

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 1307 OF 2023

(Arising from Civil Application No.1299 of 2023)

- 1. SIMBA PROPERTIES INVESTMENT CO. LTD**
- 2. SIMBA TELECOM LTD**
- 3. ELGON TERRACE HOTEL LTD ::::::::::::::: APPLICANTS**
- 4. LINDA PROPERTIES LTD**

VERSUS

- 1. VANTAGE MEZZANINE FUND II PARTNERSHIP**
- 2. UGANDA REGISTRATION SERVICES BUREAU :::: RESPONDENTS**

BEFORE: HON JUSTICE OSCAR KIHKA, JA

(Sitting as a single Justice)

RULING OF COURT

This application was brought under **Section 33** of the **Judicature Act**, **Section 98** of the **Civil Procedure Act** and **Rules 2(2), 40 (1) (b)** and **Rule 42** of the **Judicature (Court of Appeal Rules) Directions SI 13-10** seeking for orders that;

1. An interim order of stay of proceedings be issued in High Court Arbitration Cause No. 0072 of 2023; Vantage Mezzanine Fund II Partnership & another Vs Simba Properties Investment Co. Limited and Ors pending the hearing, determination and final



disposal of the Applicant's substantive application for stay of proceedings vide Civil Application No. 1299 of 2023.

2. Costs of the application be provided for.

The Application is supported by the affidavit of LAUREL ABABUZA BAGUMA sworn on the 19th day of December 2023, a supplementary affidavit sworn on 5th January 2024 and an affidavit in rejoinder sworn on 15th January 2024. The grounds upon which this application is premised are briefly that;

1. The Applicants filed a Notice of Appeal against the decision of the High Court in Miscellaneous Application No. 2484 of 2023 on 22nd November 2023.
2. The Applicants also filed an application for leave to appeal pending before this court vide Civil Application No. 1295 of 2023.
3. The Applicants have filed a substantive application for stay of proceedings vide Civil Application No. 1299 of 2023.
4. The Applicants have an arguable appeal which is not frivolous and vexatious and will be rendered nugatory if the stay of proceedings order is not granted.
5. The proceedings in Arbitration Cause No. 0072 of 2023 Vantage Mezzanine Fund II Partnership and another Vs Simba Properties Investment Co. Limited & Ors are frivolous and vexatious and the Applicants will suffer prejudice if the same are not stayed.



6. There is an imminent threat in so far as High Court Miscellaneous Cause No. 0072 of 2023 for enforcement is pending and is likely to be fixed anytime.

The Respondent filed an affidavit in reply sworn by Moses Muziki on the 12th of January 2024 opposing the application on grounds that;

1. This application is an abuse of court process and the same ought to be dismissed because the law specifically bars such applications and matters that relate to the arbitration Act.
2. The Applicants did not obtain leave of court to appeal HCMA No. 1299 of 2023 upon which Civil Application No. 1299 of 2023 is premised.
3. The application does not raise any serious threat of execution that would warrant the issuance of an interim order.
4. The Applicant's claims of urgency as set out in paragraph 11 of Baguma's affidavit are unsupported by evidence and Arbitration Cause No. 0072 of 2023 whose proceedings the Applicants seek to stay has never been fixed for hearing.

Representation

At the hearing of this application, Mr. Brian Moogi appeared together with Mr. Charles Muhumuza for the Applicants while Mr. David Kaggwa appeared for the 1st Respondent. Both parties filed written submissions which were adopted at the hearing as their legal arguments.



Consideration of the Application

I have carefully considered the law applicable to this application and the authorities cited to court together with the affidavit evidence on record.

This court has inherent power to make such orders as may be necessary for achieving the end of justice or to prevent abuse of the process of Court under rule 2 (2) of the Judicature (Court of Appeal Rules) Directions Rules.

Rule 2(2) provides:

“Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay.”

The considerations for the grant of an interim order of stay of execution, stay of proceedings or interim injunction are whether there is a substantive application pending and whether there is a serious threat of execution before hearing of the substantive application and whether a Notice of Appeal has been filed. **See Hwang Sung Industries Ltd vs. Tajdin Hussein and 2 Others (SCCA NO. 19 of 2008**



The Supreme Court in **Zubeda Mohamed & Anor vs. Laila Wallia & Anor, Civil Reference No.07 of 2016**, discussed the law on interim applications and held as follows;

In summary, there are three conditions that an applicant must satisfy to justify the grant of an interim order:

- 1. A Competent Notice of Appeal;*
- 2. A substantive application; and*
- 3. A serious threat of execution.”*

In the instant Application, it is established from paragraph 13 of the Applicant's affidavit in support of the application, that a Notice of Appeal was lodged by the applicant on 22nd November 2023 in accordance with Rule 76 of the Rules of this Court. There is a pending substantive Application for a Stay of Proceedings vide Civil Application No. 1299 of 2023. The Applicant also filed an application for leave to appeal vide Civil Application No. 1295 of 2023 also pending before this court.

According to counsel for the applicant, there is a threat that Miscellaneous Cause No. 0072 of 2023, which is an application for enforcement, will be fixed for hearing. This will render the substantive application for stay of proceedings nugatory.

I have duly noted the points of law raised by the Respondent in paragraph 3.2.1 a), b) and c) which in a nut shell state that this application is incompetently brought before this Court. With respect, those are matters that should be canvassed in the substantive



application. In an application such as this, the only considerations are three and they have been enumerated hereinabove.

I therefore find that the Applicant has made out a case for issuance of an interim order of stay of proceedings and I hereby allow this application with the following orders;

1. An interim order of stay of proceedings is hereby issued in High Court Arbitration Cause No. 0072 of 2023; Vantage Mezzanine Fund II Partnership & another Vs Simba Properties Investment Co. Limited and Others pending the hearing, determination and final disposal of the Applicant's substantive application for stay of proceedings vide Civil Application No. 1299 of 2023.
2. Costs shall abide the outcome of the substantive application.

I so order

Dated this^{12th} day of^{April}..... 2024

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OSCAR JOHN KIHKA
JUSTICE OF APPEAL