THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

CONSTITUTIONAL APPLICATION NO. 10 OF 2021

(CORAM: OPIO-AWERI; TUHAISE; CHIBITA: JJSC)

(An application arising out of Constitutional Application No. 09 of 2021 arising from Constitutional Petition No. 37 of 2014)

ATTORNEY GENERAL :::
APPLICANT

AND

SSEJJEMBA ISRAEL :::::::::::::::::::::::::::::::::::: **RESPONDENT**

RULING OF THE COURT

This is an application brought by Notice of Motion under Rules 2(2), 6(2)(b), 42 & 43(1) of the (Supreme Court Rules) Directions, seeking the following Orders:

1. That an Interim stay of execution of the decision of the Constitutional Court in Petition No. 37 of 2014 delivered on 5th October, 2021 be granted.
2. Costs of the application be provided for

The application is accompanied by an affidavit sworn by Lillian Bucyana, on behalf of the Applicant.

The respondent filed an affidavit in reply.

The background to the application is that the Respondent was sued in Makindye Chief Magistrates Court under the (Small Claims

Procedure) Rules. Judgment was entered against him and on finding out that he could neither appeal nor retain the services of a lawyer, he filed a constitutional petition under article 137(3) of the Constitution seeking declarations that the Judicature (Small Claims Procedure) Rules 2011 contravene the right to appeal and the non-derogable right to a fair hearing.

The Constitutional Court granted the prayers of the respondent and declared that failure to provide for the right of appeal and the right to legal representation by the Judicature (Small Claims Procedure) Rules was unconstitutional.

It is against this decision of the Constitutional Court that the applicant seeks an Interim stay of execution pending final determination of the substantive application.

REPRESENTATION

The Applicant was represented by Patricia Mutesi, Commissioner from the Attorney General's chambers while the Respondent was represented by Isaac Obiro Ekirapa. The respondent, Israel Ssejemba, was in attendance.

SUBMISSIONS

The parties filed written submissions. Counsel for the applicant contended that the applicant is dissatisfied with the judgment and declarations of the Constitutional Court in Petition No. 37 of 2014 delivered on 5th October, 2021, has filed a substantive application for stay of execution, there is an imminent threat of execution before the hearing of the substantive application for stay of execution and that it is just and equitable to grant an interim stay of execution.

He referred court to **Hassan Basajjabalaba & Another vs Attorney General & 2 Others Misc. Application No. 04 of 2018** and **Hwan**

Sung Industries Industries Ltd vs Tajdin Hussein & 2 Others SCCA No. 19 of 2008

In reply, Counsel for the respondent submitted and referred court to various persuasive authorities including **Infinity Telecom (U) vs Ecobank Ltd & Ors HCMA No. 2128 of 2016**.

He also cited **Constitutional & Human Rights Division Petition No. 39 of 2017**

CONSIDERATION BY COURT

We have had occasion to read through the application and the accompanying affidavit. We have also read through and considered the affidavit in reply.

We have also perused the submissions by both Counsel.

We find that it is in the interest of justice to grant the Interim Order for stay of the judgment and declarations of the Constitutional Court in Petition No. 37 of 2014 delivered on 5th October, 2021, pending final disposal of the substantive application.

We are persuaded that the respondent will not suffer prejudice.

The Interim Order staying the execution is hereby granted as prayed.

This order shall stay in force for three months, or until further orders are given in the substantive application.

Costs will be in the cause.

Dated at Kampala, this ....21st.... Day of ...December2021

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JUSTICE OPIO-AWERI

Delivered by the Registrar 21/12/21

JUSTICE OF THE SUPREME COURT

JUSTICE PERCY NIGHT TUHAISE

JUSTICE OF THE SUPREME COURT

JUSTICE MIKE CHIBITA

JUSTICE OF THE SUPREME COURT