPONDENTS

**Before:**

The Hon. Mr. Justice Anthony Wabwire Musana,

**The Panelists:**

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

**Representation:**

Ms. Marvin Kushaba of M/s. Kyagaba & Otatiina Advocates for the Applicant  
Mr. Ayebare Robert of M/s. Barya, Byamugisha & Co. Advocates for the Respondents

**RULING**

- [1] On the 25<sup>th</sup> of March 2022, the Industrial Court<sup>1</sup> declared the termination of the Respondents from the service of the Applicant Centre unlawful, awarding monetary compensation in the sum of UGX 104,717,000. Dissatisfied, the Respondent filed a notice of appeal on the 7<sup>th</sup> of April 2022. Seeking to realize the award, on the 19<sup>th</sup> of December 2022, Professor John Jean Barya, acting for the Claimants, applied for execution of the award through the attachment and sale of 6 motor vehicles. On 20<sup>th</sup> of January

<sup>1</sup> Per Ntengye H.J, A. Namara, M. Matovu, S. Nabirye in LD 218 of 2014 Asiimwe A.B & 3 Ors v Law Development Centre



2023, the Registrar of this Court issued a notice to show cause why execution should not issue against the Applicant.

- [2] By motion under Sections 13 and 33 of the Judicature Act Cap. 13, Section 98 of the Civil Procedure Act Cap.71, and Orders 22 r 26 and 43 rr(1)-(4) of the Civil Procedure Rules S.I 71-1(*from now CPR*), the Applicant seeks an order for stay of execution of the decree or orders in Labour Dispute No. 218 of 2015 pending the hearing and determination of the intended appeal.
- [3] The grounds in support of the motion were elaborated in the affidavit of Mr. Hamis Ddungu Lukyamuzi. He deposed to the merit and a high chance of success of the intended appeal, to the Applicant being served with a notice to show cause why execution should not issue, and, on the advice of Counsel, to the substantial loss the Applicant would suffer if the decree were executed. He further deposed to the uncertainty of refund from the Respondents if the appeal succeeded and affirmed the longevity of the appeal process. He also affirmed the Applicant's capacity to settle the decretal sum as a statutory establishment. Finally, he deposed to the Applicant's willingness to deposit security for due performance, the speed with which the application had been brought, and the fairness, justice, and equity in a grant of stay.
- [4] In his affidavit in reply, the 1<sup>st</sup> Respondent opposed the application averring that the intended appeal had no likelihood of success and there was no possibility of irreparable damage to a statutory corporation. He averred that if the Court was inclined to grant the application, the Applicant should deposit UGX 122,000,000/=.
- [5] The principles governing a grant of stay of execution have, from the Supreme Court's decision in **Lawrence Musiitwa Kyazze v Eunice Busingye**<sup>2</sup> and other guiding dicta of Courts of judicature, been well settled. For good measure, an Applicant seeking an order of stay of execution must establish that:
- (a) Their appeal is not frivolous or has a likelihood of success,
  - (b) They will suffer substantial loss/irreparable damage,
  - (c) The appeal will be rendered nugatory if a stay is not granted,
  - (d) The application was instituted without undue delay.<sup>3</sup>
  - (e) There is a serious or imminent threat of execution of the decree and
  - (f) The refusal to grant the stay would inflict more hardship than it would avoid.<sup>4</sup>

<sup>2</sup> S.C. Civil Appeal No. 18 of 1990. Both Counsel relied on this authority.

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

<sup>4</sup> H.C.M.A No. 12 Of 2017 John Baptist Kawanga Vs Namyalo Kevina & Anor



- [6] On the intended appeal, it was submitted for the Applicant considering the memorandum of appeal; the intended appeal is not frivolous. Conversely, the Respondents submitted that the awards were statutory, supported by evidence, and that, therefore, the intended appeal did not have a likelihood of success. The memorandum containing two grounds of appeal was attached to the affidavit in support. In **Diamond Trust (U) Ltd and Anor v Ham Enterprises Ltd & 2 Ors**,<sup>5</sup> the Honourable Principle 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 find this approach very helpful and adopt it.
- (7) The first ground of appeal questions the lawfulness of the termination. In its decision, from which the Applicant now intends to appeal, the Industrial Court<sup>6</sup> found that the termination of the Respondents was contrary to the Supreme Court's decision in **Hilda Musinguzi v Stanbic Bank SCCA No. 005 of 2016** and the International Labour Organization Convention No. 158 of 1982. There was not much discussion on the evidence adduced. The Court of Appeal might well revisit the evidence to determine this question, which would be a reasonable ground for appeal.
- [8] The second ground of the intended appeal related to the failure to deduct money initially paid to the Respondents in lieu of notice from the award of severance pay. Counsel for the Respondent argued that the awards were statutory. The Industrial Court awarded severance pay under **Section 87 of the Employment Act, 2006** (from now EA), long service award under Clause 33 of the Applicant's standing orders, certificates of service under **Section 61 EA**, and general damages. While the other awards are statutory, the award of general damages is discretionary. It is difficult to point out the jurisprudential value of an appeal on this point.
- [9] Regarding substantial loss, the Applicant submits that it is a publicly funded statutory body and will not be able to refund or purchase government vehicles in addition to interruption of its activities as an educational institution if execution ensues. The Applicant also contends that there is no certainty of refund should the appeal succeed. The Respondent counters that the Applicant has not demonstrated what loss it would suffer beyond the ordinary loss of the decretal sum. We agree with the Honourable Lady Justice E. Nambayo's ruling in **Uganda Bookshop Ltd & Another v Willington S.K Makumbi**<sup>7</sup> that substantial loss is beyond ordinary loss. In

<sup>5</sup> H.C.M.A No. 846 of 2020

<sup>6</sup> Per Ntengye H.J et al(supra)

<sup>7</sup> H.C.M.A No. 101 of 2018



our view, disruption of the academic activities arising from the attachment of motor vehicles assigned to a statutory entity enmeshes the Applicant under challenging circumstances. The loss would be substantial.

- [10] Regarding applying without undue delay, the procedural history of this application is that on 25<sup>th</sup> March 2022, the award was delivered. On 7<sup>th</sup> April 2022, the Applicant filed a notice of appeal and applied for a typed copy of the proceedings. On the 19<sup>th</sup> of December 2022, the Respondents applied for execution. On 17<sup>th</sup> January 2023, the Court issued the record of proceedings. On 12<sup>th</sup> February 2023, the Court issued a notice to show cause why execution should not issue. One day later, on the 13<sup>th</sup> of February 2023, the Applicant filed this application. We are satisfied that the Applicant filed this application without undue delay.
- [11] Regarding the imminent threat of execution, the Respondents applied for execution by attaching and selling certain motor vehicles. The Applicant contends that these vehicles are not liable to attachment under Section 15(4) of the Government Proceedings Act Cap. 77 (*from now GPA*) and Rule 19 of the Government Proceedings (Civil Procedure) Rules S.I 77-1 (*from now GPR*). There was some difficulty placing reliance on these citations because Section 15(4) GPA is not in force, and the final provision of the GPR is Rule 17. The argument does not also gain much purchase because the provisions of the GPA and GPR relating to the immutability of the Government in execution proceedings were subject to judicial consideration in the case of **Osotraco Ltd v Attorney General**<sup>8</sup>. In that case, execution against the government was constitutionally practicable. That notwithstanding, we are satisfied that on the strength of the application for execution in annexure G to the 1<sup>st</sup> Respondent's affidavit in support, there is an imminent threat of execution.
- [12] As to whether the refusal to grant the stay would inflict more hardship than it would avoid, the parties made no submissions on the point. We are of the persuasion that the absence of certainty of refund should the appeal succeed as against the disruption of the Applicant's activities imposed by execution by attachment and sale of 6 vehicles could inflict more hardship and more so for the reasons in paragraphs [9] above [13] below.
- [13] On security for the due performance of the decree, the Applicant offers to deposit the same in paragraph 15 of Mr. Lukyamuzi's affidavit in support. Strangely, the Applicant appears to recant the offer in paragraph 7 of its main submissions and paragraph 1.19 of its submissions in rejoinder. On

<sup>8</sup> H.C.C.S No 1380 of 1986 [2002] UGHC 5. On appeal before the Court of Appeal in C.A.C.A No. 32 of 2022, Mpagi Bahegiene JJA (*as she then was*) upheld Egonda Ntende J (*as he then was*) rendering the immunities of state not immutable under the 1995 Constitution.



their part, the Respondents submit that the Applicant must deposit the entire decretal sum. Our reading of Her Lordship, Nambayo J. in the Uganda Bookshop Ltd case<sup>9</sup> does not suggest a mandatory deposit of the decretal amount. In citing **Kampala Bottlers Ltd v Uganda Bottlers Ltd**<sup>10</sup> Her Lordship made reference to a deposit of security for costs and not the decretal sum as Counsel for the Respondent would have us believe. We are inclined to the view that Order 43(4)(c) CPR confers discretion on the Court.<sup>11</sup>

- [14] Overall, the Applicant has met the threshold for a grant of stay of execution. However, and as rightly put by Counsel for the Respondents, the Industrial Court's practice is for conditional grants of stay of execution. The rationale is expressed in the case of **Sanyu Fm (2000) Limited v Ben Kimuli**,<sup>12</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>13</sup> In the case before us, while the Applicant contends uncertainty of refunds in the event of a successful appeal, the Respondents suggest an intentional delay in realizing the fruit of their litigation. In **Security Group Uganda Ltd v Kigozi Samuel**<sup>14</sup> we opined that a party seeking remedial action before an appellate court would be interested in speedy disposal of the appeal to access the monies deposited as security. Similarly, a respondent would be assured of a safety net in the form of protection for the award, the imponderables notwithstanding. This approach would be consistent with the particularly apt dicta of the Honourable Dr. Justice Flavian Zeija in the case of **John Baptist Kawanga v Namyalo Kevina and Ssemakula Laurence**<sup>15</sup>. His Lordship holds;

*"...The objective of the legal provision on security was never intended to fetter the right of appeal. It was intended to ensure that courts do not assist litigants to delay execution of decrees through filling vexatious and frivolous appeals. Therefore, the decision whether to order for security for due performance must be made in consonance with the probability of the*

<sup>9</sup> Supra

<sup>10</sup> S.C.A No. 25 of 1995

<sup>11</sup> Similarly, under Order 22 Rule 26 CPR, the court may grant the order if it sees fit and on such terms as to security as the Court thinks fit.

<sup>12</sup> LDMA 248 of 2019

<sup>13</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.

<sup>14</sup> LDMA 36 of 2022

<sup>15</sup> HCMA 12 of 2017




success of the appeal and on the facts of each case as the situations vary from case to case.

In the circumstances of the present case, this Court's invocation of a temporary stay of execution would assist with the delicate balance of the parties' competing contentions and interests. We would grant an order of conditional stay of execution.

- [15] The final leg of this application is what quantum of security for due performance must the Applicant deposit? The Applicant did not suggest any sum. On their part, the Respondents sought a deposit of the entire decretal amount. In our resolution of security for due performance in paragraph [13] above, we dispelled the notion that the whole decretal sum must be deposited in Court. In the **Security Group Africa case (supra)**, we ordered the Applicant to deposit one-half of the decretal amount. In the present case and after objectively considering all circumstances, we order the Applicant to deposit with the Registrar of this Court two-thirds of the decretal amount in Labour Dispute No. 218 of 2015, the sum of UGX 69,811,344/=, within 30 days of this order. There shall be no order as to costs.

It is so ordered at Kampala this 16<sup>th</sup> day of June 2023.


Anthony Wabwire Musana,  
Judge, Industrial Court





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The Panelists agree:


1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.




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Ruling delivered in open Court in the presence of:

1. For the Applicant: **Mr. Robert Ayebare** for Respondent.
  2. For the Respondent: **Mr. Marvin Kushaba** for the Applicant.
- Court Clerk: **Mr. Samuel Mukiza.**