

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA HOLDEN AT JINJA**  
**MISCELLENOUS APPLICATION NO. 008 OF 2021**  
**(ARISING FROM LABOUR DISPUTE REFERENCE NO. O15 OF 2021)**  
5 **(ALL ARISING FOM LABOUR COMPLAINT JJA/LAB/025/FEB/2021)**

**BUSOGA FORESTRY CO. LIMITED                   .....APPLICANT**

**VERSUS**

**BATABANE ANATOLE                   .....RESPONDENT**

10 **RULING**

**BEFORE**

1. **THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

1. **MS. ROSE GIDONGO**

15 2. **MS. BEATRICE ACIRO**

3. **MR. JACK RWOMUSHANA**

This application was brought by Notice of Motion under section 40(1) of the Labour Disputes (Arbitration and Settlement) Act 2006, Regulation 22(2) of the Labour Disputes (Arbitration and Settlement) (Industrial Court  
20 Procedure) Rules 2012, Rules 6(2) (b) 42 (1) & (2) and 44(1) of the Judicature

(Court of Appeal) Rules S.1 No. 13 – 10 section 33 of the Judicature Act Cap. 13 and Order 52 Rule 1 & 3 of the Civil Procedure Rules S.1 71 – 1)

For orders: -

- 25
- a) For Stay of Execution is issued by this Court staying execution of the Award and /or Decree of the Industrial Court entered against the Applicant in **Labour Dispute Reference No. 015 of 2021** until final disposal of the Appeal lodged by the Applicant to the Court of Appeal.
  - b) Costs of this Application be provided for.

30 The grounds of this Application are stated in the affidavit of Imran Nakueira and are summarised as follows;

- 1. The Applicant is aggrieved by the Award of the Industrial Court in Labour Dispute Reference No. 015 of 2021 and has filed an Appeal in the Court of Appeal against the same.
- 2. The Appeal raises matters of great importance and has high chances of success.
- 3. If execution of the award/decreed is not stayed, the said appeal will, if successful be rendered nugatory and the Applicant will suffer irreparable loss.
- 4. The application is brought without inordinate delay.
- 40 5. That it is in the interest of justice that the Orders sought are granted.

**The Applicants case:**

The Applicants case as deposed in the Affidavit in support of **Imran Nakueira**, the Corporate Affairs Director of the Applicant and summarised  
45 as follows:

1. That, the Applicant was the Respondent in **Labour Dispute Reference 015 of 2021**, in which an award was granted against it on 2/12/2021, with specific orders to pay inter alia;
  - a) UGX 68,364,000/= (Uganda Shillings Sixty Eight Million Three  
50 Hundred Sixty Four Thousand) as acting Allowance.
  - b) UGX 42,166,667/= (Uganda Shillings Forty-Two Million One Hundred Sixty Six Thousand Six Hundred Sixty Seven) as severance allowance.
  - c) UGX 37,950,000/= (Uganda Shillings Thirty Seven Million, Nine  
55 Hundred Fifty Thousand) as three months' notice.
  - d) UGX 120,000,000/= (Uganda Shillings One Hundred Twenty Million) as general damages.
  - e) Interest at a rate of 15% per year from the date of the Award till payment in full, in accordance with the award Marked "A" on the record.
2. That, the Applicant is aggrieved by the Award and or Decision whose import and effect will have a substantive and irreversible negative effect in the operations of the Applicant if implemented because payment of the amounts indicated in the award to the Respondent would put the  
65 Applicant out of pocket in substantial amount of money.
3. That, the Applicant has filed a notice of Appeal and the Record of Proceedings has been sought to enable it file a Memorandum of Appeal.

“B1” and “B2” attached on the record are, the Notice of Appeal and Letter requesting for the Record of Proceedings respectively).

- 70 4. That, based on their Lawyers, M/s Mpanga Advocates, he believes that, the proposed grounds of the Appeal in a draft Memorandum of Appeal marked “C”, are likely to succeed and if the decision of this court is not stayed, the appeal will be rendered nugatory.
- 75 5. That, based on information from his lawyers AF Mpanga Advocates, he believes that the grounds of appeal are not of a frivolous nature but are substantive, and they raise matters of great public importance and therefore merit consideration by the Court of Appeal .
- 80 6. That, the Award to the Respondent is quite substantial and if execution is allowed and the money is paid to him, it will never be recovered in the event that the Appeal succeeds, thereby occasioning the Applicant irreparable loss. This is because the Respondent is out of a job and would have no means of paying back the sums if execution was levied.
- 85 7. That, he knows that, the Applicant enjoys an unfettered right to appeal the matter to the Court of Appeal which will be rendered nugatory if the award of the Industrial Court is executed.
8. Therefore, in the interest of justice the enforcement of the Award of this Court should be stayed until the appeal has been heard and determined.

#### **The Respondent's case**

The Respondent's case as stated in his Affidavit in reply, is as follows:

- 90 1. That, for more than 10 years, he was employed as a Finance Manager which was the second position in hierarchy at the Applicant

Company and he was only reporting to the Managing Director until, January 2021, when the Applicant constructively dismissed him.

- 95 2. Admitted that he sued the Applicant in this court and on 2/12/2021, Judgement was entered in his favour in the Amounts already stated by the Applicant above.
3. That the award of this Court is yet to be enforced and the Applicant filed this application on 20/12/2021, when he had not yet applied for its execution.
- 100 4. That while he was working with the Applicant, he got a salary loan of Ushs 170 Million, from Standard Chartered Bank (SCB), at a rate of 18% pa of which Ushs 140 million is still outstanding. Therefore he is in need of the fruits of the award to enable him clear his outstanding loan obligations (including the ever increasing interest and penalties due to none payment). He attached a Confirmation of the Applicant's  
105 commitment to SCB, for the loan, Marked "B" on his Affidavit in reply.
- 110 5. That the Applicant has not met the conditions prerequisite for grant of stay of execution and it has not deposited security of the entire decretal award sum in this court.
6. That, Applicant's purported appeal has no merit and is intended to block him from accessing the fruits of his award and it would not suffer any damage if the award is executed

## SUBMISSIONS

115 Both Counsel filed written submissions which we considered and for which we thank them.

### DECISION OF COURT

**The issue for determination by Court is whether the Applicant has adduced sufficient reasons to justify a stay of execution?**

120 It is trite that, an application for stay of execution is only intended to prevent the Judgement Creditor from putting into operation the legal process for execution but it does not deprive the successful decree holder from enjoying the fruits of his or her Judgement. This Court has jurisdiction to stay execution of its own awards on grounds that, an appeal is pending, if it is satisfied that,  
125 the appeal has prospects of success and the Applicant/Appellant has no reasonable prospects of recovering the award, if stay of execution is not granted and the award /decree is executed. The Court in resolving such applications is also not barred from applying the Civil Procedure Rules. Order 43(4)(3) of the Civil Procedure Rules, provides the conditions which must be  
130 satisfied before an order for stay of execution may be granted by a Court as follows:

- a) *Substantial loss may result to the party applying for stay of execution unless the order is made*
- b) *The application has been made without unreasonable delay.*
- 135 c) *Security has been given by the applicant for due performance of the decree or order as may ultimately be binding upon him or her, as long the execution is made before the expiry of the time within which an appeal from the decree should be filed.*

The most important consideration for Court to grant an order of stay of  
140 execution in the instant application is to ensure that, if the Applicant's Appeal  
is successful it is not rendered nugatory by the execution of this court's award.  
Therefore, the Applicant must adduce evidence to convince this Court that it  
will suffer substantial loss if the order is not granted.

We have carefully perused the Notice of Motion and the Affidavits in support  
145 and in opposition of the application, the submissions of both counsel and the  
law applicable, and we find as follows:

Regarding the condition of the likelihood of suffering substantial loss, if this  
application is not granted, the Applicant argued that the Respondent having  
lost his job and given his outstanding loan obligations, it was likely that it  
150 would not recover the award if it succeeded on appeal, but execution was not  
stayed. The Respondent in his reply did not dispute this, in fact he confirmed  
that he was out of a job therefore, he needed to execute the award to enable  
him pay for his outstanding loan of Ugx. 140,000,000/- and ever-increasing  
interest.

155 In the circumstances, it is highly unlikely that he would be able to refund the  
entire award if the Applicant succeeded on Appeal because he categorically  
stated that, he intends to pay a substantial amount of the award to the  
Standard Chartered Bank to settle his loan obligations. We are therefore  
satisfied that if the execution is not stayed the Applicant may suffer substantial  
160 loss. The applicant has satisfied this condition.

With regard to whether the appeal is not frivolous and has a likelihood of  
success. Not being a Court of Appeal, this court is not duty bound to review

the award or to consider its substance at this stage. Our role is to determine whether the grounds of Appeal have a probability of success or not. After  
165 carefully perusing the award and the grounds of appeal as set out in the proposed memorandum of appeal attached to the Application, we think that, the Applicant raises relevant appealable issues regarding constructive dismissal resulting from restructuring of an organisation, which would call for the Court of Appeal to determine. In the circumstances the applicant has  
170 satisfied this principle that the Appeal has a probability of success.

On issue whether the application is rendered moot for being made before execution proceedings were commenced by the Respondent, the award having been issued /delivered on 2/12/2021 and the notice of Appeal having been filed on 6/12/2021 and the execution proceedings having commenced in January  
175 2012, we think that, this would not render the application moot because the most important consideration is to ensure that the appeal is not rendered nugatory if execution is not stayed. Although there was no evidence of an eminent threat of execution, when the application was filed, the Applicant has already shown that it would suffer substantial loss and there was an eminent  
180 threat of not recovering the award if the appeal is successful that the Respondent is out of a job and he has a large loan that is outstanding with an ever-increasing interest. The circumstances of the Judgement creditor/Respondent as already discussed above are a threat to recovery of the award of the appeal succeeds.

185 Regarding the principle that the Applicant has given sufficient security for due performance, the Applicant contested the requirement for it to deposit



security for due performance on grounds that it is a credible, duly licenced  
Company doing business as a going concern and law abiding. We associate  
ourselves with the the Hon. Justice Dr. Flavian Zeija's (as he then was) holding  
190 in **John Baptist Kawanga v Namyalo Kevina and Ssemakula Laurence**  
(spura) to the effect that,

“...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  
295 security for due performance must be made in consonance with the  
probability of the success of the appeal and on the facts of each case as  
the situations vary from case to case.”

In the circumstances of this case, even if Court were to believe that the  
200 Applicant was of high repute, as already stated above, the purpose of ordering  
a deposit of security is not a bar the Applicant from proceeding with its Appeal  
but to ensure that the Judgement creditor is not deprived of enjoying the fruits  
of his or her Judgement.

The Applicant in the instant application did not adduce any evidence of its  
205 financial status, to enable us determine whether to order the deposit of  
security for due performance or not. In our considered opinion, it is not  
sufficient for the Respondent to only state that it is a duly licensed Company  
doing business as a going concern and of high repute without demonstrating  
its financial status. In any case, even if we were to consider it as such and even  
210 if its appeal has prospects of success, it has no control on the duration of the

hearing and determination of the appeal. In the circumstances, the Applicant is ordered to deposit a bank guarantee in a reputable bank acceptable to the Respondent as security for due performance for the whole decretal amount together with accruing interest as awarded until the determination of the Appeal. This is to ensure that in the event that the appeal does not succeed the Respondent will recover the full award of this court.

In conclusion, given the statement by the Respondent that he is unemployed and he needs to execute his award to settle his outstanding loan obligations amounting to Ugx. 140,000,000/- with the ever-increasing interest rates, we accordingly grant this application and order as follows:

1. The Applicant shall provide a Bank Guarantee as security for due performance in from a reputable Bank acceptable to the Respondent, providing for the entire decretal sum within 21 days from this ruling.
2. No order as to costs is made.

Delivered and signed by:

1. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

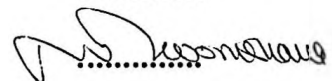
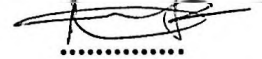
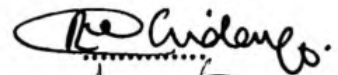


PANELISTS

1. MS. ROSE GIDONGO

2. MS. BEATRICE ACIRO

3. MR. JACK RWOMUSHANA



DATE: 7/04/2022