

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA**  
**CIVIL APPLICATION No. 1055 of 2023**  
**(ARISING FROM CIVIL APPEAL No. 13 of 2023)**

5 **NIC GENERAL INSURANCE**

**COMPANY LTD:..... APPLICANT**

**VERSUS**

**KAZERWA BRASIUS:..... RESPONDENT**

10 **RULING OF CATHERINE BAMUGEMEREIRE, JA**  
**SITTING AS A SINGLE JUSTICE**

**Introduction**

The applicant brought this application by way of notice of motion under section 33 of the Judicature Act, section 98 of the Civil  
15 **Procedure Act and rules 2(2), 42, 43 and 44 of the Judicature (Court of Appeal Rules) Directions, SI 13-10, seeking orders that:**

1. The execution of the decree arising from the judgment in High Court Civil Suit No. 406 of 2017 at Commercial Division be stayed pending the determination of the appeal in this court.
- 20 2. The costs of the application be provided for.

**Brief background**

The respondent filed High Court Civil Suit No. 406 of 2017, which was decided in his favour and judgment was entered on the 13th day of August 2021. The applicant being dissatisfied with the decision of the  
25 High Court filed a Notice of Appeal dated 23<sup>rd</sup> August, 2021. The

applicant subsequently filed an application seeking stay of execution in the High Court vide Misc. Application No. 917 of 2022 but the same was dismissed. The Applicant filed an appeal in this Honourable Court vide **Civil Appeal No. 13 of 2023** on 12<sup>th</sup> January 2023. The applicant  
5 also filed both an interim and the substantive stay of execution in this honourable court pending the disposal of the appeal.

### **Representation**

At the hearing of the application, Mr. Alex Kabayo represented the  
10 applicant while Mr. Brian Kabayiza represented the respondent. Both counsel opted to proceed by way of written submissions, which have been adopted by court to make this ruling.

### **The Parties' Submissions**

15 Counsel for the applicant submitted on the discretion of this court to grant an order of stay of execution where a notice of appeal has been filed. He cited **Hon. Theodore Ssekikubo & Others v the Attorney General & Another CA No 06 of 2013** on the principles for the grant of an order of stay of execution.

20 Regarding the first principle of validity of the notice of appeal, Alex Kabayo submitted that paragraph 6 of the Affidavit in support states that the Notice of Appeal was filed on 26<sup>th</sup> August 2021 within the time prescribed by the rules. Further, that the appeal was instituted vide a Memorandum of Appeal filed on 12<sup>th</sup> January 2023 having received the  
25 complete copy of the certified record of proceedings on 21<sup>st</sup> November

2022. He submitted that the notice of appeal was filed in time and the appeal is thus valid.

Regarding the condition that the appeal has a likelihood of success, 5 counsel submitted that this court is enjoined to peruse the record particularly the judgment of the High Court as well as the Memorandum of Appeal and determine whether they reveal that the intended appeal raises questions that merit the consideration of the Court of Appeal. Counsel argued that the deponent has proved that 10 the applicant has arguable grounds of appeal and that the intended appeal against the whole decision of the Trial Court has a very high likelihood of success.

On the condition whether the applicant would suffer irreparable 15 damage or that the appeal will be rendered nugatory if a stay is not granted, counsel argued that for the applicant to prove a likelihood of suffering irreparable damage in a case of money decree, they must show that restitution will not be possible in the event that the appeal succeeds.

20 It was counsel's contention that the amount sought to be recovered is colossal and if execution is not stayed, the payment of the said amounts, that is; RWF 53,850,785 (Fifty Three Million Eight Hundred Fifty Thousand Seven Hundred Eighty Five Rwandan Francs), UGX 7,560,000 (Seven Million Five Hundred Sixty Thousand Shillings) 25 being the assessed special damages, UGX 50,000,000 (Fifty Million

Uganda Shillings) as general damages and a further UGX 26,196,477 in taxed costs, shall adversely affect the operations of the applicant company. A refusal to grant the stay would inflict more hardship than it would avoid.

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Regarding the principle of balance of convenience, counsel cited **Kiyimba Kaggwa v Hajji Abdul Nasser Katende (1985) HCB** for the proposition that the balance of convenience lies more on the one who will suffer more if the respondent is not restrained in the activities complained of in the suit. Counsel reiterated his earlier submission on the colossal sums of money sought to be recovered and averred that if execution is not granted to the applicant, it would inflict more hardship than it would avoid.

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15 On the principle of the application being brought without undue delay, counsel referred to paragraph 11 of the affidavit in rejoinder, where it was stated for the applicant that the instant application was commenced on 27<sup>th</sup> September 2023 following the respondent's application for execution served upon the applicant's lawyers on 12<sup>th</sup> September 2023 and a notice to show cause why execution should not issue, issued on 11<sup>th</sup> September 2023. Counsel further submitted that prior to that, there was no threat of execution to warrant stay of execution proceedings.

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Counsel implored this court to grant the application in the terms sought in the motion.

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Brian Kabayiza appearing for the respondent, in reply, submitted that as to the appeal having a likelihood of success, there is no competent appeal on record. Counsel contended that although the record of appeal was ready by 16<sup>th</sup> September 2021, the applicant only managed  
5 to file the appeal on 12<sup>th</sup> January 2023, over a year and half after the record of appeal were certified. He submitted that an appellant is required to file an appeal within 30 days from the date the record is ready. Counsel referred to **rule 83 (2) of the Rules of this court**, which only excludes the time for the preparation of the record of  
10 proceedings in computing the time frame within which to file an appeal. Counsel submitted that this condition has not been satisfied.

Regarding the condition of irreparable damage, counsel submitted that the decree in the contested judgment is a monetary award whose  
15 payment cannot in a way render the substantive application and appeal nugatory. It was counsel's argument that the applicant is an insurance company that deals in billions of shillings and francs. A decretal sum together with costs of 287, 350,359/= is therefore miniscule. Counsel added that in the likely event that the applicant's  
20 appeal succeeds, the applicant would ably have a remedy of restitution. He referenced **Nagar Palika Bureau v Bhabhlubhai Virabhai (2005) 4 SCC1** where the Indian Supreme Court held that ordinarily, execution of a monetary decree is not stayed in as much as satisfaction of the appeal being allowed, the remedy of restitution is always  
25 available to the successful party.

Counsel submitted that this ground has not been proved.

Regarding the condition of unreasonable delay, counsel submitted that the applicant's record of proceedings was ready by 16<sup>th</sup> September 2021  
5 but the applicant commenced an appeal over a year and a half since the record was ready. He submitted that the applicant's application for stay of execution in the High Court vide Misc. Application No. 917 of 2022 was dismissed in 2022, and the applicant chose to file the substantive application for stay in this court over a year which makes  
10 the applicant guilty of dilatory conduct. Counsel cited **Remigio Obwana v Registered Trustees of Tororo Diocese CA Civil Reference No. 69 of 2020** where it was held that;

*"A party that is dissatisfied with the decision of any court is required to take the essential steps within the prescribed time to  
15 file an appeal against the decision, under the relevant applicable laws. A losing party who only springs in action when the successful party sets in motion the process of realizing the fruits of his or her judgment, cannot be allowed to use the court to frustrate or delay the execution process. There must be finality in  
20 litigation."*

Counsel submitted that the applicant in this case was guilty of dilatory conduct.

Counsel for the respondent added another condition of security for  
25 due performance of the decree. He submitted that the requirement for



payment of security for costs is to ensure that a losing party does not intentionally delay execution while hiding under unnecessary applications. Counsel submitted that if this court is inclined to grant the application, the applicant should be ordered to obtain an  
5 irrevocable bank guarantee of UGX 287,350,359 in favour of the respondent, which the respondent shall be entitled to liquidate if his appeal is successful. Counsel urged this court to find that the applicant failed to prove the requirements for grant of a stay of execution thus the application should be dismissed with costs.

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#### **Determination of the application**

This court has considered the application, the response thereto and the submissions on record. The issue for determination is whether the applicant should be granted an order of stay of execution pending  
15 appeal.

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The jurisdiction of this Court to grant a stay of execution is set out in **rule 6(2) (b)** of the Rules of this court which provides that; **"Subject to sub-rule (1) of this rule, the institution of an appeal  
20 shall not operate to suspend any sentence or to stay execution, but the court may in any civil proceedings where a notice of appeal has been lodged in accordance with rule 76 of these Rules, order a stay of execution, an injunction or stay of proceedings as the court considers just.**

In *Dr. Ahmmed Muhammed Kisuule v Greenland Bank (in liquidation)* S.C.C.A No. 7 of 2020, the Supreme Court found that: -

“For an application in this court for stay of execution to succeed the applicant must first show subject to other facts in a given case that he/she has lodged a notice of appeal... the other facts which lodgment of the notice of appeal is subject vary from case to case but include the fact that the applicant will suffer irreparable loss if a stay is not granted, that the appellants appeal has a high likelihood of success.” (Emphasis is mine).

Further, in *Kyambogo University v Prof. Isaiah Omolo Ndiege* CACA No. 341 of 2013, this court listed the conditions for grant of stay of execution to include:

“There is a serious or eminent threat of execution of the decree or order and if the application is not granted, the appeal would be rendered nugatory, that refusal to grant the stay would inflict more hardship than it would avoid. That the application was made without unreasonable delay.”

Courts normally decide applications of stay of execution on factual basis and the decisions vary from case to case. I will however summarize the principles that have been commonly followed by courts as highlighted in the authorities above, in the grant of stay of execution.



1. The applicant must show that he/she lodged a notice of appeal.
2. That the appeal has a high likelihood of success.
3. That substantial loss may result to the applicant unless the stay is granted.
4. That the application has been brought without unreasonable delay.

I shall follow the above criteria to determine this application since both parties argued the same in their submissions.

Regarding the question whether the applicant has lodged a notice of appeal; a stay of execution is grounded on the pendency of an appeal. In this application I note that the High Court delivered its judgment on 13<sup>th</sup> August 2021. The applicant lodged a notice of appeal on 23<sup>rd</sup> August 2021 as per **annexure "C"** of the applicant's affidavit in support. A memorandum of appeal was lodged in this court on 12<sup>th</sup> January 2023 as per **annexure "F."** Counsel for the respondent however argued that the appeal is incompetent because the appeal was filed over a year and half after the prescribed time within which to lodge the appeal.

At this stage, I am constrained to discuss the competency of the appeal basing on the time frames within which the documents were lodged. A party has the duty to prove that there is a valid appeal before the court. As discussed earlier, there seems to be a notice of appeal but the memorandum of appeal was filed out of time. I further find that there

is no existent application for leave to file out of time. I therefore find that the first condition has not been satisfied.

Having found that the applicants have not met the more pertinent conditions for the grant of an order of stay of execution, inclined not to allow the application. The application is therefore dismissed with costs.



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CATHERINE BAMUGEMEREIRE  
JUSTICE OF APPEAL

13 - Feb 2024