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**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA (COA) AT  
KAMPALA**

**CIVIL REFERENCE NUMBER 116 OF 2013**

**HERMAN KALISA:..... APPLICANT**

**Vs.**

**1. GLADYS NYANGIRE**

**2. JOHN KATTO**

}

**RESPONDENTS**

**3. ACCESS REPROGRAPHICS LIMITED**

**BEFORE:**

**HON. MR. JUSTICE. KENNETH KAKURU, JA**

Date: 5<sup>TH</sup> AUGUST 2013

### **RULING**

This matter came up for hearing by way of reference, from the decision of Her worship Ssali Harriet Nalukwago Assistant Registrar of this Court dated 4<sup>th</sup> July 2013, in which she declined to grant an interim order of stay of execution of a High Court decree, pending the hearing and determination of the substantive application for stay of execution pending Appeal.

The matter was filed by way of “Memorandum of Reference” with only two grounds namely.

- 1) The learned Assistant Registrar erred in law and in fact when she failed to find that the applicants had satisfied the grounds for the grant of an interim order of stay of execution.
- 2) The learned Assistant Registrar erred in law and in fact when she assumed the jurisdiction of an appellate Court and considered the merits of the appeal.

At the hearing of the application neither counsel raised the issue of jurisdiction. Court inquired from counsel for the applicant upon

what law the appeal by way of reference from a decision of an Assistant Registrar to a single Justice of Appeal had been instituted.

It was conceded by counsel for the appellant that there was no specific law granting an aggrieved person a right of appeal against a decision of a Registrar granting or declining to grant an interim order of stay of execution.

He however submitted that this was the practice both at this Court and also at the Supreme Court. The practice he argued it has become law, as a result of authorities of both courts. Counsel referred me to the authority of **Benson Ongom vs Sebunya Robert** [Court of Appeal Civil Application No. 140 of 2013]. (Unreported)

I notice that in that case the applicant proceeded under Rules 2 (2), 6(2) b, 43 and 44 of the rules of this Court. It was not an appeal by way of reference. It seems to have been an application for an interim-order of stay of execution pending the hearing and determination of a reference pending before a single Judge, presumably on the same matter. It was not in form of an appeal or reference.

Strange criticism  
are a pre-requisite  
4 grounds

In that particular case the issue of procedure and jurisdiction was not canvassed at all. It is therefore not an authority on this matter. Neither counsel for the applicant nor counsel for the respondent availed me with any useful authorities in this specific matter of jurisdiction.

Doing what I could, I found out the following;-

1. That indeed it has been the practice of this Court for a single Justice of Appeal to entertain a reference from a Registrar of this Court in respect of interim orders.
2. That the issue of jurisdiction or procedure has not been specifically determined by the full bench of this Court or by the Supreme Court as far as I could determine.

Since this issue has been raised in this application I will proceed to determine it.

On 2<sup>nd</sup> July 2004, the Chief Justice issued **Practice Direction No.1 of 2004.**

I will reproduce it for clarity;-

**PRACTICE DIRECTION NO.1 OF 2004.**

**The Court of Appeal (Judicial Powers of Registrars) Practice Direction.**

***PURSUANT to the Court of Appeal Rules Directions 1996 made under Section 41 (I) (v) of the Judicature Act 2000, and in order to ensure expeditious disposal of cases, the powers of Registrars shall include, but not be limited to entertaining matters under the following rules.***

- 1. Rule 4 – Extension of time***
- 2. Rule 5 – Applications for Interim Orders***
- 3. Rule 34 (2) (c) – Approval of such contested orders / decrees***
- 4. Rule 93 – Orders on withdrawal of an appeal / application***
- 5. Rule 112 – Orders on relief from fees and security in civil appeal.***

***This Direction is issued this 2<sup>nd</sup> day of July 2004.***

***B J Odoki***

***CHIEF JUSTICE***

Whereas prior to the coming into force of this Practice Direction only the Court could grant a stay of execution, under the Practice Direction a Registrar could now grant an interim order of stay of execution pending the determination of a substantive application of stay of execution before the Court.

In my view the Practice Direction to a limited extent granted the Registrar and a single Justice concurrent powers. The reason was;-

*“In order to ensure expeditious (sic) disposal of cases”*

The Practice Direction did not create a new strata of Court, at the level of a Registrar.

Suffice it to say that in my view at this Court now both the Registrar and a single Justice of Court can entertain an application for interim order of stay of execution pending the hearing and

determination of a substantive application of stay of execution that may be pending before a full bench of Court of Appeal.

The powers of a single Justice of Appeal are derived from the provisions of section 12 of The Judicature Act. The section provides as follows;-

12 (1) A single Justice of Appeal may exercise any powers vested in the Court of Appeal in any interlocutory cause or matter before the Court of Appeal.

(2) Any person dissatisfied with the decision of a single Justice of Appeal in execution of any power under subsection (1) shall be entitled to have the matter determined by a bench of three Justices of Appeal which may confirm, vary or reverse the decision.

Clearly section 12 (2) creates a right of appeal from a decision of a single Justice of Appeal.

I have found no corresponding right of appeal granted to parties in respect of decisions of Registrar's under practice Direction No 1 of 2004. Since I have already stated that the Registrar under Practice

Direction No.1 of 2004 exercises the power of a single Justice Appeal. It follows therefore that an appeal, from the decision of the Registrar in exercise of the enhanced powers would go to the full bench of three Justices of Appeal under section 12 (2) of the Judicature Act.

Practice Direction No.1 of 2004 at a glance seems to contradict Rule 53 which stipulates as follows;-

53 (1) Every application, other than an application included in sub rule (2) shall be heard by a single Judge of the Court except that any such application may be adjourned by the Judge for determination by the Court.

(2) This rule shall not apply.

a) to an application for leave to appeal, or for a certificate that a question or questions for great public or general importance arise; or



- b) to an application for a stay of execution, injunction or stay of proceedings; or
- c) to an application to strike out a notice of appeal or an appeal; or
- d) to an application made as ancillary to an application under paragraph (a) or (b) or made informally in the course of hearing, including an application for leave or to extend time if the proceedings are found to be deficient in the matters in the course of hearing.

With the coming into force of Practice Direction No.1 of 2004, A Registrar could grant an interim order of stay of execution, injunction or stay of proceedings while a single Justice of Appeal would be precluded from doing so by Rule 53.

This contradiction however is cured by the provisions of section 12 of the Judicature Act that grants power to a single Justice of Appeal

to exercise any power vested in the Court of Appeal in any interlocutory cause or matter before the Court of Appeal.

My considered view of the law is that the provisions of section 12 of the Judicature Act override the provisions of Rule 53 of the Rules of this Court.

The Court of Appeal Rules and Directions were issued by the Chief Justice in exercise of the powers conferred upon him by paragraph (b) of subsection (1) of section 48 of the Judicature Act. These Directions (herein referred to as the Rules of this Court) cannot override, narrow or abridge the substantive law under which they were made.

Accordingly in my view a single Justice of this Court is enshrined with power to hear and determine any interlocutory matter arising from or related to any Appeal or intended appeal in this Court under the provisions of section 12 of the Judicature Act.

To determine otherwise would create an absurdity in which a Registrar of this Court would have power to hear and determine applications such as those for leave to appeal, stay of proceedings, stay of execution e.t.c yet a single Justice of Appeal would have no such powers. This absurdity would extend to the fact that a single Justice of Appeal could hear and determine a matter from a Registrar by way of reference / appeal whereas the Justice has no power to hear that matter in the first instance.

Again I have said this absurdity does not arise in view of Section 12 of the Judicature Act.

Having said that, I hastened to note that in a similar case before my brother Justice Remmy Kasule JA, sitting as a single Justice of Appeal in *Butera Edward vs Mutalemwa Godfrey* (Civil Reference No. 70 of 2013) he held thus;-

*“Pursuant to Practice Direction No.1 of 2004 issued by*

*His Lordship the Chief Justice on 02.07.2004 pursuant to Section 41 (1) (v) of the Judicature Act, 2000, Registrars*

were vested with powers to extend time under Rule 4 and to entertain applications for interim Orders under Rule 5 of the Rules of this Court, amongst other powers. The issuance of the Practice Direction was in order to ensure expeditious disposal of cases.

Like is the case in Rules 15 (4) and 110 (3) of this Court Reference against the Registrar's decision in respect of documents being filed in Court and in taxation of costs has to be made to a single Justice under Section 12 (2) of the Judicature Act and Rules 55 (2) of the Rules of this Court.

It logically follows therefore that Reference to a single Justice has to be made in respect of a decision of a Registrar made in exercise of the Registrar's enhanced powers. This Reference is therefore properly before this Court in as much as it is the nature of an appeal against the decision of the Assistant Registrar in dismissing Application No. 112 of 2013 for an interim order of stay of execution”.

With utmost respect to the Honorable Justice of Appeal I do not agree with some aspects of this holding.

Rules 15(4) and 110(3) are very specific. They provide as follows:-

*15(4) Any person who is dissatisfied with a decision of the Registrar or registrar of High Court, rejecting any document under this rule, may require the matter to be referred to a Judge for his or her decision.”*

*110(3) Any person who contends that a bill of costs as taxed is, in all the circumstances , manifestly excessive or manifestly inadequate, may require the bill to be referred to a Judge and the Judge may make such deduction or addition as will render the bill reasonable.*

These orders grant parties the right of appeal from decisions of the Registrar in respect of documents being filed in this Court and in taxation of costs. They do not grant a general right of appeal against the Registrar’s decision in general. These are the only instances in

which an aggrieved party may appeal against a decision of the registrar to a single Justice of Appeal.

The enhanced powers of the Registrar do not as a matter of course create a right of appeal. If they did, in my view the Practice Direction would have specifically stated so.

It has long been established in the a case of **Attorney General vs Shah NO.4 [1971] EA P.50**

Per **SPRY. Ag President**, that;-

*“Appellate jurisdiction springs only from statute. There is no such a thing as inherent appellate jurisdiction”*

In my view a single Justice of Appeal can only entertain such appeals as the rules of this court or any other law prescribes. No law prescribes a right of appeal from a decision of a Registrar in an application for stay of execution to a single Justice of Appeal.

In the case of **Attorney General vs Shah (Supra)** the appellant had attempted to rely on section 82 of the Civil procedure Act read together with section 68 as creating a right of appeal. This was rejected by Court as according to, **Mustafa. JA.**

*“It relates only to procedural matters and does not confer a right of appeal”.*

I agree, the right of appeal cannot be inferred or assumed. It must be specially provided for by law. I am fortified in my view by the decision of the Supreme Court in **Baku Raphael Obudra and Obiga Kania vs. The Attorney General** (Supreme Court Constitutional Appeal No.1 of 2005) in which **Honorable Justice Tsekooko JSC** noted that;-

*“Jurisdiction cannot be prescribed by mere inference”*

In the same case **Hon. B.J Odoki CJ** also noted that;-

*“It is trite law that there is no such a thing as an inherent Appellate jurisdiction. Appellate jurisdiction must be specifically created by law. It cannot be inferred or implied”*

The learned Chief Justice went on to agree with **Hon. Byamugisha JA** that on the authority of **Attorney General -vs Shah (supra)** jurisdiction being a creature of statute, it cannot be said that jurisdiction can be inferred by cross reference.

With all due respect to my learned brother **Hon. Remmy Kasule JA** I think he did infer jurisdiction of this Court in this matter when he held that:

*“it logically follows thereafter that reference to a single Justice has to be made in respect of a decision of a registrar made in exercise of the Registrar’s enhanced powers”*

In this regard the above decision was made ***per incuriam***.

The purpose of issuing practice direction No.1 of 2004 is stated in the body of the Direction itself.

*To wit:-* “in order to ensure expeditious disposal of cases”.



This purpose would be defeated in my view by allowing appeals from an order of the Registrar on interim orders. This practice has increased rather than resolve the issue of case back-log and expeditious disposal of cases.

The practice also creates another legal problem. The right of appeal from the decision of a single Justice of Appeal exercising jurisdiction as an appellate Judge from the decision of a Registrar.

It is trite law that an interim order of stay can only be sustained when there is a substantive application pending before a full bench of the Court of Appeal.

The same full bench would then be required to hear and determine an appeal arising out of a decision of a single Justice of Appeal on a matter originating from a decision of a Registrar on an interim order.


This would not only cause confusion but would amount in my humble view to a waste of time and abuse of Court process.

The procedure, it is my finding is that, as much as possible interim orders especially those staying execution and or proceedings of High

Court should be entertained by a Justice of Appeal and not a Registrar.

That Registrar should entertain such applications only where there is extreme urgency and a single Justice of Appeal is not available.

Even then, the order should be granted for a specific and a limited period only which period should not exceed 14 (fourteen) days in my humble view. There upon the Registrar should at the same time fix the main application for hearing in order to avoid abuse of Court process.

 Again I am fortified by the ruling of **J.N Mulenga JSC** in *Supreme Court Civil Application No. 31 of 2004* in which he held thus;

***“An interim order ought to be made only in compelling circumstances, to prevent defeat of justice and strictly pending ascertained hearing of a substantive application by the full Court”***

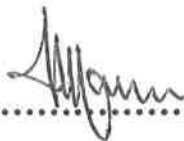
Where the Registrar declines to grant such an order as in this particular case, the aggrieved party may file a fresh application and

have it fixed before a single Justice of Appeal, rather than proceed by way of reference or appeal.

Furthermore, the practice of Registrars of this Court issuing interim orders staying the proceedings of cases pending before Judges of High Court has caused discomfort to say the least at the High Court with some of Judges declining to honor such interim orders.

For the above reasons therefore I am unable to find that this Court has jurisdiction to entertain this reference. It is accordingly struck out with no order as to costs.

**DATED** at Kampala this 5<sup>TH</sup> day of August 2013.



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**HON.MR. JUSTICE KENNETH KAKURU, JA**