

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 14 OF 2010**

1. BREAKERS AND PARTNERS UGANDA LIMITED

2. ADULLA OKODI.....APPELLANTS

VERSUS

ATTORNEY GENERAL.RESPONDENT

CORAM:

HONORABLE JUSTICE A S NSHIMYE, JA

HONORABLE JUSTICE SOLOMY BALUNGI BOSSA, JA

HONORABLE JUSTICE KENNETH KAKURU, JA

JUDGMENT

Background

The Appellants sued the Non-Performing Assets Trust (NPART) and one Surjeet Singh in the Non Performing Tribunal (NPT) vide Tribunal case No. 6 of 2002 for unlawful seizure and sale of property at Plot 26 Station Road, Lira, belonging to the Appellants. In 2005, the NPT ordered the NPART to pay the Appellants a sum of Uganda shs. 273,000,000/= plus taxed costs of shs. 18,336,000/ = . NPART and Surjeet Singh filed Civil Appeal No. 33 of 2005 in the Court of Appeal.

Before payment could be made, the NPART expired on or about October 10, 2007. The Appellants then filed Civil Suit No. 125 of 2008 in the Commercial Court against the Attorney General to recover the judgment debt and costs.

The basis of the suit was that upon expiry of the NPART, the Government of the Republic of Uganda is liable for all assets and liabilities of the NPART.

At the hearing of Civil Suit No. 125 of 2008, the Respondent raised a preliminary objection against the suit arguing that it was incompetent because **Civil Appeal No. 33 of 2005 NPART v. Breaker and Partners of Uganda and Another** was still pending before the Court of Appeal. The High Court upheld the preliminary objection and dismissed Civil Suit No. 125 of 2008.

The Appellants have appealed on four grounds, namely;

1. The learned trial Judge erred in law and fact when he held that Civil Appeal No. 33 of 2005 filed by the NPART survived the NPART expiry.
2. The learned Judge erred in law and fact when he held that the court had no alternative but to stay proceedings in Civil Suit No. 125 of 2008 until final disposal of the appeal.
3. The learned Judge erred in law when he held that the appropriate remedy for the appellant was to apply for substitution of NPART with the Attorney General in Civil Appeal No. 33 of 2005 under Order 24 of the Civil Procedure Rules.
4. The learned Judge erred in law in dismissing the suit.

At the hearing of the appeal, Counsel Nerima appeared for the Appellants while Mr. Martin Mwambusya; a State Attorney appeared for the Respondent.

Resolution of the grounds of appeal

Basically, the appeal raises two substantial points, i.e. whether the learned trial Judge was right in dismissing Civil Suit No. 125 of 2008, and whether there is an appeal pending before the Court of Appeal.

On ground 1, learned Counsel for the appellants argued that Civil Appeal No. 33 of 2005 did not survive the expiry of NPART Statute as NPART ceased to exist. Therefore, the Government was liable for all the assets and liabilities of the NPART. The learned Judge should therefore not have dismissed the suit based on the pending appeal.

In his judgment, the learned trial Judge notes that:

"It must however be noted that by this suit the plaintiff is seeking to enforce a judgment already obtained against the Trust. It is the same judgment which is the subject of appeal in the previously instituted suit. By filing this suit against the Attorney General, the plaintiff is tactfully seeking to enforce the judgment against NPART which is the subject of appeal."

While it is true that the subject of appeal is the judgment obtained by the appellants against NPART, nevertheless, its existence did not justify the dismissal of Civil Suit No. 125 of 2008. The appellants

filed a legitimate action to recover a judgment debt and costs from the Attorney General as the legal representative of the Ugandan Government, which the appellants assume to bear the ultimate responsibility for all assets and liabilities of NPART. The Appellants were interested in pursuing their case. The most pertinent issue for the High Court to decide was whether the Respondent is liable to pay the judgment debt. There was no order for stay of execution of the judgment in Civil Suit No. 125 of 2008 from either the High Court or the Court of Appeal. It is now trite law that an appeal is not an automatic stay of execution.

Since the appeal Civil Appeal No. 33 of 2005 contests the judgment debt and might or might not reduce the sums in it, the most the trial Judge should have done was to hear the parties in Civil Suit No. 125 of 2008. Moreover, the parties to the appeal are not the same as those in the present case. This was not done. In the premises, we consider that the learned trial Judge erred in dismissing the suit on the ground that *'it is a waste of Court's valuable time to stay the proceedings in this suit and a further delay of justice'*.

Regarding the existence of the appeal, we consider that this is a question for the appeal bench in Civil Appeal No. 33 of 2005 to decide. We note that the 1st appellant is a statutory body that was extinguished by operation of law. It is not clear to us whether the successor body came into being. If there is a successor body, then it may choose to pursue the appeal.

A related matter, which we consider should be decided by the appeal bench in Civil Appeal No. 33 of 2005, is whether a substitution of the defunct NPART should be made. We consider that we are not properly seized with this matter.

In conclusion, we answer the first issue in the negative. The question whether Civil Appeal No. 33 of 2005 survived the expiry of NPART is to be decided by the appeal bench in that Court. It is sufficient for us to note that it is pending in the Court of Appeal.

The second issue is not answered either way. The learned Judge did not stay proceedings in Civil Suit No. 125 of 2008. In fact, he dismissed the suit.

We answer issue No. 3 in the negative. The learned trial Judge had no jurisdiction to decide on a matter that is before the Court of Appeal. It is the bench in Civil Appeal No. 33 of 2005 that will make the determination whether the parties in that case should be substituted.

Lastly, we consider that the learned trial Judge erred in law when he dismissed Civil Suit No. 125 of 2008. It therefore hereby reinstated on the High Court docket. The matter should proceed before another Judge.

Before we take leave of the matter, we would like to note that to avoid multiplicity of suits, either the two suits in the High Court should be consolidated or NPART substituted with Attorney General and the decree holder then applies for execution. Regarding the appeal in this court, since it is the case for the appellant herein that NPART has ceased to exist, they should move court to strike out the appeal on that account. This court would then consider the matter and take appropriate action.

Order accordingly.

Dated this 15th day of January 2016

Signed by;

Honorable Justice A S Nshimye, JA

Honorable Justice Salomy Balungi Bossa, JA

Honorable Justice Kenneth Kakuru, JA

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Honorable Justice Solomy Balungi Bossa, JA

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