

**THE REPUBLIC OF UGANDA,  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CIVIL APPLICATION NO 101 OF 2021  
(Arising from Civil Application No. 100 of 2021)  
(Arising from Civil Suit No. 721 of 2020)**

10 **CHINA HENAN INTERNATIONAL  
COOPERATION GROUP COMPANY LTD} ..... APPLICANT**

**VERSUS**

**JUSTUS KYABAHWA} ..... RESPONDENT**

**RULING OF CHRISTOPHER MADRAMA, JA**

15 This application is for determination by a Single Justice under Rules 1 (2), 6  
(2), 42 (2), 43 (1) and 44 (1) of the Judicature (Court of Appeal Rules), section  
98 of the Civil Procedure Act and section 33 of the Judicature Act for an  
interim order be issued staying further execution of the decree in Civil Suit  
No 721 of 2021 pending the determination of the applicant's substantive  
20 application for stay of execution before the full bench. Secondly, the  
applicant prays for the costs of the application to be provided for.

The grounds of the application averred in the notice of motion are that:

1. That the applicant has lodged a notice of appeal, appealing against the judgment and orders of the High Court in Civil Suit No 721 of 2020.
- 25 2. The applicants intended appeal raises serious questions of law and fact and has a high likelihood of success.
3. The applicant on 30<sup>th</sup> March, 2021 received a garnishee order nisi issued via Miscellaneous Application No 392 of 2021 wherein all the applicants bank accounts in Stanbic bank were garnished.

- 5 4. The garnishee nisi order in Miscellaneous Application No 392 of 2021 was made absolute.
5. The applicant has been served with other 2 garnishee nisi orders against Uganda National Roads Authority and Guaranty Trust Bank (Uganda) Ltd.
- 10 6. The applicant's applications for stay of execution were dismissed by the trial judge.
7. The applicant has filed a substantive application praying for stay of execution of the decree in Civil Suit No 721 of 2020 pending the determination of the applicant's appeal.
- 15 8. The applicant's main application will be rendered nugatory if the respondent further executes the decree in Civil Suit No 721 of 2020 before the determination of the applicant's main application.
9. The applicant will suffer irreparable loss and/or damage if the execution of the said decree is not stayed pending the determination of the applicant's main application.
- 20 10. That the application is been made without any unreasonable delay.
11. That there is imminent threat of further execution of the decree before the hearing and determination of the applicant's main application and appeal.
- 25 12. That it is in the interest of justice that the further execution of the decree in Civil Suit No 721 of 2020 be stayed pending the determination of the main application.

The application is supported by the affidavit of Zhang Jinpai, the applicant's country manager in charge of running the day to day affairs of the applicant in Uganda. In the affidavit sworn in Kampala on 15<sup>th</sup> April 2021 he gives the facts and grounds of the application as follows:

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Zhang Jinpai states that he is conversant with the facts surrounding the matter and is authorised to swear the affidavit on behalf of the applicant company. The facts are that the respondent had instituted the suit against the applicant in Civil Suit No 721 of 2020 and on 19<sup>th</sup> March 2021 and the High

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5 Court delivered judgment in favour of the respondent. The applicant was  
dissatisfied with the decision and on 24<sup>th</sup> of March 2021 filed a notice of  
appeal in this court. The applicant also filed a letter requesting for the typed  
record of the proceedings for the purposes of prosecuting the intended  
10 appeal. On the basis of information of his lawyers he deposes that on 30<sup>th</sup>  
March 2021, they were served with a garnishee order nisi issued in High  
Court Miscellaneous Application No 392 of 2021 wherein all the applicant's  
bank accounts in Stanbic bank were attached. The garnishee order against  
Stanbic bank was made absolute on 9<sup>th</sup> April 2021. The applicant applied to  
15 the High Court for stay of execution and to set aside the garnishee  
proceedings in High Court Miscellaneous Application No 0 467 of 2021  
consolidated with the Miscellaneous Application No 481 of 2021 and the  
applicant's application is where dismissed on 9<sup>th</sup> of April 2021 by the learned  
trial judge.

On 12<sup>th</sup> April 2020 his lawyers were served with two garnishee orders nisi  
20 against the applicant, Uganda National Roads Authority and Guaranty Trust  
Bank (Uganda) Ltd threatening further execution of the court decree.  
Garnishee proceedings against the applicant and Uganda National Roads  
Authority, for hearing on 15<sup>th</sup> of April 2021 at 11 AM and the garnishee  
proceedings against the applicant and the Guaranty Trust Bank (Uganda)  
25 Ltd is coming up for hearing on 20<sup>th</sup> April 2021 at 9:30 AM in further  
execution of the court decree.

On the basis of advice of his lawyers he deposed that the applicant's  
intended appeal raises pertinent and substantial questions of law regarding  
breach of contract, validity of variation dates, grant of damages and general  
30 damages and it has a high likelihood of success. Further on the basis of  
advice of his lawyers the intended grounds of appeal are as follows:

1. The learned trial judge erred in law and fact when he held that the  
applicant breached the consultancy agreement between the parties.

- 5        2. The learned trial judge erred in law and in fact when he held that the variation deed between the parties entered on 14<sup>th</sup> of January 2019 was illegal, void and of no effect.
3. The learned trial judge erred in law and fact when he held that the applicant is indebted to the respondent in the sum of US\$900,000.
- 10       4. The learned trial judge erred in law and fact when he awarded the respondent damages of US\$200,000 for breach of contract.
5. The learned trial judge erred in law and fact when he awarded the respondent general damages of US\$250,000 for inconvenience.

The deponent further repeats the averments in the notice of motion.

15       In reply, the respondent Mr Justus Kyabahwa deposed to an affidavit in reply in which he states that he read and understood the notice of motion and the affidavit in support of the application. He further states that the garnishee order nisi issued in Miscellaneous Application No 394 of 2021 has been made absolute and the funds were duly transferred to his account on 9<sup>th</sup> of

20       April 2021 in compliance with the court order. In the premises and on the advice of his lawyers he deposes that there is nothing to stay in respect of that order and execution thereof is complete. As far as consolidated Miscellaneous Application Nos 467 and 481 of 2021 are concerned, the applications for stay of execution in the High Court were dismissed by the

25       learned trial judge after he considered the evidence on record and found that the application lacked merit. He further stated that the garnishee order nisi issued against the applicant and Uganda Roads Authority in Miscellaneous Application No 451 of 2021 has since been made absolute and the copy thereof Annexure "B" shows that it was issued on 15<sup>th</sup> April 2021.

30       The respondent deposed that he had substantially executed the decree with orders absolute being made with respect to money owing or accruing to the applicant in Stanbic bank Uganda Ltd and Uganda National Roads Authority amounting to over US\$1,000,000 and therefore there is no irreparable loss that would be suffered by the applicant by continuing with the garnishee

35       proceedings against it and Guarantee Trust Bank (U) Ltd. On that account

5 he is of the opinion that it is not reasonable to stay further execution of the decree.

On the basis of the advice of his lawyers Messieurs Crane Associated Advocates, the deponent states that the applicant has not demonstrated any likelihood of success in the main application which is supposed to preserve  
10 the status quo and prevent the application from being rendered nugatory. Further that the applicant has not demonstrated that it will suffer any substantial harm that cannot be compensated by an award of damages. Thirdly, the applicant has not provided any evidence of the inability of the respondent to refund any money paid to him during the course of execution  
15 of the decree in the event that the applicant succeeds in the appeal. Fourthly, the garnishee order nisi against the applicant and the Uganda National Roads Authority which is partly the basis of the application before the court has already been made absolute and execution completed.

The respondent deposed that the contest between the parties is of a purely  
20 monetary nature and the appeal would not be rendered nugatory by completion of execution since any money paid during the course of execution to the judgment creditor can always be refunded to the applicant in the event that they succeed in the appeal. Further the applicants will not suffer any irreparable harm that cannot be adequately compensated by an  
25 award of damages and he has the capacity to refund any money paid to him by the applicant in the course of execution if the applicant succeeds in the appeal. He further contends that there is no imminent threat of execution in so far as the garnishee order nisi against the applicant and the Uganda National Roads Authority has already been made absolute and execution  
30 completed. Because execution was substantially completed, there is no longer any imminent threat of execution.

The respondent further contends that the applicant's application was brought in bad faith in that on 4<sup>th</sup> of December, 2020 when the case was called for trial, the parties were ordered to file their trial material and  
35 evidence by 18<sup>th</sup> of December 2020 and the applicant refused to do so. On

5 21<sup>st</sup> January 2021 more than 40 days after the order for filing the trial materials and evidence had been made, the applicant had filed no evidence or trial materials. The applicant half-heartedly applied for extension of time within which to file the same and withdrew the same and proceeded to close its case without adducing any evidence in the case. When the respondent  
10 filed submissions, the applicant instead of filing submissions filed Miscellaneous Application No 99 of 2021 for exactly the same orders sought by way of an oral application to the court to extend time within which to file its evidence and trial material. Judgment of the court was delivered on 19<sup>th</sup> of March 2021 and the applicant filed Miscellaneous Application Nos 468 and  
15 467 of 2021 for an interim order of stay of execution and stay of execution respectively. The applicant and its counsel refused to accept service of the affidavit in reply in Miscellaneous Application No 467 of 2021 and his lawyers had to use other means to serve the applicant. Before the applications could be determined, the applicant in abuse of process and with intent to delay and frustrate execution, filed an identical Miscellaneous Application Nos  
20 490 and 481 of 2021 for interim order of stay of execution and for stay of execution. These applications were never served on the lawyers of the respondent. He therefore believes that the application before this court was filed in bad faith to frustrate the enjoyment of the fruits of the judgment of  
25 the respondent.

At the hearing of the application learned counsel Laston Gulume represented the applicant while learned counsel Mr Kalule Ahmed Mukasa appearing with learned counsel Mr Mugisha Akileo represented the respondent. The country representative of the applicant was in court and  
30 the respondent was also in court. The court was addressed by both counsel.

### **Submissions of the applicant's counsel**

The applicant's counsel submitted that the application was for an interim order pending the substantive application for stay of execution filed in this court before a full bench of the Court of Appeal. He submitted that the  
35 requirements for the grant of an interim order of stay of execution are as

5 held by the Supreme Court in **Hwang Sung Industries Ltd v Tajdin Hussein, Rainbow Foods Ltd and Nizar Hussein; Supreme Court Civil Application No 19/2008** have been fulfilled in that the applicant had shown that a substantive application is pending. Secondly, that there is a serious threat of execution before the hearing of the pending substantive application.  
10 Thirdly, it is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay of execution.

The applicant's counsel further relied on **E.B. Nyakana & sons Ltd vs Beatrice Kobusingye and 16 others Supreme Court Miscellaneous Application No 13 of 2017** for the requirements for the grant of a stay of execution in the interim pending the hearing of the substantive application. The requirements are that the applicant must demonstrate to the satisfaction of the court that a notice of appeal has been lodged in accordance with the rules of the court. Secondly, the applicant must show  
20 that the substantive application for stay of execution is pending before the court. Thirdly, the applicant must show that there is a serious threat of execution before the hearing of the substantive application. Fourthly the applicant must show that the application was filed without undue delay.

As far as the facts are concerned, learned counsel relied on the affidavit in support of the application to assert that there is a serious threat of execution before the hearing of the substantive application for stay as demonstrated in paragraphs 8, 9 of the affidavit in support of the application. Though there was a garnishee order absolute, counsel submitted that the respondents may not have received the payment yet and an interim order  
30 may be issued to stop them from receiving the money on the authority of **National Forestry Authority versus Muhereza Basaliza & 3 others; Court of Appeal Miscellaneous Application No 380 of 2018**. He submitted that there are 2 garnishee orders pending before the High Court and they pose a substantial threat of imminent execution.

5 Counsel further submitted that the application had been filed without undue delay and this is clearly demonstrated in the affidavit in support of the application.

In reply, the respondent's counsel Mr Kalule Ahmed Mukasa submitted that the purpose of an interim order is to prevent the abuse of court process  
10 are, to ensure that the orders in the main application are not rendered nugatory. He submitted that an interim order is not granted as a matter of course. He relied on the affidavit of the respondent for the assertion that the respondent undertakes to repay any money should the applicant to be successful on appeal. It follows that the applicant will not suffer irreparable  
15 loss and the order in the substantive application will not be rendered nugatory. Counsel further relied on the decision of the Court of Appeal of Kenya in **Kenya Shell Ltd versus Kibiru and another [1986 – 1989] EA 266** for the proposition that there was no evidence on record to justify a finding that the respondents were not likely to repay the decretal sum if the appeal was  
20 successful.

He further relied on **American Cynamid Co. versus Ethicon [1975] 2 W.L.R 316** for the principle that where the respondent is able to pay, the question of irreparable loss does not arise.

The respondents counsel further submitted that the main application is not  
25 likely to succeed because the applicant has not given sufficient particulars of what loss it is likely to suffer. He emphasised that the respondent is able to pay should the applicant succeed in the main application and in the appeal. In the circumstances, it would be unnecessary to grant an interim order where the decree has been substantially executed in that the  
30 respondent has already been paid a substantial amount of the decree in excess of US\$1,000,000. There is therefore no substantial or imminent threat of execution. He submitted that greater hardship would be occasioned to the respondent if the application is allowed.



5 Finally, learned counsel submitted that the applicant acted in bad faith during the proceedings in the High Court by trying to frustrate the progress of the suit as referred to in the affidavit in reply. He prayed that the application is dismissed with costs.

10 In rejoinder, the applicant's counsel Lastone Gulume submitted that the respondent's counsel seemed to be arguing the considerations for the grant of the substantive application. He prayed that the submissions are limited to the application for an interim order and the requirements thereof. Further, the case of **American Cyanamid versus Ethicon** (supra) does not apply to applications for an interim order as the particular case dealt with  
15 temporary injunctions and not stay of execution. He submitted that the likelihood of success of the appeal and of the substantive application and not considerations in an application for an interim order. Further irreparable loss is also not a consideration in an application for an interim order and was more relevant for temporary injunctions. Further the  
20 affidavit in reply has not given any evidence of receipt of money from Uganda National Roads Authority in the garnishee order absolute referred to and therefore an interim order can still be granted preventing the bank from paying that money.

25 On the issue of the likelihood of the success of the appeal, the respondents claim was for US\$900,000 and the learned trial judge awarded the respondent additionally US\$200,000 as compensation and a further general damages of US\$250,000 for breach of contract. He prayed that the court grants the application for stay of execution pending the hearing of the substantive application with costs in the cause.

### 30 **Resolution of Application**

I have carefully considered the facts of the application and the applicable law together with the submissions of counsel and authorities cited.

The facts are that the respondent sued the applicant claiming US\$900,000 and declarations that the applicant breached the party's consultancy

5 agreement dated 30<sup>th</sup> October 2015 by refusing to pay the full consultancy  
fees. Secondly, the respondent sought a declaration that the deed of  
variation of the consultancy agreement entered into by the parties on 14<sup>th</sup> of  
January 2019 is illegal, void and of no effect. Thirdly, the respondent prayed  
that the court finds the defendant/applicant liable to pay a sum of  
10 US\$900,000, damages for breach of contract and general damages for  
inconveniences. The respondent also sought payment of commercial  
interest on all the sums at the rate of 30% per annum from the time of  
breach of contract till payment in full together with costs.

Subsequently, the suit was allowed but there is no decree on the court  
15 record to establish what was exactly ordered. Suffice it to note that in the  
High Court Miscellaneous Application No 467 of 2021 consolidated with the  
Miscellaneous Application No 481 of 2021 arising from Miscellaneous  
application No 392 of 2021 also arising from High Court Civil Suit No 721 of  
2020, the learned trial judge considered an application for stay of execution  
20 in Civil Suit No 721 of 2020 pending the determination of the applicants  
appeal, that the garnishee order nisi issued in Miscellaneous Application No  
392 of 2021 be set aside and for costs. The learned trial judge dismissed the  
application for stay of execution with costs.

The applicants application indicates that on 9<sup>th</sup> April 2021 the registrar of the  
25 Commercial Division of the High Court issued a garnishee order nisi  
attaching money from Uganda National Roads Authority on an unpaid  
interim certificate No 09 amounting to Uganda shillings 800,000,000/= and  
US\$800,000 to satisfy the decree in High Court Civil Suit No 721 of 2020  
wherein it is indicated that a sum of US\$1,485,000 had been awarded as the  
30 decreed sum, being a total of the decreed sum, damages and interest  
without costs. Secondly, on 12<sup>th</sup> April 2021 another garnishee order nisi was  
issued against Guarantee Trust Bank (Uganda) Ltd holding all accounts in  
the names of the applicant in that bank to satisfy the decree in High Court  
Civil Suit No 721 of 2020 in which the total amount owing to the judgment  
35 creditor is US\$1,485,000.

5 For his part the respondent in paragraph 5 of the affidavit in reply stated  
that in High Court Miscellaneous Application No 392 of 2021, the garnishee  
order nisi was made absolute and there was nothing further to stay as far  
as that order is concerned. Secondly, the garnishee order nisi issued in  
10 Miscellaneous Application No 451 of 2021 has also been made absolute  
attaching money owed by Uganda National Roads Authority in Annexure "B"  
dated 15<sup>th</sup> of April 2021. Uganda roads authority was ordered to pay a sum  
of Uganda shillings 802,867,939/= and US\$811,066.16 in partial satisfaction of  
the decreed amount.

15 In the notice of motion the applicant indicates that the respondent was  
awarded a sum of US\$900,000 as money owing to the respondent, damages  
of US\$200,000 for breach of contract and further general damages of  
US\$250,000 for inconvenience.

The garnishee proceedings against guarantee trust bank (Uganda) Ltd is  
coming for hearing on 20 April 2021. In respect thereof, a garnishee order  
20 nisi had been issued but has not yet been made absolute.

The practice of the Court of Appeal when considering an application for an  
interim order pending consideration by the bench is fairly well trodden.

As held in the authorities cited by the Applicants Counsel, it has been held  
by the Supreme Court in **Uganda Revenue Authority versus Nsubuga Guster  
and another; Supreme Court Miscellaneous Application No 16 of 2018** that  
25 rule 2 (2) of the Judicature Supreme Court Rules gives the court very wide  
discretion to make such orders as may be necessary to achieve the ends of  
justice. Suffice it to note that this rule is in *pari materia* with rule 2 (2) of the  
Judicature (Court of Appeal) Rules. It was further held that one of the ends  
30 of justice is to preserve the right of appeal and to help the parties to  
preserve the status quo before their dispute can be considered on the  
merits by the full court according to the rules. The main concern is whether  
there is a serious threat of execution that may be levied before hearing of  
the substantive application.

5 The Court preserves the right of an intending appellant to have his or her appeal not rendered nugatory under **Rule 6 of the Judicature (Court of Appeal) Rules** as well as **Rule 2 (2)** of the rules of this court. The rationale for stay of proceedings was stated in **Wilson v Church (1879) Vol 12 Ch. D 454** and has been applied in innumerable decisions since then that:

10 As a matter of practice, where an unsuccessful party is exercising an unrestricted right of appeal, it is the duty of the court in ordinary cases to make such order for staying proceedings in the Judgment appealed from as will prevent the appeal if successful from being rendered nugatory.

15 (See decision of the Supreme Court of Uganda in **Constitutional Application No 03 of 2014; Hon. Theodore Ssekikubo and 4 Others v the Attorney General and 4 others.**)

It should be established that a notice of appeal has been lodged in this court in accordance with the Rules of Court. Indeed, the affidavit in support of the application in Annexure "B" attaches a notice of appeal that was lodged in  
20 the High Court on 24<sup>th</sup> March, 2021. The applicant also requested for a copy of the record of proceedings of the High Court in a letter dated 24<sup>th</sup> of March 2021 and filed in the High Court on 24<sup>th</sup> March 2021. Thirdly, the applicant demonstrated that it applied in High Court Miscellaneous Application No 467 of 2021 consolidated with High Court Miscellaneous Application No 481 of  
25 2021 for stay of execution pending appeal which application was dismissed by the High Court on 9<sup>th</sup> April 2021 by the learned trial judge. It is further not in dispute that the applicant lodged an application in this court in the Court of Appeal Miscellaneous Application No 100 of 2021 for stay of execution of the decree in Civil Suit No 721 of 2020 pending the determination of the  
30 applicant's appeal.

In this application the applicant seeks an interim order of stay of execution pending the hearing of the substantive application for stay of execution before the full bench.

5 In **Theodore Ssekikubo and 4 others versus the Attorney General and 4 others, Supreme Court Constitutional Application No 4 of 2014**, the Supreme Court held that the grant of interim orders is meant to help the parties preserve the status quo until the main issues between them are determined in the main application.

10 Jurisdiction to issue a stay of execution orders is expressed in Rule 6 (2) (b) of **The Judicature (Court of Appeal) Rules** which provides that:

6. Suspension of sentence and stay of execution

(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-

15 (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 the proceedings on such terms as the court may think just.

20 As noted above the applicant fulfilled the requirement to lodge a notice of appeal in accordance with Rule 6 (2) (b) of the Rules of this Court and also filed a substantive application for stay of execution. The matter was urgent and the applications were filed promptly. It was argued on 17<sup>th</sup> April 2021 on a Friday at 11.00 O'clock yet one of the matters sought to be stayed are garnishee proceedings fixed for 20<sup>th</sup> April 2021 to determine whether the  
25 garnishee order nisi attaching monies of the applicant in Guarantee Bank (Uganda) Ltd be made absolute.

30 Among the questions for consideration is whether the applicant's application has been overtaken by events. Secondly, the respondents counsel invited the court to consider the merits of the application on the likelihood of success of the appeal or the application for stay of execution. In the circumstances of this application, I only state that the grounds of appeal that the applicant intends to raise are substantial questions as to the quantum of compensation that had been awarded to the respondent. First of all, the principal claim of the respondent is US\$900,000. Additionally,

5 according to paragraph 11 of the affidavit in support of the application, the respondent was awarded damages of US\$200,000. Further, the respondent was awarded general damages of US\$250,000 for inconvenience. I do not have the decree to consider whether interest was also awarded. The documents indicate that a total of US\$1,485,000 is the sum owing to the judgment creditor. This is an additional US\$585,000. I have further considered the fact that in the garnishee order nisi dated 9<sup>th</sup> of April 2021 the unpaid interim certificate No 09 amounting to Uganda shillings 800,000,000/= and US\$800,000 due from Uganda National Road Authority (the garnishee) was attached to answer the decree. These amounts constitute over US\$1,000,000. I note that another garnishee order nisi is pending determination on 20<sup>th</sup> April 2021 wherein the money of the applicant in Guarantee Trust Bank (Uganda) Ltd was attached. 20<sup>th</sup> April, 2021 is tomorrow. It is not indicated how much money would be affected. Additionally, the applicants account in Stanbic bank had been attached by a garnishee order nisi in HCMA No 392 of 2021 which was made absolute and the amount involved is not indicated. The respondent has been vague about the amount of money he has received thus far and the court cannot indulge in guess work.

25 Generally, award of interest may be considered sufficient compensation under the principle of *restitutio in integrum* in respect of a claim for a liquidated amount. Further contractual interest may be the only compensation payable for delays in payment (See **Halsbury's laws of England Fourth Edition Reissue Volume 12 (1)** and paragraph 1063 thereof page 484, for the proposition that upon breach of contract to pay money due, the amount recoverable is normally limited to the amount of the debt together with such interests from the time when it became payable under the contract or as the court may allow. The rate of interest agreed to will be the measure of damages no matter what inconvenience the plaintiff has suffered from the failure to pay on the day payment was due. See also **Trans Trust S P R L v Danubian Trading Co Ltd [1952] 1 All ER 970** per Denning LJ said at Page 977 **Suisse Atlantique Société D'armement Maritime S A v N V**

5 **Rotterdamsche Kolen Centrale [1966] 2 All ER 61**, House of Lords, per Viscount Dilhorne at page 69 and Lord Reid at page 77).

Granted, general damages may also be claimed. These are matters that need to be investigated on appeal. I do not accept the submissions of the respondent's counsel that it is sufficient for the respondent to be able to  
10 refund the money if the applicant's appeal succeeds. The respondents counsel relied on the decision of the Court of Appeal of Kenya in **Kenya Shell Ltd versus Kibiru and another [1986 – 1989] EA 266**. In that matter the High Court awarded damages in the sum of Kenya shillings 201,380 and Kenya shillings 5002 to the respondents. The court found that the main ground on  
15 which stay would be granted that, if upon the determination of the appeal, and the respondent proceeded to execute the decree in the interim, the appeal would be rendered nugatory. The decision is clearly distinguishable on the ground that the applicant's application for stay of execution is the one that is in issue and not the main appeal. The applicant seeks a right of  
20 hearing before an order may be made granting or refusing the stay of execution pending appeal. The issue of the respondent being able to pay should be a consideration for the full bench. The application for stay of execution would be rendered nugatory if an interim order of stay of execution is not granted.

25 I accept the submissions of the respondent's counsel that an interim order of stay of execution should not be granted as a matter of course. For that reason, I have duly considered the submissions of the respondent's counsel that execution was completed in respect of certain garnishee proceedings. The respondents counsel cited my decision as a judge of the High Court of  
30 Uganda Commercial Division in **Unique Holdings Limited versus Business Skills Trust Limited; High Court Miscellaneous Application No 402 of 2012**. In that decision I considered the process of execution by garnishee proceedings. Garnishee proceedings are proceedings enabled by section 38 (c) of the Civil Procedure Act which provides *inter alia* that the court may  
35 order execution by attachment of debts. I will quote the Judgment in **Unique**

5 **Holdings Limited Versus Business Skills Trust Limited** (supra) extensively  
as it deals with in detail with garnishee proceedings and it reads as follows:

10 "The beginning point for resolution of this controversy is the consideration of the  
nature of execution proceedings and specifically the nature and effect of a  
garnishee order absolute. According to **Words and Phrases Legally Defined**  
volume 2 and 3<sup>rd</sup> edition London and Butterworth's 1989 at page 195-196 *the word*  
*"execution" in its widest sense signifies the enforcement of or giving effect to the*  
*judgments or orders of courts of justice.* Denning MR considered the word  
"execution" and completion of execution in the case of **Re Overseas Aviation**  
**Engineering (GB) Ltd [1962] 3 All ER 12 at page 16.** In that case he considered the  
15 effect of section 325 of the Companies Act 1948 on what was meant by completion  
of execution under that section. The section reads:

... "(1) ..."

20 ... "when a judgment creditor obtains a judgment charge on specific land of a  
company, he thereby issues "execution" against the land of the company". He goes  
on to say:

25 "The word "execution" is not defined in the Act. It is, of course, a word familiar to  
lawyers. "Execution" means, quite simply, the process for enforcing or giving  
effect to the judgment of the court: and it is "completed" when the judgment  
creditor gets the money or other thing awarded to him by the judgment. That this  
is the meaning is seen by reference to that valuable old book "Termes de la Ley",  
where it is said:

30 "Execution is, where judgment is given in any action, that the plaintiff shall  
recover the land, debt, or damages, as the case is; and when any writ is awarded  
to put him in possession, or to do any other thing whereby the plaintiff should the  
better be satisfied his debt or damages, that is called a writ of execution; and  
when he hath the possession of the land, or is paid the debt or damages, or hath  
the body of the defendant awarded to prison, then he hath execution."

35 The same meaning is to be found in **Blackman v Fysh** ([1892] 3 Ch at p 217), when  
Kekewich J said that execution means the "process of law for the enforcement of a  
judgment creditor's right and in order to give effect to that right". In cases when execution  
was had by means of a common law writ, such as *fieri facias* or *elegit*, it was legal  
execution: when it was had by means of an equitable remedy, such as the appointment of  
a receiver, then it was equitable execution. In either case it was "execution" because it  
was the process for enforcing or giving effect to the judgment of the court. Applying this  
40 meaning of the word "execution", I should have thought it plain that when a judgment



5 creditor gets a charge on the debtor's property, it is a form of "execution", for it is a means of enforcing the judgment."

10 ...the question of whether execution has been completed would depend on the wording of the statutory provision and the action taken by the judgment creditor. In this particular case we have to consider the provisions of Order 23 of the Civil Procedure Rules. We have to first of all consider order 23 rule 2 which gives the effect of a garnishee order in the following words:

"Service of an order that debts due to a judgment debtor liable under a decree be attached, or notice of the order to the garnishee in such manner as the court may direct, shall bind such debts in his or her hands"

15 The rule operates as soon as a service of the garnishee order nisi is served upon the bank. It attaches the money in the account of the judgment debtor with the garnishee bank pending proceedings to determine whether the garnishee order should be made garnishee absolute. Rule 2 deals with the attachment of debts. Attachment of debts of is a procedure for enforcement of execution provided for under section 38 (c) of the Civil Procedure Act. Section 38 of the Civil Procedure Act provides as follows: ...

20 Order 23 of the Civil Procedure Rules is entitled "Attachment of Debts". In the words of section 38 of the Civil Procedure Act, it is the procedure for enforcement of execution as provided for or prescribed by the Civil Procedure Rules.

25 Two further rules of order 23 of the Civil Procedure Rules have to be considered. These are order 23 rules 3 and 7 of the Civil Procedure Rules. Rule 3 provides that where the garnishee does not appear the court may levy execution against the person or goods of the garnishee to levy the amount due from him or her or so much of the amount due as may be sufficient to satisfy the decree together with the costs of the garnishee proceedings. Rule 7 provides as follows:

30 "Payment made by or execution levied upon the garnishee under any such proceedings as aforesaid shall be a valid discharge to him or her as against the judgment debtor to the amount paid or levied, although such proceedings or order may be set aside or the decree reversed."

35 In this particular case execution was levied upon the garnishee for the amount equivalent to the decreed amount plus costs of the garnishee proceedings and the garnishee bank paid the same to the account of the judgment creditor/respondent. Under the above rule the payment to the account of the judgment creditor/respondent was a valid discharge of the garnishee as against

5 the applicant/judgment debtor to the extent of the amount levied or paid out under the garnishee order absolute. Secondly, such proceedings or order may be set aside or the decreed reversed. The latter part of the rule is inapplicable in that there are no such proceedings to set aside the garnishee order absolute or the proceedings therefore.

10 A garnishee order absolute may only be set aside on specific grounds. Denning MR considered the procedure of garnishee in **Choice Investments Ltd v Jeromnimon (Midland Bank Ltd, garnishee) [1981] 1 All ER 225** at page 227 where he said:

15 "The word 'garnishee' is derived from the Norman-French. It denotes one who is required to 'garnish', that is, to furnish, a creditor with the money to pay off a debt. A simple instance will suffice. A creditor is owed £100 by a debtor. The debtor does not pay. The creditor gets judgment against him for the £100. Still the debtor does not pay. The creditor then discovers that the debtor is a customer of a bank and has £150 at his bank. The creditor can get a 'garnishee' order against the bank by which the bank is required to pay  
20 into court or direct to the creditor, out of its customer's £150, the £100 which he owes to the creditor.

25 There are two steps in the process. The first is a garnishee order nisi. Nisi is Norman-French. It means 'unless'. It is an order on the bank to pay the £100 to the judgment creditor or into court within a stated time unless there is some sufficient reason why the bank should not do so. Such reason may exist if the bank disputes its indebtedness to the customer for one reason or other. Or if payment to this creditor might be unfair by preferring him to other creditors: see *Pritchard v Westminster Bank Ltd* [1969] 1 All ER 999, [1969] 1 WLR 547 and *Rainbow v Moorgate Properties Ltd* [1975] 2 All ER 821, [1975] 1  
30 WLR 788. If no sufficient reason appears, the garnishee order is made absolute, to pay to the judgment creditor, or into court, whichever is the more appropriate. On making the payment, the bank gets a good discharge from its indebtedness to its own customer, just as if he himself directed the bank to pay it. If it is a deposit on seven days' notice, the order nisi operates as the notice.

35 As soon as the garnishee order nisi is served on the bank, it operates as an injunction. It prevents the bank from paying the money to its customer until the garnishee order is made absolute, or is discharged, as the case may be. It binds the debt in the hands of the garnishee, that is, creates a charge in favour of the judgment creditor: see *Joachimson v Swiss Bank Corp*n [1921] 3 KB 110 at 131, [1921] All ER Rep 92 at 102, per Atkin LJ. The money  
40 at the bank is then said to be 'attached', again derived from Norman-French. But the 'attachment' is not an order to pay. It only freezes the sum in the hands of the bank until the order is made absolute or is discharged. It is only when the order is made absolute that the bank is liable to pay."

5 According to Halsbury's laws of England volume 17 (1) fourth edition (reissue) paragraph 265:

"A final third party debt order is enforceable as an order to pay money."

10 The garnishee order absolute is an order to pay money. By that the garnishee bank was ordered to pay the respondent. This it did by transferring the money it had from the applicants account to the respondents account. From the above authorities I am persuaded that execution is a process. How that process operates to give effect or enforce the decree of the court is provided for by the law. In this case the process of execution is completed when the garnishee bank complies with a garnishee order absolute. The garnishee bank had complied with  
15 the order of the bank by asking the respondent to open an account and transferring the money to the respondents account.

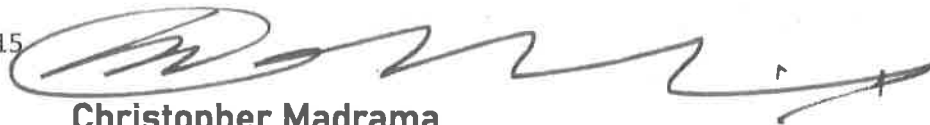
The above quotation is clear and the following highlights can be taken from it. The first is that execution is a process of the court and therefore the court only stays its own process in implementing the decree even if it directs that  
20 the judgment creditor not to carry out certain actions in realising what is decreed. Secondly, garnishee proceedings are proceedings for execution by attachment of debts. It is a two-step process in which money is attached by a garnishee order nisi. The garnishee order nisi puts an injunction on the money owing to the judgment debtor at the hands of the garnishee who may  
25 be the bank or any other person who owes money to the judgment debtor. Upon the garnishee order nisi being made absolute, it directs the debtor or the person owing money to the judgment debtor to pay the money to the judgment creditor. That payment is an absolute discharge of the person owing money to the judgment debtor. The execution process is complete by  
30 making the garnishee order nisi absolute. Thereafter the court has no further business because it has directed the money to be paid to the judgment creditor. In the circumstances, the order can only be set aside because it would be setting aside an order directing money that is in the hands of the garnishee to be paid to the judgment creditor. That order  
35 cannot be stayed. It can only be reversed or set aside. It is unknown whether the respondent received this money.

5 In the circumstances of this application, there is only one last order by way of garnishee order nisi putting an injunction on money belonging to the applicant at the hands of Guarantee Trust Bank (Uganda) Limited. The order has not yet been made absolute and therefore it can be stayed.

10 In the premises, I would grant an interim stay of execution staying any further execution of the decree thereby stopping any further payments not yet executed in High Court Civil Suit Number 721 of 2021 pending the determination by the full bench of Miscellaneous Application No. 100 of 2021 with costs in the cause.

Dated at Kampala the 19<sup>th</sup> of April, 2021

15

A handwritten signature in black ink, appearing to read 'Christopher Madrama', with a long horizontal flourish extending to the right.

**Christopher Madrama**

**Justice of Appeal**