THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISCELLANEOUS APPLICATION NO.018 OF 2023
(Arising from Labour Dispute Claim No. 238 of 2016 and Labour Dispute Reference No. 118 of 2016)

1. EMMANUEL LAGU
2. MWESIGWA MOSES K.::APPLICANTS

VERSUS

ABB LIMITED:::RESPONDENT

BEFORE:

THE HON. MR. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

1. HON. ADRINE NAMARA,

2. HON. SUSAN NABIRYE &

3. HON. MICHAEL MATOVU.

RULING

[1] The Applicants' sought an order of this Court staying execution of the award and decree in Labour Dispute Reference No. 118 of 2016 consolidated with Labour Dispute Claim No. 09 of 2018 pending hearing and disposal of the Applicants' appeal against the said decision.

[2] Mr. Patrick Mugalula of Messrs Katende, Sempebwa & Co. Advocates, appeared for the Applicants, while Mr. William Kasozi of Messrs A.F Mpanga Advocates appeared for the Respondent. Both parties filed affidavits and written submissions in support of and opposition thereof. We have considered the submissions in the course of this ruling.

Analysis and Decision of the Court

[3] The facts common to the cause are that on the 29th day of April 2022, the Industrial Court[1] delivered an award against the Applicants in Labour Dispute Reference 238 of 2016, consolidated with Labour Dispute Claim 09 of 2018. The Court held that the Applicants' dismissal was fair and lawful and ordered them to refund UGX 277,879,031 as overpaid bonuses. Dissatisfied with that decision, the Applicants filed a notice of appeal on the 4th day of May 2022. The Respondent filed Miscellaneous Application No. 016 of 2023 seeking to execute the award and decree of the Industrial Court. Following this, the Applicants filed the present application for a stay which the Respondent objects to.

[4] The principles governing a grant of stay of execution have been very well settled.[2] The Applicant must establish that:

(a) The appeal has a likelihood of success; or a prima facie case of the right of appeal.
(b) They will suffer irreparable damage, and the appeal will be rendered nugatory if a stay is not granted.
(c) If (a) and (b) have not been established, Court must consider where the balance of convenience lies.
(d) the Application was instituted without undue delay.[3]
(e) there is a serious or imminent threat of execution of the decree or order, and if the application is not granted, the appeal would be rendered nugatory.
(f) the refusal to grant the stay would inflict more hardship than it would avoid.[4]

[5] Regarding the likelihood of success, the Respondent contends that the intended appeal is frivolous. The Applicants suggest there are questions of admissions relating to the contractual allocation of risk, irregularities in the disciplinary proceedings, bias, defences of bonafide change of position and estoppel, and the award of costs. Notably, we did not benefit from considering any draft grounds of appeal, which would not be within the remit of this court. It would amount to a review of the award of the Industrial Court. We consider that the averments in both the affidavit in support filed by the 1st Applicant and the 2nd Applicant's rejoinder affidavit raise appealable questions that may merit further judicial consideration. The Respondent suggested that the appeal was frivolous. We disagree with this

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[1] Panel headed by H.L Asaph Ruhinda Ntengye and Panelists Hon. J.H Bwire, Hon. J. Nyachwo and Hon. P. Katende.
[2] The same principles were cited by both Counsel for the Applicant(Page 2 of submissions) and the Respondent(at paragraphs 2.1 and 2.2 of submissions).
[3] Supreme Court Constitutional Application No. 06 Of 2013 Hon. Theodore Ssekikubo And 3 Others Vs Ag And 4 Others
[4] John Baptist Kawanga Vs Namyalo Kevina & Anor H.C.M.A No. 12 Of 2017

proposition. In **Zachary Olum and Anor v Attorney General,**[5] a frivolous case was one where the pleadings disclose no reasonable cause of action that to put them forward would be an abuse of Court. Overall, we do not find that the Applicants make a frivolous appeal, and we would find that they satisfy this condition for a grant of stay.

[6] On the defence of a bonafide mistake, Counsel for the Respondent argued that this was not tenable under Section 69 of the Contract Act, 2010. We agree with this proposition. The Contract Act 2010 supplants common law principles where it does not codify the same. The bonafide mistake would, therefore, not be available to the Applicants.

[7] The Applicants alluded to the committal proceedings or possible bankruptcy regarding irreparable damage or substantial loss. The Respondent contended that the applicants would return money to the owners. Bankruptcy proceedings portend significant injury to any person so declared. The possibility of the same amounts to substantial irreparable damage and would find that the Applicants satisfy this condition.

[8] The court considers the balance of convenience where the Applicant has yet to demonstrate a likelihood of success in the intended appeal or irreparable damage. As the Applicants have established a prima facie case on appeal, we do not consider resolving the balance of convenience useful.

[9] Regarding the undue delay, a copy of the Notice of Appeal dated 4th May 2022 and a letter seeking certified proceedings served on the Respondent on 11th May 2022 were attached to the 2nd Applicant's affidavit in rejoinder. The Respondent argued that the application was delayed. The Applicant's contended, quite correctly, that the application for stay would not be competent without a threat of execution. The position of the law as it stands is that an application for the stay will not be entertained unless the Applicant can show a threat of execution. In **Orient Bank Ltd vs. Zaabwe & others,**[6] it was observed that courts should not order a stay where there is no evidence of any application for execution of the decree. On the 17th of February 2023, the Respondent's Notice To Show Cause Why Execution Should Not Issue (NTC) was endorsed by the Registrar of this Court. The Applicant's filed this application on the 22nd of February, 2023, 5 days after the NTC was issued. We are satisfied that the Applicants filed a notice of appeal and, following the imminent threat of execution, brought this application without undue delay.

[5] Constitutional Petition No. 6 of 1999
[6] HCMA 19/2007

[10] As to whether the refusal to grant the application will inflict more harm than not, Mr. Mugalula submitted that the Applicants risked committal to civil prison and bankruptcy. Having found a possibility of significant damage, we would be inclined to find that a refusal to grant the order would inflict more harm than not. The Respondent conceded to having a "strong financial base." This concession cements the view that the Respondent would suffer less harm than the Applicants.

[11] The satisfaction of the threshold for a grant of stay notwithstanding, the Industrial Court has consistently held that a grant of stay of execution is not to be unconditional.[7] The rationale in **Sanyu Fm (2000) Limited v Ben Kimuli**[8] is that the Court sought to balance the fear of substantial loss if it is impossible to recover money after execution with the delay in enjoying the fruits of litigation if the appeal were to delay.[9] In each of these cases, the Court has granted a conditional stay of execution. The Applicants have not made a compelling case for a departure from this approach. In **Crown Beverages Ltd v Okot Omoya Brian**[10], we posited that a party seeking remedial action before an appellate court would be interested in a speedy disposal of the appeal to access the monies deposited as a security. At the same time, a respondent would be assured of a safety net in the form of security for the award, the imponderables notwithstanding. The rationale of the Industrial Court was to balance the competing rights and interests of the parties. And we are fortified in this view by the decision of the High Court of Uganda in the case of **John Baptist Kawanga v Namyalo Kevina and Ssemakula Laurence,**[11] where the Honorable Dr. Justice Flavian Zeija observed 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."*

[12] In the **Security Group Africa vs Kigozi Brian** (supra) and **Crown Beverages vs Okot Omoya** (supra) cases, the Court ordered a deposit of one-half of the decretal amount. In the **Torres AES LLC v Ojok Johnson and 87 Others,**[12] where the award was more than UGX 1,000,000,000/=, the Court ordered the Applicant to deposit UGX 400,000,000/=. Objectively considering the facts and circumstances of the present case and the Applicant's stated financial positions, we order that the Applicants' deposit in the Court sums equivalent to one-half of the respective awards against

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[7] LDMA36/2022 Security Group Africa(U)Ltd v Samuel Kigozi

[8] LDMA 248/2019

[9] See also LDMA 005/2020 Absa Bank (Formerly Barclays Bank Of Uganda) Vs Aijukye Stanley, LDMA 008/2021 Busoga Forestry Company Vs Batabane Anatole and LDMA170/2019 Stanbic Bank (U) Ltd Vs Okou R. Constant.

[10] See LDMA110/2022

[11] HCMA 12 of 2017

[12] LDMA 165 of 2015

each of them. The Applicants may elect to deposit the same through cash, bank or insurance guarantee, or certificates of title of equal value to the said security. The same shall be deposited in Court within 45 business days of this order. There shall be no order as to costs.

[13] For the avoidance of doubt, the orders are as follows:

(i) The 1st Applicant deposits UGX 93,266,250/= or security as per paragraph [12] above.

(ii) The 2nd Applicant deposits UGX 45,673,266/= or security as per paragraph [12] above.

Dated, delivered and signed at Kampala this 3rd day of May 2023

HON. MR. JUSTICE ANTHONY WABWIRE MUSANA, _____
JUDGE, INDUSTRIAL COURT

THE PANELISTS AGREE:

1. **HON. ADRINE NAMARA,** _____

2. **HON. SUSAN NABIRYE &** _____

3. **HON. MICHAEL MATOVU.** _____

Ruling delivered in open Court in the presence of:

1. **For the Applicant:** Mr. Patrick Mugalula.
2. Applicants absent.
3. **For the Respondent:** Mr. William Kasozi for the respondent assisted by Mr. Hezekiah Nsubuga.

Court Clerk: **Mr. Samuel Mukiza.**