

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPLICATION NO. 134 OF 2014**

**UGANDA TELECOM LIMITED**

5 .....**APPLICANT**

**VERSUS**

**1. BERNARD MWETEISE**

**2. ASAPH NDAULA & 823**

**OTHERS.....RESPONDENTS**

10

**CORAM:**

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

***SINGLE JUSTICE***

15

**RULING**

This application was brought under **Section 98** of the Civil Procedure Rules, **Rules 2 (2), 5** of **43** of the Rules of this court

20 It seeks the following orders;-

***1) That the time within which to comply with condition No. 1. (ii) of the order for stay of execution of the decree in HCCS 135 of 2013 of 2013 granted in this Honourable Court vide Civil***

25

**Application No. 388 of 2013 be extended from 31<sup>st</sup> January 2014 to 4<sup>th</sup> February 2014.**

**2) Those costs of this application be provided for.**

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The grounds upon which this application is based are;-

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**1) That the applicant being dissatisfied with Judgment and orders of the High Court in Civil Suit No. 135 of 2003 filed Civil Appeal No. 230 of 2013.**

15

**2) That in execution of the decree of HCCS No. 135 of 2003, a Garnishee Oder Nisi in High Court Execution Division EMA No. 2355 of 2013 was extracted by counsel for the respondent on the 22<sup>nd</sup> day of November 2013.**

20

**3) That the applicant filed Civil Application No. 388 of 2013 in this Honourable court for an order that that execution of the decree in HCCS 135 of 2013 be stayed.**

25

**4) That this Honorable court granted an order staying the execution of the Decree in HCCS No. 135 of 2003 on the 20<sup>th</sup> day of December pending the determination of Civil Appeal No. 230 of 2013 on condition that the applicant pays the**

**respondent Ushs. 1,000,000,000 (One billion shillings only) being part of the decretal sum as follows:**

5 **i) 500,000,000 (five hundred million shillings only) on the date of the order;**

**ii) 500,000,000 (five hundred million shillings only) on or before 31<sup>st</sup> January 2014 and;**

10 **iii) That the Garnishee Order Nisi in High Court Execution Division EMA No. 2355 of 2013 be vacated upon payment of the 1<sup>st</sup> installment in (i) above.**

15 **5) That the applicant paid to the respondent first installment of Ushs 500,000,000 (five hundred million shillings only) on the date of the said order.**

20 **6) That on 30<sup>th</sup> January 2014 the respondent's Advocates demanded payment of the 2<sup>nd</sup> installment in satisfaction of the conditions of stay of execution failure of which they threatened to use court's intervention to compel**  
25 **the applicant to pay it.**

**7) That on 30<sup>th</sup> January 2014, the applicant instructed his bankers, Standard Chartered Bank**

**Ltd by way of Electronic Funds Transfer (EFT) to pay UGX. 500,000,000/= to the respondent's Advocates in fulfillment of the conditions of stay of execution.**

5

**8) That on 4<sup>th</sup> February 2014 the respondent's Advocates duly received UGX 500,000,000/- on their account No. 6004022007 held with Barclays bank of Uganda Ltd.**

10

**9) That the respondent received payment after only one business day on 4<sup>th</sup> February 2014.**

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**10) That the respondents have extracted a Garnishee Order Nisi on 4<sup>th</sup> April 2014 for a sum of 77,786,747,125/- (Seventy seven billion, seven hundred and eighty six million, seven hundred and forty seven , one hundred and twenty five shillings) purportedly in execution of the decree in HCCS No. 135 of 2003.**

20

**11) That the attempted execution is illegal, unconscionable and an abuse of court process because:-**

25

**a) There is no decree for a sum of 77,786,747,125/- (Seventy seven billion, seven hundred and eighty six million,**

**seven hundred and forty seven, one hundred and twenty five shillings).**

5 **b) That Judgment was in favour of 825 plaintiffs/ Judgment Creditors and not 912 as indicated in the Garnishee.**

10 **c) Out of the 825 Judgment Creditors the applicant is liable for only 516 and not all those in the Garnishee Order Nisi.**

15 **d) The Pension due to the Judgment Creditors has never been ascertained by any court.**

20 **e) An offset of money's received by the plaintiffs from the Uganda Communication Employees' Contributory Pension Scheme (UCECPS) pursuant to clause (g) of the decree of HCCS No. 135 of 2003 has not yet been effected.**

25 **f) As a result of the above the purported execution by way of Garnishee Nisi is premature.**

**12) That there is a serious threat of execution before the hearing and determination of Civil Appeal No. 230 of 2013.**

5 **13) That it is in the interest of substantive justice that extension of time is granted to the applicant to fulfill the conditions of order of stay of execution and the applicant contends that the grant extension sought will not in any way**  
10 **prejudice the respondents.**

The application is supported by the affidavit of Prosy Kembabazi for the applicant which generally repeats the ground of the application in the notice of motion.

15 At the hearing of this application Mr. Cephas Birungyi learned counsel appeared for the applicant while Mr. John Matovu appeared for the respondent.

20 Mr. Birungyi with leave of court amended the notice of motion by deleting therefrom **Section 98** of the **Civil Procedure Act**.

He submitted that the application was brought under **Rule 5** of the Rules of this court seeking to extend time within which to  
25 comply with the order of this court dated 20<sup>th</sup> December 2013.

He submitted that the reason the applicant failed to comply with order is that they did not have sufficient funds on one account at

Standard Chartered Bank. That the instructions to that Bank were given on 30<sup>th</sup> January 2014 but could not be effected by the Bank until funds were mobilised from other accounts.

5 In the result that the instructions were effected on 3<sup>rd</sup> February 2014 and the funds were credited on the 4<sup>th</sup> February 2014 on the respondents Advocate's Bank account.

10 He submitted further that the applicant had complied with order and satisfied the reasons for which it was granted in the first place *albeit* late.

He also submitted that no injustice had been visited upon the respondent.

15 In reply Mr. John Matovu learned counsel for the respondent submitted that the application was misconceived and in alternative that it had no merit.

20 He submitted that the clause (3) three of order of this Court dated 20<sup>th</sup> December 2013 clearly stated that the order would lapse automatically if not complied with fully on or before 31<sup>st</sup> day of January 2014.

25 That by that date of 31<sup>st</sup> January 2014 the applicant had not complied with order as admitted in this application. That there was therefore no order to be revised by this court at all. That this

court has no power to extend time in respect of an order that had lapsed

5 In the alternative and without prejudice to the above Mr. Matovu submitted that no sufficient cause had been sworn in the affidavits in support of the notice of motion for extension of time. That there was no explanation why the order was not complied with. He submitted that the delay was caused by the applicant's dilatory conduct.

10 He prayed for this application to be dismissed.

15 Mr. Birungyi in rejoinder submitted that instructions for payment were made on 30<sup>th</sup> January 2014 but could not be effected on that date due to insufficient funds on the Standard Chartered Bank Account. That later the money was transferred and the order complied with.

20 I have listened carefully to the submissions of both counsel and I have also studied the court record before me.

25 The applicant was on 20<sup>th</sup> December 2013 ordered by this court to pay to the respondent shs. 1,000,000,000/- (One billion shillings only) into equal installments. The last one falling due on 31<sup>st</sup> January 2014.

It was also the order of this court that in the event money was not paid in accordance with that order of 30<sup>th</sup> December 2013. The



order of stay of execution issued by this court would lapse automatically on 31 January 2014.

It is conceded in this application by Mr. Birungyi that the applicant  
5 failed to effect the second installment on or before 31<sup>st</sup> January 2014.

Accordingly the order of stay of execution lapsed at the close of business on 31<sup>st</sup> January 2014. Therefore there is no order of stay  
10 of execution in place now and there has been none since 1<sup>st</sup> February 2014.

I therefore agree with Mr. Matovu learned counsel for the respondent that by the time the second instalment was paid on  
15 4<sup>th</sup> February 2014 the order of stay of execution had already lapsed.

However, I do not agree with him that this court has no power to extend the time in which this order ought to have been complied with.

20 This application is brought under **Rule 5** of the Rules of this court which stipulates as follows;-

**“Extension of time**

**The court may, for sufficient reason, extend the time limited by these Rules or by any decision of the court or of the High court for the doing of any act authorised or required**

**by the Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to the time as extended.** (Emphasis added).

5

This court has powers under the above rule to extend time limited by any decision of this court for doing any act, whether before or  
10 after the expiration of that time.

This court therefore has power to extend time and or validate any act carried out after the expiration of the authorised time.

15 However, court may only grant such extension of time for sufficient reason. It is up to the applicant to satisfy court that sufficient reason exists for the extension time. This in my view is not the same **“showing sufficient reason for failure to comply”** with decision or the Rules of this court.

20

In the circumstances of this application my considered view is that the applicant had a duty to satisfy court that there was sufficient reason to extend time and that he was prevented from complying with the order of court for sufficient reason.

25

I agree with Mr. Matovu that the applicant has failed to show any sufficient reason why they failed to comply with order of court.

Mr. Birungyi attempted to show why it is just and equitable to grant the order sought in this application. The matters he referred to in this regard occurred after the order had lapsed and are in my view largely irrelevant.

5

It was incumbent upon the applicant to apply for extension of time immediately he realized he had failed to comply with the order of court. If for nothing else but to regularize the late payment. The applicant did not do so. They waited until they were  
10 woken up by the respondent when he applied for execution of the decree since the order of stay had lapsed. That is why it appears this application was filed on 9<sup>th</sup> April 2014 and not earlier.

Be that as it may, the peculiar circumstances of this case require  
15 that the dispute between the parties be resolved by having the pending appeal heard and determined. Executing the decree of the High Court while this appeal is pending would render the appeal nugatory. This court has a duty to protect the parties' legal right to appeal.

20

Having found that the applicant has not shown sufficient reason for extension of time I would ordinarily have dismissed this application.

But in the interest of justices and for the reason I have outlined  
25 above, I would invoke the power of this court under **Rule 2(2)** of the Rules of this Court which stipulates as follows:-

## **2. Application**

5                   ***(2) Nothing in these Rules shall be taken to  
limit or otherwise affect the inherent power  
of the court, or the High Court, to make  
such orders as may be necessary for  
attaining the ends of justice or 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  
10 be exercised to prevent abuse of process of  
nay court caused by delay.***

And I also invoke the provisions of **Rule 42 (2)** of the Rules of  
this court which stipulates as follows;-

15                   ***2) Notwithstanding subrule (1) of this  
rule, in any civil or criminal matter, the  
court may, on application or of its own  
motion, give leave to appeal and grant a  
consequential extension of time for doing  
20 any act as the justice of the case requires,  
or entertain an application under rule 6(2)  
(b) of these rules, in order to safeguard  
the right of appeal, notwithstanding the  
fact that no application for that purpose***

**has been made to the High court.”**  
**(Emphasis added).**

I am therefore inclined to grant a consequential extension of time  
5 to the applicant for the payment of the second installment of  
shs. 500,000,000/- (five hundred million shillings only) to the  
respondent from 31<sup>st</sup> January 2014 to 4<sup>th</sup> February 2014.

This order having been made on this Court's own motion and this  
10 application having substantively failed, I would order that costs be  
paid to the respondents.

I must state that the dispute between the parties should be  
resolved by having the appeal herein fixed, heard and  
15 determined.

It is now possible to have the main appeal herein heard and  
determined without any further delay. I accordingly direct the  
Registrar of this court to ensure that the appeal herein is fixed for  
20 hearing at the earliest date possible.

For clarity I have granted the orders as follows:-

**1) A consequential order is hereby granted extending**  
25 **the time in which the applicant was required to pay to**  
**the respondent the 2<sup>nd</sup> installment of shs.**  
**500,000,000 (Five hundred million shillings only) in**  
**the order of this court dated 20<sup>th</sup> December 2013 from**

**31<sup>st</sup> January 2014 to 4<sup>th</sup> February 2014. (Civil Application No. 388 of 2013)**

5 **2) The order of stay of execution of the decree in HCCS 135 of 2013 shall remain in force pending the hearing and determination of Civil Appeal No. 230 of 2013.**

**3) The costs of this application shall be paid by the applicant.**

10 **Dated at Kampala this 14<sup>th</sup> day of April 2014.**

15 .....  
**HON. MR. JUSTICE KENNETH KAKURU**  
**JUSTICE OF APPEAL**