

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA HOLDEN AT
KAMPALA

CIVIL APPLICATION NO. 177 OF 2014

ARISING FROM CIVIL APPLICATION NO. 176 OF 2014

Arising from High Court (Commercial Division) Miscellaneous
Application

No. 132 of 2014

Arising from High Court Commercial Division C.S No. 69 of 2012

HON NAKATO KYABANJI KATUSIIME.....
APPLICANT

VERSUS

KENROY INVESTMENTS LIMITED
.....RESPONDENT

RULING OF HON. MR. JUSTICE KENNETH KAKURU

The applicant in this matter is represented by **Mr. Nsubuga** and the respondent by **Mr. Tusiime**. Both parties were in court the respondent being represented by its Director.

I have perused the pleadings herein and carefully listened to the submissions of both counsel.

This is an application for an interim order of stay of execution pending the hearing and determination of the application for a

substantive order of stay of execution in **Court of Appeal Miscellaneous No.176 of 2014.**

The applicant seeks to stay the order of the High Court in **Miscellaneous Application No. 132 of 2014** dated 23rd April 2014. That order was dismissing the applicant's application for leave appear to defend in **HCCS No. 69 of 2014** a suit brought under summary procedure order 36 of the Civil Procedure Rules.

The application for leave to appear and defend suit must have been made under **Order 36 Rule 5** of the Civil Procedure Rules.

Section 76 of the Civil Procedure Act sets out orders from which appeals from the High Court to this court lie as of right. An appeal from an order made under **Rule 5 of Order 36** declining to grant leave to appear and defend a suit, is not one of the orders that are appealable from as of right.

Order 44 Rule (1) sets out orders from which appeals lie as of right. An order made under **Order 36 Rule 5** is not among those orders. **Order 44 Rule (2)** states that an appeal shall not lie against any other order except with leave of Court. Under **Order 44 Rule (3)** leave must first be sought at the High Court. In this particular case leave was sought by the applicant herein *vide* **High Court Miscellaneous Application 294 of 2014** and it was duly granted on condition that the applicant deposits in court the decretal amount. She failed to comply with that order.

She has not sought leave of this Court to appeal against that High Court order. No application is pending in this Court and no order for leave to appeal has been granted by this Court. There is nothing therefore upon which the notice of appeal and this application are grounded.

For this court to grant the order sought there must be a pending application and a pending appeal, intended as it may be, on account of a valid notice appeal.

That appeal or intended appeal must not be frivolous or vexatious and must have a likelihood of success. I am unable to find that the applicant's intended appeal has likelihood of success in view of the evidence on record and her own admissions before and after the passing of the decree of the High Court. The applicant admits her indebtedness to the respondent and as such has no valid defence to the suit at the High Court.

If the High Court decree is executed I find that she will not suffer irreparable loss or damage as any such loss or damage can be atoned by way of damages.

It appears to me that this application and the substantive application for stay of execution application No. 176 of 2014 pending in this court are simply a way of buying time for the applicant. Both applications have no merit whatsoever. They are an abuse of court process which this court cannot condon.

I therefore invoke the provisions of **Rule 2 (2)** of the Rules of this Court which empower me to make such orders as may be necessary to prevent abuse of court process and I dismiss this application with costs.

I also dismiss the main application herein application 176 of 2014 in respect of the same parties for the same reasons under **Section 12** of the Judicature Act and **Rule 2 (2)** of the rules of this court.

I make no order as to costs in respect of that application No. 176 of 2014.

I so order.

Dated at Kampala this 26th day of June 2014.

HON. MR. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL