



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-MA-0030-2021
(ARISING FROM CIVIL SUIT NO.67 OF 2012)

UMEME LIMITED ----- APPLICANT
VERSUS
STELLA KADECEMBER ----- RESPONDENT

BEFORE: Hon. Justice Nshimye Allan Paul M.

RULING

REPRESENTATION

The Applicant was represented by Adv. Nabadda Eva Sevume from M/s Shonubi Musoke & Co. Advocates, while the Respondent was represented Adv. Ntambirweki Kandebe from M/s Ntambirweki Kandebe & Co. Advocates.

BACKGROUND

The Applicant brought this Application under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act, and Order 9 Rules 12 & 27, Order 22 rule 23, Order 51 Rule 6, Order 52 Rules 1,2&3 of the Civil Procedure Rules, seeking orders that;

- i. An order for stay of execution of the Judgment and decree in *Civil Suit No.67 of 2012 Stella KadeceMBER v Umeme Limited* be issued pending the hearing and final determination of the Applicant's appeal vide Civil Appeal No.223 of 2020 against the Judgment in the Court of Appeal.
- ii. Costs of this Application be provided for.

The Application was supported by the affidavit of Rogers Mugisha – the Applicant's Legal Officer, and it was opposed through an affidavit deposed by Kyomugisha Edith Kagambirwe – the Respondent's Attorney.

GROUNDNS

The grounds as set out in the notice of motion are;

- 1) That judgment was delivered in favour of the Respondent in *Civil Suit No.67 of 2012 Stella Kadecember v Umeme Limited* on 15th July 2020 by Honourable Justice Dr. Zeija Falvian.
- 2) That the Applicant was dissatisfied with the decision/judgment of the Honourable Justice Dr. Zeija Falvian in *Civil Suit No.67 of 2012 Stella Kadecember v Umeme Limited*.
- 3) The Applicant filed a notice of appeal in this honourable Court and in the Court of Appeal vide Civil Appeal No. 223 of 2020 on 17th July, 2020.
- 4) The Applicant's appeal to the Court of Appeal is meritorious with high chances of success.
- 5) The Applicant will suffer substantial loss/irreparable damage if no order of stay of execution or injunction is granted pending the outcome of the appeal and the Applicants' appeal will be rendered nugatory.
- 6) The Application has been filed before this Honourable Court without unreasonable delay.
- 7) It is in the interest of justice that the orders sought in this Application be granted by this Court.

SUBMISSIONS

Both parties proceeded by written submissions; the Applicant's submissions were filed on 21st January, 2022 and the Respondent's submissions were filed on 28th October, 2022.

Applicant's submissions

Counsel submitted that the principles under which an application for stay of execution can succeed are espoused in Order 43 of the Civil Procedure Rules and a litany of cases including **LAWRENCE MUSIITWA KYAZZE VS EUNICE BUSINGYE SCCA NO.18 OF 1990**. Counsel submitted that the Applicant has already filed a notice of appeal before this Court (*see paragraph 5 of the affidavit in support*) and that the Applicant's appeal is meritorious given the grounds mentioned under paragraph 6 of the affidavit in support. Counsel contended that the Applicant shall suffer substantial loss if this Application is not granted because in the event the appeal is successful, the chances of recovering the decretal sum from the Respondent are not guaranteed. Counsel added that the Application has been made without undue delay and that given the fact that the Respondent

is notoriously present around the country, it is not judicious to order a deposit of security for due performance.

Respondent's submissions

5 Counsel submitted that the intended appeal is speculative, and the trial judge was right in finding that the Respondent had locus to commence the suit. He contended that, the respondent is entitled to recover her decretal sum, and that the Application has not shown any loss they would suffer in case this Application is granted. Counsel also contended that the Applicant did not prove any eminent
10 threat of execution by the Respondent, and that the Applicant has not satisfied the requirement of depositing security for due performance.

DETERMINATION

In Applications of this nature, the Court is guided by the law in **ORDER 43 rule 4**
15 **(2) and (3) OF THE CIVIL PROCEDURE RULES SI 71-1** which provides as follows;

"4. Stay by High Court.

*(2) Where an application is made for stay of execution of an
20 appealable decree before the expiration of the time allowed for appealing from the decree, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.*

*(3) No order for stay of execution shall be made under subrule (1) or
(2) of this rule unless the court making it is satisfied—*

*(a) that substantial loss may result to the party applying for stay
25 of execution unless the order is made;*

*(b) that the application has been made without unreasonable
delay; and*

*(c) that security has been given by the applicant for the due
30 performance of the decree or order as may ultimately be binding upon him or her."*

In principle, for an application for stay of execution to succeed, the applicant ought to show that they have lodged an appeal as was stated by the Supreme Court in **DR. AHMED MUHAMMED KISULE VS. GREENLAND BANK (IN**
35 **LIQUIDATION), SUPREME COURT CIVIL APPLICATION NO. 7 OF 2010**. The evidence of the applicant in paragraph 5 states that it filed a notice of appeal, which was attached to the affidavit in support as annexure B. The stamps on the

notice of appeal clearly shows that it was filed in the registry of the High Court and served on the respondent's lawyers Ntamirweki Kandeebe & co advocates. I therefore find that there is proof that the applicant has filed a notice of appeal against the decision of the High Court in Civil suit 67 of 2012.

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The applicant avers in paragraph 12 of the affidavit in support that it will suffer substantial loss if the application is not granted, because it may render any success in the appeal nugatory. This argument by the applicant speculates the impact execution now may have, if they succeed at the appeal. It is important to weigh this argument as against that of the respondent who is a decree holder and is also entitled to the fruits of her judgement.

The remedy for balancing the interests of both parties, the appellant and decree holder, ought to have been the reason why the law in Order 43 Rule 4 (3)(c) of the Civil Procedure Rules provides for security for the due performance of the decree, which is intended to protect the judgment creditor in the event that the appeal is unsuccessful as was held by The Hon. Lady Justice Victoria Nakintu Nkwanga Katamba in **KISAALU JOSEPH & 10 ORS VS. NAKIITO MAYI & ANOR HIGH COURT MISC. APPLICATION NO. 105 OF 2020.**

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The court may waive the requirement for security for the due performance stated in the law in Order 43 Rule 4 (3)(c) of the Civil Procedure Rules, but the decision to waive it depends on the circumstances of each case. I will now consider the submissions of each party on this issue of security for due performance.

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The applicant submitted at page 6 of its submissions that;

“Notwithstanding the applicant's willingness to deposit security for due performance of the decree as may ultimately be ordered by court, the legal provision on security was never intended to fetter the right of appeal”

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The respondent submitted at page 6 of her submissions that;

“Security for due performance of the decree must be given because the decree holder is a Widow, who was deprived of her husband and lively hood, the other beneficiaries are orphans who have suffered over the

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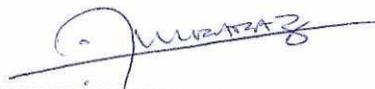
years. The defendant, UMEME runs a time limited concession over Electricity distribution in some parts of Uganda, with no other known businesses or assets. If the concession ends, it might not even pursue the Appeal and it would be difficult to trace or execute against it in a foreign country".

Having considered the submissions of both parties, I find that in order to balance the interest of both parties, I see no reason to waive the requirement for security for the due performance stated in the law in Order 43 Rule 4 (3)(c) of the Civil Procedure Rules. I am fortified in this position because the applicant in its submissions quoted above, stated that it is willing to deposit Security for due performance if ordered by court. I will therefore grant a conditional order for stay of execution, subject to depositing security for the due performance of the decree.

A perusal of the judgement in High Court Civil Suit No.67 Of 2012, that is attached as annexure A to the affidavit in support of the application shows that the Hon Justice Dr Flavian Zeija ordered at page 13 and 14 of the judgement ordered that the applicant herein pays Shs 7,417,000/= with interest as special damages, shs 43,200,000/= with interest for loss of dependency, shs 120,000,000/=with interest as general damages, shs 75,000,000/= for children and costs. The total ascertainable amount ordered without interest is shs 245,617,000/=

In conclusion, I order that;

1. That the execution of the decree in Mbarara High Court Civil Suit 67 of 2012 is hereby stayed subject to the Applicant depositing in Court a total amount of Uganda shs 245,617,000/= as security for the due performance of the decree within two months from the date of delivery of this ruling, in default of which, the respondent may proceed with execution of the whole decree against the applicant.
2. No order as to costs of this application is made.


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NSHIMYE ALLAN PAUL M.

JUDGE

05-04-2024