

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 132 OF 2014
WANAINCHI GROUP (U) LTD ::::::::::::::::::::APPLICANT
VERSUS
THE NEW VISION PRINTING &
PUBLISHING CO. LTD ::::::::::::::::::::RESPONDENT

CORAM: HON. JUSTICE S.B.K KAVUMA, DCJ

RULING OF COURT

This application is brought under Section 98 of the Civil Procedure Act and Rules 2(2), 6(2) (b), 43, 53(2) of the Judicature (Court of Appeal Rules) Directions for an interim order of stay of execution of the decision /order of Masalu Musene. J in High Court M.A No. 183 of 2013.

Background

The respondent filed an application against the applicant in the High Court for a temporary injunction seeking to restrain the applicant, (Wanainchi Group Ltd), from further infringement of the respondent's copyright in the. production, air transmission or broadcast of "Bukedde Television" through the respondent's Zuku Television.

The respondent contended that the applicant continued to infringe on the respondents' copyright by retransmitting the applicant's work for private benefit and for personal economic gain without the consent or licence of the owner despite express warning. That an order of a temporary injunction was granted and the applicant made an application for review, which was dismissed, hence this application.

The Application is based on the following grounds;

1. The applicant intends to appeal against the ruling in High Court Misc. Application No. 183 of 2013 dismissing the applicant's application for review of the grant of temporary injunctive orders in favour of the respondent vide High Court Misc. Application No. 30 of **2013** and has filed a Notice of Appeal.
2. The applicant has also filed a substantive Application for stay of execution vide Civil Application No. 131 of **2014** which is pending hearing and determination.
3. There is a serious threat of permanent business loss/closure of the applicant's business operations in Uganda resulting from the dismissal of High Court Misc. Application No. 183 of 2013 and the continued execution of the injunctive orders of the High Court issued vide High Court Misc. Application No. 30 of 2013 against the applicant which, if continued, would render the appeal and substantive application for stay of execution nugatory.

Representation

Mr. Fred Muwema, (counsel for the applicant) appeared for the applicant while Mr. Peter Kawuma holding brief for Mr. Kiryowa, (counsel for the respondent) appeared for the respondent.

Submissions of counsel

Counsel for the applicant referred to the affidavits of Wambui Maina and Carolyn Kintu in his submissions. He also relied on the case of *Hwang Sung Industries (U) Ltd vs Tajdin Hussein & 2 others Civil Application No. 19 of 2008*.

He submitted that since the injunction was granted, there is a serious threat of execution wherein Bukedde TV signal will be switched off Zuku Television. He prayed that this

application be granted so as to maintain the status quo and to preserve the applicant's rights in this matter. He stressed that if the interim order is not granted, the main application will be rendered nugatory.

In reply, Mr. Kawuma opposed the application and referred to the affidavit in reply sworn by Mr. Robert Kabushenga. He submitted that the applicants, Zuku TV, and the respondents, Bukedde TV, are both competitors in the same business working for economic gain. Counsel relied on the case of *Joel Kato & Margaret Kato Vs Nuulu Nalwoga*

Civil Application No. 12 of 2011 for the principals for Court to consider before granting orders of interim stay of execution. He submitted further that the Notice of Appeal was filed out of time which was 5 weeks after the ruling was delivered. There is no mention of whether the applicant tried to apply for a stay of execution in the High Court before coming to this Court which, according to counsel, is an abuse of court process. In this regard, he referred to the case of **Assimwe Francis Vs Tumwongyeirwe Aflod Misc. Application No. 103 of 2011**.

Further, counsel contented that the Bukedde TV signal on Zuku TV had, in any case, been off air since February 2013 which is over a year ago.

Court's consideration of the Application

I have listened to the submission of both counsel and I have carefully considered the law quoted and the affidavit evidence on record.

Rule 6(2) (b) of the Judicature (Court of Appeal Rules) Directions provides for stay of execution thus;

“(2) Subject to sub rule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may -

(a)

(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 76 of these Rules, order a stay of execution, an injunction, or a stay of proceedings on such terms as the court may think just”

Under Rule 42(1) of the Rules of this Court, this application should have been made to the High Court first. The Rule provides:

“42. Order of hearing applications

(1) whenever an application may be made either in the court or in the High Court, it shall be made first in the High Court”.

This was further echoed in the case of ***Lawrence Musiitwa Kyazze versus Eunice Busingye Civil Application No. 18 of 1990***, by the court holding that an application of this nature ought to have been made at the High Court first. However, where there are special and rare circumstances, this court may hear such an application.

In Hwang Sung Industries Ltd Vs Tajdin Hussein and 2 others (supra) Okello JSC (as he then was) stated some of the principals to be considered in granting interim orders of stay of execution, thus:

“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. It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.”...

According to the evidence on record, a Notice of Appeal has been lodged in court under Rule 76 of the Rules of this Court.

A substantive application for stay of execution has also been filed and it is referenced as Civil Application No. 131 of 2014.

However, as to the existence of a serious threat of execution, I find that the Bukedde TV signal on Zuku TV has been off air since February 2013. No execution has ever been attempted since then. In the circumstances, I am not persuaded that there is now an eminent and serious danger of execution.

In the result I find no merit in the application. it is accordingly dismissed with costs.

I so order

Dated at Kampala this 26th day of October 2015

S.B.K Kavuma

Deputy chief Justice