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THE REPUBLIC OF UGANDA

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IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

Miscellaneous Application No. 68 of 2020

(Arising from Miscellaneous Application No. 57 of 2020 and Court of Appeal Civil Appeal No. 160 of 2019, itself arising from High Court at Mukono Civil Suit No. 14 of 2017 formerly High Court at Jinja Civil Suit No. 20 of 2014)

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Security Group Uganda Limited ::::::::::::::: Appellant

Versus

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**Hajjati Zam Zawedde
(Administrator of the Estate of
The late Tamale Ahmed)**



::::::::::::::: Respondent

**Coram: Hon. Justice Remmy Kasule, Ag. JA Sitting as a
Single Judge**

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Ruling

This Ruling is in respect of an application for an interim order of stay of execution.

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The hearing of the application was on 17.03.2020 before His Lordship the Hon. Mr. Justice Alfonse Owiny Dollo, DCJ, as he

then was. He reserved preparation and delivery of the Ruling on another future date. He however subsequently assumed the office of Chief Justice of Uganda before preparing and delivering the said
35 Ruling.

On 06.05.2021 the application came up for further action. The hearing was in chambers. Learned Counsel Ivan Engoru, Arnold Lule Ssekiwano and Prescilla Mutebi were for the applicant. Learned Counsel Ronald Aine and Nazania Robert were for the
40 Respondent. Mr. Dacha Ahenda, country representative of the applicant and the respondent in person were also present.

The Court, with consent of respective Counsel and their parties, resolved to prepare and deliver the Ruling on the basis of the pleadings and submissions made and already on the Court record.
45 I have been able to go through the pleadings and submissions of respective Counsel on the Court record and I have accordingly prepared this Ruling for delivery.

In the original High Court, at Jinja, **Civil Suit No. 20 of 2014**, which on being transferred to Mukono, became registered as High
50 Court at Mukono **Civil Suit No. 14 of 2017**, the respondent, together with her now deceased husband, sued the appellant and 2 others for both general and special damages. They asserted in the plaint in the suit that on 16.04.2013 at Ntinda Zone, Mukono District, two employees of the applicant, while in the course of their
55 employment, shot dead Tamale Ahmed, their son.

On 10.04.2019, Judgment was delivered in the suit by the learned trial Judge Mutonyi, J. for the respondent against the appellant for total damages of UGX. 456,000,000= with costs of the suit.



Dissatisfied, the applicant lodged **Civil Appeal No. 160 of 2019**
60 against the High Court Judgment on 19.06.2019. The applicant
also moved the High Court through **Miscellaneous Application**
No. 193 of 2019 to stay execution. The High Court dismissed that
Application on 24.02.2020.

Thereafter, on 04.03.2020 the Applicant lodged in this Court of
65 Appeal **Miscellaneous Application No. 57 of 2020** to stay
execution of the Decree in the High Court Suit. On 11.03.2020
this **Application No. 68 of 2020** for an interim order of stay was
also lodged in this Court.

In the meantime, the respondent, in execution of the Decree in
70 **HCCS No. 14 of 2017** commenced in the High Court at Mukono
Garnishee proceedings against the Applicant. On 11.03.2020 the
applicant was served with a Garnishee Order Nisi issued in the
suit by the High Court, Mukono. The effect of the Order was to
freeze the applicant's bank accounts in Standard Chartered, DFCU
75 and ABSA banks to the extent of the amount stated in the said
Order Nisi.

The Applicant thus moved this Court in this Application for an
interim order of stay of execution of the High Court Decree in the
suit, by Garnishee proceedings or otherwise, pending hearing and
80 final determination of the substantive Application for stay that is,
Miscellaneous Application No. 57 of 2020.

The Respondent opposed this Application on the grounds that the
Applicant lodged the Notice of Appeal in this Court out of time and
never served the same upon the respondent within the prescribed
85 time or at all. It was also contended that, the appeal by the



applicant has no likelihood of success at all. Further, the substantive Application for stay had also never been served upon the respondent. Accordingly the Order Nisi had been lawfully issued by the High Court. The Respondent was capable of
90 refunding any moneys she may recover in execution of the High Court Decree, should a Court of law order her to refund the same in future. No irreparable damage or loss would be suffered by the execution going on through the Garnishee proceedings process.

In resolving the issues in this application, I am mindful of the legal
95 position that for an application for an interim order of stay to succeed, it suffices of the Applicant to prove to Court that the said applicant had lodged before this Court a proper Application for an interim order for stay, that a substantive Application to stay execution is pending disposal in this Court and that there is a
100 serious threat of execution before determination of the pending substantive application. See: **Court of Appeal Miscellaneous Applications No. 343 and 345 of 2013: Crane Bank Limited and Another vs Belex Tours and Travel Ltd.**

In this Application the Applicant has satisfactorily proved not only
105 that a substantive Application to stay execution, that is **Miscellaneous Application No. 57 of 2020** is pending determination in this Court, but also that **Civil Appeal No. 160 of 2019** challenging the High Court decision in **HCCS No. 14 2017** is also pending determination by this Court.

110 It has also been proved by the Applicant that through Garnishee proceedings lodged in the High Court at Mukono in **HCCS No. 14 of 2017**, there is an imminent threat of execution at the level of

the said High Court having issued an Order Nisi attaching and that way freezing the accounts of the Applicant in the various banks
115 where those accounts are maintained and operated by the Applicant.

The Respondent, through her Counsel, complained to this Court that while this Ruling was pending delivery, the Respondent moved ex-parte the High Court in Mukono in **HCCS No. 14 of 2017**
120 through **Miscellaneous Cause No. 15 of 2020** to vary the terms of the Order Nisi by vacating the same from attaching and freezing those accounts in the various banks. Instead, the Applicant had applied to the High Court to be allowed, and the Court had so allowed the Applicant, to deposit in Court in cash the decretal sum
125 of UGX. 491,997,000= on the Judiciary Account No. 9030012447840 with Mukono High Court held at Stanbic Bank, Mukono. The applicant had so complied.

Suffice to note that on 17.03.2020, when the then Deputy Chief Justice, Hon. Justice Alfonse Chigamoy Owiny-Dollo, adjourned
130 the Application pending delivery of the Ruling, he issued an interim order to the effect that:

*“Staying any further execution of the Decree and Orders in Mukono **HCCS No. 14 of 2014: Hajati Zam Zawedde v Security Group Uganda Limited until pending Ruling”.***

135 This Court does not find that there was any violation of the above quoted Order by the Applicant. What the applicant did was to deposit in the High Court at Mukono the decretal sum, instead of having that amount being kept on the respective bank accounts in the various banks, which accounts would remain frozen to the

140 extent of that amount. The Applicant just resorted to a better
alternative than the freezing of the several bank accounts. The
applicant did so by moving the High Court at Mukono in **HCCS No.
14 of 2017**. The said Court was satisfied with that process,
otherwise it would have made other orders in the cause to ensure
145 justice, if it so found. The said Court did not find it necessary to
issue any further orders.

In conclusion, this Application stands allowed. An interim order
to stay execution of the decree in **HCCS No. 14 of 2017** formerly
Jinja **HCCS No. 20 of 2014** is hereby issued on condition that the
150 decretal sum of UGX. 491,997,000= deposited in the High Court
at Mukono by the Applicant on the Uganda Judiciary Account No.
9030012447840, Mukono High Court, with Stanbic Bank,
Mukono Branch, shall remain so deposited on that account
pending the determination of **Court of Appeal Miscellaneous
155 Application No. 57 of 2020** and/or **Court of Appeal Civil Appeal
No. 160 of 2019**, whichever is determined earlier, or pending
further orders of this Court.

Given the special circumstances of this case, whereby the decretal
sum is deposited in the High Court, at Mukono, which makes it
160 very urgent to resolve as to who of the Applicant and the
Respondent is entitled to this money, whether the whole or part of
it, the Registrar, Court of Appeal, is hereby directed to fix for
hearing at the earliest Civil Appeals Session of the Court possible,
Civil Appeal No. 160 of 2019 together with **Miscellaneous
165 Application No. 57 of 2020** and all other applications arising out
of that appeal, so that the said appeal and Applications are

determined at one go and as quickly as possible by this Court.

As to costs of this application, the same are to abide the final determination of the substantive Application for stay, **Civil**
170 **Application No. 57 of 2020** and/or **Civil Appeal No. 160 of**
2019, whichever is earlier determined.

It is so ordered.

Dated at Kampala this day of 2021.

1st July

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Remmy Kasule
Ag. Justice of Appeal