



**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISCELLANEOUS APPLICATION NO. 143 of 2024**

*(Arising out of Labour Dispute Miscellaneous Application No. 60 Of 2022, Execution Application No. 59 of 2022 and Labour Dispute Reference No. 337 of 2017)*

**JAMES TWEHEYO.....APPLICANT  
VERSUS**

**UGANDA NATIONAL TEACHERS UNION(UNATU)..... RESPONDENT**

**Before:** The Hon. Mr. Justice Anthony Wabwire Musana

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

**Representation:**

1. Mr. Jonan Nuwandinda Rwambuka of M/s.Rwambuka & Co Advocates for the Applicant.
2. Mr. Phillip Mwesiga of M/s JByamukama & Co Advocates for the Respondent.

**Case summary**

*Civil Procedure- Setting aside order of stay- By consent, a conditional order of stay of execution was initially granted to the Respondent. The Applicant sought to set aside this stay, arguing the Respondent failed to meet the condition of providing a bank guarantee for the awarded sum. Although a guarantee was provided, it was incorrectly addressed to the Registrar of the High Court rather than the Registrar of the Industrial Court. The court determined this to be a non-fatal misnomer, recognising the clear intention to comply with the stay order and prioritising substantive justice over this technicality. Consequently, the application to set aside the stay was dismissed, provided the Respondent rectifies the address on the guarantee.*

**RULING**

- [1] This ruling concerns an application to set aside an order of stay of execution issued by this Court in Miscellaneous Application No. 60 of 2022. The application was made under Section 33 of the Judicature Act Cap. 16(JA), which is now Section 37 under the Laws of Uganda, Revised Edition 2023, and other enabling provisions of law cited therein. We were also asked to provide for costs.
- [2] The background facts of the application, as presented in the supporting affidavit of the Applicant, are clear and straightforward. The Applicant, who was the successful party in LDR No. 337 of 2017, was awarded UGX 64,490,000/= with interest at 15% p.a from the 6<sup>th</sup> of May 2022 until payment in full. Upon applying for execution, the Respondent countered by applying for a stay of execution.<sup>1</sup> The Respondent's application was settled by consent on the 14th of September 2022, the terms of which were that a bank guarantee for the decretal sum be provided.

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<sup>1</sup> LDMA No. 60 of 2022 was filed on 18<sup>th</sup> May 2022

- [3] In this application, the Applicant contends that the Respondent has not met the conditions for a stay of execution. The Respondent opposes the application. Mr. Phillip Buni Duluga deposed an affidavit in reply, in which he referred to a bank guarantee filed in this Court on the 3<sup>rd</sup> October 2022. According to Mr. Duluga, a copy of the guarantee was served on the Applicant's counsel. He also averred that the initial guarantee had been renewed.
- [4] When the matter was called before us on the 21<sup>st</sup> of March 2025, Mr. Rwambuka, appearing for the Applicant, argued that there was no guarantee on record because annexures A2 and A3 to Mr. Duluga's affidavit were addressed to the Registrar, High Court of Uganda and not the Registrar, Industrial Court of Uganda. Counsel asked that the conditional order of stay be set aside and that execution issues. Mr. Mwesiga took the view that all guarantees, by general practice, were to be addressed to the Registrar of the High Court.
- [5] There is a common cause that the conditional order of stay of execution required the Respondent to deposit a bank guarantee for the sum of UGX 64,490,000/= /=. The payment guarantee attached to Mr. Duluga's affidavit contains the following salient features:
- (i) The guarantee is addressed to the Registrar, High Court of Uganda.
  - (ii) It is dated the 21<sup>st</sup> of September 2022, seven days after the consent order for conditional stay was executed.
  - (iii) The underlying agreement is No.60 of 2022 for Court Processes and;
  - (iv) It is in the sum of UGX 64,490,000/=.
- [6] Upon obtaining this payment/demand guarantee, the Respondent's Counsel, Mr. Phillip Mwesiga, forwarded the same to the Registrar of this Court on the 20<sup>th</sup> of September 2022. Counsel copied Mr. Rwambuka's law firm. On the 20<sup>th</sup> of March 2025, the Respondent renewed the payment guarantee, signifying the ongoing nature of this case, continuing with and containing the same features as indicated in paragraph [5] above.
- [7] We have reviewed the consent order of conditional stay of execution. Without delving into the traditional grounds for setting aside a consent order<sup>2</sup>, it is this Court's estimation that the intent in annexures A, B and C to Mr. Duluga's affidavit was to comply with the consent order for conditional stay of execution. With the exception that the guarantee was addressed, wrongly, to the Registrar of the High Court of Uganda, the rest of the contents of the documents are consistent with the application from which the present application arises. They bear the same cause number, No. 60 of 2022, and refer to court processes, stating the decretal amount in LDR No. 337 of 2017. In our view, this is a matter of misdescription. The beneficiary is misnamed, and we do not think this to be fatal. We take valuable guidance on the point from the Supreme Court in East Africa Foam Limited v Attorney General and 2 Others<sup>3</sup> where the Court observed that it often happens that a contract, creating legally binding obligations, names a wrong party and in appropriate circumstances, the naming of a wrong party may be regarded as a misnomer that a Court can, in the interests of justice, rectify by ordering that the right

<sup>2</sup> A consent order can only be set aside on very limited grounds, such as fraud, mistake, misapprehension, or if the consent was given without sufficient material facts, or in ignorance of material facts, or if it contravenes court policy. See *Attorney General v Kamoga SCCA No. 8 of 2004*

<sup>3</sup> [2025] UGSC 5

party be substituted for the wrong party. The Court discussed *Libefi Mercian Limited v Cuddy Civil Engineering Ltd and Another*<sup>4</sup> and *Nittan (UK) Limited v Solent Steel Fabrications Limited*<sup>5</sup>, where the following passage, attributed to Lord Denning, was cited;

*"In this Court, we are very used to dealing with misnomers. We do not allow people to take advantage of a misnomer, when everyone knows what was intended. I will only refer to one authority, Whittam v WJ Daniel & Co. Ltd [1962] 1 QB 271 at p. 277, where Lord Justice Donovan cited the words of Lord Justice Devlin: "I think that the test must be: how would a reasonable person receiving the document take it? If, in all the circumstances of the case and looking at the document as a whole, he would say to himself: "Of course it must mean me, but they have got my name wrong, then there is a case of a mere misnomer."*

- [8] The point from the above authorities is that, in legal terms, a misnomer refers to a situation where a party is incorrectly named in a legal document, but the intention is clear. In the present context, the reference to the Registrar High Court in respect of the decretal sum in LDMA 60 of 2022 could only have been a reference to the Registrar Industrial Court of Uganda, the intended beneficiary and addressee in Annexure "A" to Mr. Duluga's affidavit in reply. It is inconceivable that the Respondent intend the payment guarantee to go anywhere else. This Court must say, of course, that the payment guarantee was intended for the Registrar of the Industrial Court. Therefore, this is a classic misnomer. Despite the misaddressing of the guarantee, we determine that a guarantee does exist. Thus, this application is deemed to be without merit
- [9] In *Wycliff Mubale & Ors V Makerere University*<sup>6</sup> we observed the encompassing hold of Section 34 of the Civil Procedure Act Cap.282(CPA) That provision is to the effect that all matters of execution should be handled by the Court that issued the decree.<sup>7</sup> We also cited Section 8 of the Labour Disputes (Arbitration and Settlement) Act, Cap. 227, which grants this Court powers to grant reliefs it deems fit. In our view, this matter is at the stage of execution, and it would not be optimal to consider the correct payment guarantee in another action. Therefore, in further accordance with the dictates of Article 126(2)(e) of the Constitution of the Republic of Uganda, which engenders substantive justice over technicalities and because the Applicant herein has himself preferred a cross-appeal against the decree and orders that he now seeks to execute, we are inclined to the view that the stay of execution occasions no prejudice to both parties. Therefore, we now issue the following orders:
- (i) The Respondent shall cause the payment guarantee dated 20<sup>th</sup> March 2025, now in the custody of the Registrar of this Court, to be replaced with a payment guarantee in the same terms addressed to the Registrar, Industrial Court of Uganda. The same should be placed in the registry of this Court within five business days from the date hereof.

<sup>4</sup> [2013] EWHC 2688

<sup>5</sup> [198U 1 Lloyd's Law Rep 633

<sup>6</sup> LDMA No. 48 of 2024

<sup>7</sup> Section 34 (1)CPA, reads: - All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit.

(ii) This application is dismissed. Each party shall bear its costs.

It is so ordered.

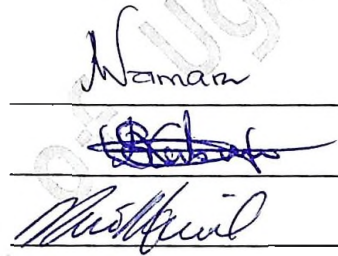
Signed, dated and delivered in Kampala this 27<sup>th</sup> day of March, 2025.



Anthony Wabwire Musana,  
Judge, Industrial Court of Uganda

**The Panelists Agree:**

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



27<sup>th</sup> March 2025

12:36 a.m.

**Appearances**

**For the Respondent:**

**Mr. Jerry Ahumuza**  
Parties absent.

Court Clerk:

**Ms. Olivia Nanseera.**

Mr. Ahumuza :

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

Court :

Ruling delivered in open Court.



12:52 p.m.

Anthony Wabwire Musana,  
Judge, Industrial Court of Uganda.

