

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NUMBER 0171 OF 2014**

- 1. MODERN DEVELOPMENT UGANDA LTD**
- 2. DR. KAIJUKA MUTABAZI EMMANUEL.....APPLICANTS**

VERSUS

FBW UGANDA LTDRESPONDENTS

CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA
SINGLE JUSTICE

RULING

In this application the applicant seeks the following orders:-

- 1. That an Interim Order be issued staying the process of the 2nd Defendant filing a defence and the 1st Defendant amending its defence and hearing of Civil Suit N0.481 of 2012 be stayed pending final disposal of Misc. Application No. 167 of 2014 for leave to appeal, Misc. Application No. 168 of 2014 for stay and the intended appeal thereof or as the Court Orders otherwise.***
- 2. Costs of this application be provided for.***

The grounds for the application as set in the notice of motion are as follow;-

- 1) *That the 1st applicant was the Respondent/ Defendant in Misc. Application No.64/2014 and upon its determination the 2nd applicant was joined as the 2nd defendant.*
- 2) *THAT the Applicants have filed a Notice of Appeal against the ruling in the above application and they have also applied for typed and certified copies of the proceedings and ruling.*
- 3) *THAT in her ruling, the Learned Trial Judge has set out time schedules for amending and serving the amended plaint and for the 2nd Defendant to file his defence within fifteen (15) days of the service of the amended plaint and the 1st applicant to amend its defence within the same period.*
- 4) *THAT the ruling in Misc. Application No.64 of 2014 was delivered on 17th April 2014 which was a Thursday, and Friday to Monday inclusive were public holidays yet by Tuesday 9:30Am Counsel for the Applicants was served with an amended plaint and therefore the time for filing and amending the defence had started running.*
- 5) *THAT the way in which the Trial Judge treated Counsel for the Applicants and summarily rejected an application for leave to appeal, there is a threat that she intends to hear the case on the amended Plaint and deliver judgment against the Applicants before their application for leave to appeal and the intended appeal are disposed of.*
- 6) *THAT the Applicants have applied for stay vide Misc. Application No.168 of 2014.*
- 7) *THAT the intended appeal has a high likelihood of success.*

8) THAT if the stay applied for is not granted, the application for leave to appeal and indeed the intended Appeal shall be made nugatory and the applicant shall suffer irreparable damage.

9) THAT this application has been brought without delay.

10) THAT it is in the interests of justice that this application be granted and an Interim Order issued accordingly.

At the hearing of this application **Mr. Blaize Babigumira** learned counsel appeared for the applicant while **Ms. Deepa Verma** appeared for the respondent.

This application was heard and dismissed on 2nd May 2014 and at that time this court reserved the detailed reasons for the Ruling which I now deliver.

In my brief Ruling I stated as follows;-

“I have heard the submissions of both counsel. I have also perused the court record and the authorities cited to me.

The applicants have been granted leave to appeal.

Therefore there is a pending appeal before this court since a copy of the notice of appeal had already been lodged in this Court, having been filed earlier at the High court.

*This application therefore is an interlocutory application. A single Justice of this court under **Section 12** of the Judicature Act, may exercise any power vested in the court of appeal in any interlocutory cause or matter before the court of appeal.*

*I have not been able to find any urgency in this matter before me. With all due respect to learned counsel Mr. Babigumira, I have found no substance in this application and in the substantive application for stay. Filing two applications in respect of the same subject matter was unnecessary in view of **Section 12** of the Judicature Act above cited.*

Allowing the respondents to file an amended plaint and the applicants also to file their respective defences would in my view not prejudice the applicants at all.

It is just and equitable that the order of the High Court ought not to be interfered with for no good reason. The parties must comply with court order.

This application and application No. 168 of 2014 also for stay of execution are hereby dismissed with costs to the respondent.

The applicants may if they so wish file their application before the High Court which issued the order.

Because of the importance of the legal issues raised herein I will give the detailed reasons of my decision in both the above application which will be delivered on notice.”

I now proceed to give the reasons for the above decision.

In the case of ***Kyambogo University Vs Prof. Isaiah Omolo Ndiege (Court of Appeal Civil Application No. 341 of 2013)*** this court observed as follows;-

“In my view the law recognises that not all orders or decrees appealed from have to be stayed pending appeal. It also recognises a fact that an appeal may be determined without the court having to grant a stay of execution.

However, court may stay execution where the circumstances of the case justify such a stay. It is therefore incumbent upon the applicant in every application of stay of execution to satisfy court that grounds exist for grant of a stay of execution. The assumption that once a party has filed an appeal a stay of execution must follow as a matter of course has no legal basis.”

For an application of this nature to succeed the applicant must satisfy court that the following conditions exist.

- 1) “That the applicant has lodged a notice of appeal in accordance with Rule 76 of the Rule of this court.*

- 2) That a substantive application for stay of execution has been filed in this court and is pending hearing.*

- 3) That the said substantive application and the appeal are not frivolous and they have a likelihood of success.*

- 4) That there is a serious and imminent threat of execution of the decree or order and that if the application is not granted the main application and the appeal will be rendered nugatory.*

- 5) That the application was made without unreasonable delay.*

- 6) The applicant is prepared to grant security for due performance of the decree.*

- 7) That refusal to grant the stay would inflict greater hardship than it would avoid.”*

In *National Corporation versus Mukisa Foods Miscellaneous Civil Application No. 7 of 1998* this court held as follows:-

“The court has power in its discretion to grant stay of execution where it appears to be equitable so to do with a view to temporarily preserving the status quo.

As a general rule the only ground for stay of execution is for the applicant to show that once the decretal property is disposed of there is no likelihood of getting it back should the appeal succeed”

This court is being called upon to exercise its discretion to grant an order staying “a process” in the High Court. I have not been shown how the process at the High Court would render the pending appeal nugatory. I do not think it is capable of doing so.

I am unable to say that the applicant’s appeal is meritorious with high chances of success, as nothing has been shown in this application to that effect.

The respondent applied to amend pleadings and add a party. The High Court granted that application. I do not see how that would in any way prejudice the applicant.

The applicant is at liberty to file a defence in respect of the additional party’s claim.

In any event the respondent is at liberty to file a separate suit against any other party without the consent of the applicant in respect of the same matter. Court may upon an application by either party or on its own motion allow such suit to be consolidated with the existing suit. In that case the respondent would have achieved by other means what the applicant is seeking to injunct in these proceedings.

This court has a duty to prevent abuse of court process resulting from multiplicity of suits.

For these reasons and for the reasons I had already stated in my brief ruling I dismiss with costs this application.

The substantive application herein from which this emanates is also dismissed with not order as to costs.

Dated at Kampala this 11th day of July 2014.

HON. MR. JUSTICE KENNETH KAKURU

JUSTICE OF APPEAL