

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO.144 OF 2014

5 **UGANDA REVENUE AUTHORITY.....APPLICANT**

V E R S U S

EAST AFRICA PROPERTY HOLDING LTD.....RESPONDENT

10 **CORAM: HON. MR. JUSTICE RICHARD BUTEERA, JA**
(A SINGLE JUSTICE)

RULING:

15 This is an application for an interim order staying the execution and enforcement of orders of the High Court made in Civil Suit No.247 of 2013 pending the applicant's main application for Stay of Execution of the above stated court orders before a full bench of this Court.

20 The application is brought under s.12 of the Judicature Act and Rules 2, (6) (2) (b) and 43 of the Judicature (Court of Appeal) Direction section 1: 13-10.

The grounds of the application are contained in the affidavit of Mwajumah Nakku, an advocate, employee of the applicant which is attached to the filed application.

5 The background to the application is briefly the following:-

The respondent sued the applicant in the High Court for an order compelling the applicant to refund Uganda shs.653,059,147 as VAT refund. The High Court delivered judgment in favour of the respondent on 19/02/2014 granting the order for the refund of the
10 above stated sum. The applicant was dissatisfied and aggrieved by the decision and orders of the High Court. The applicant as a result filed a Notice of Appeal and requested for a certified copy of the records of proceedings and judgment and then filed this application.

15 The respondent opposed the application and filed an affidavit in reply.

At the hearing of this application learned counsel, Namutebi Christina, represented the applicant. Learned counsel, Bishagenda
20 Dorothy, represent the respondent. Counsel for the applicant submitted that their appeal has merit and a high likelihood of success and their application had been made without undue delay. Counsel

further submitted that the respondents have taken steps and expressed demand with letters dated 19/03/2014 and 08/04/2014 making the orders of the High Court executable. Counsel, explained that if this Court does not grant an interim order of stay the applicant will suffer irreparable loss and the appeal will be rendered nugatory.

Counsel submitted that the grant of an interim stay was just and equitable and should be granted by this court.

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Counsel for the respondent opposed the application. The respondent had filed an affidavit in reply in support of their objection to the application for an interim stay of execution.

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Counsel for the respondent submitted that there was no application for execution filed at the High Court. No warrant for execution had been issued by the High Court as none had been applied for. Counsel stated that she was in personal conduct of the case and no execution proceedings had been commenced at the High Court Execution Division for her client. Counsel contended that there was no pending execution for this Court to Stay and there was no

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pending damage justifying a grant of this application. Counsel prayed Court to dismiss the application with costs.

The principles upon which an application for an interim order for stay of execution are granted were clearly stated by the Supreme Court by Civil Application No.19 of 2008 Hwang Sung Industries Ltd vs. Tajdin Hussein and 2 others as follows:-

“For an application for an interim order of stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before the hearing of the pending substantive application.”

The most important consideration for a court to grant an interim order of stay of the nature applied for here is to stop execution and ensure that an appeal if successful is not rendered nugatory. There must be established by evidence a serious and imminent threat of execution of the decree or order and the evidence should be adduced that if the application is not granted the main application and the appeal will be rendered nugatory.

In the instant case, the applicant has not adduced evidence of a serious threat of execution.

The applicant has only adduced evidence of two letters from the respondent requesting for payment of the sum decreed by the High Court.

5 The two letters certainly do not amount to **“evidence of a serious threat of execution of the decree before the hearing of the substantive application for an interim order to issue.”**

10 The letters are not at all a threat of execution of a Court Order. There is no evidence that there is a pending or imminent threat of execution. No evidence was adduced that a warrant of execution has been issued or has even been applied for.

15 I find no justification for granting the order applied for. The application is accordingly dismissed with costs.

Dated this day 6th of May 2014.

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Hon. Justice R. Buteera
JUSTICE OF APPEAL