

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 1069 OF 2023

5 **HARUNA SENTONGO:::APPLICANT**

VS

I & M BANK LIMITED

(formerly ORIENT BANK (U) LIMITED :::::::::::::::::::RESPONDENT

10 **BEFORE: CHRISTOPHER GASHIRABAKE JA**

(Sitting as a Single Justice)

RULING OF COURT

15 This Application was brought under Rule 2(2), 6(2), 42(1), 43, 44(1)
of the Judicature (Court of Appeal Rules) Directions seeking for
orders at;

20 1. An interim order doth issue staying the execution of the decree
of the High Court (Commercial Division) in Consolidated Civil
Suits No. 464 of 2018 and No. 036 of 2019 until the
determination of Civil Reference No. 023 of 2023 and Civil
Application No. 113 of 2023 by a bench of three (3) Justices of
Appeal; and



2. Costs for this application be provided for.

The grounds upon which this application is premised are set out in the Notice of Motion and the affidavit in the support of the application deposed by the Applicant, Mr. HARUNA SENTONGO and are briefly
5 that;

1. On 23rd December 2022, the High Court (Commercial Division) in consolidated Civil Suits No. 464 of 2018 and No. 036 of 2019 delivered its judgment in favor of the Respondent.

2. The Applicant was dissatisfied with the said decision of the
10 High Court and accordingly filed Civil Appeal No. 001 of 2023 in this Honorable Court and the same is pending hearing and determination.

3. On 14th March 2023, the Respondent advertised the Applicant's property comprised in Kibuga Block 12 Plots 250,
15 251 and 252 for sale.

4. The Respondent has further filed its bill of costs in the High Court (Commercial Division) vide High Court Taxation Application No. 158 of 2023 and the same has been fixed for hearing.

20 5. On 27th March 2023, the Applicant filed Civil Application No. 113 of 2023 seeking an order staying the enforcement and/or execution of the judgment, decree and orders of the High Court in Civil Suit No. 464 of 2018 and Civil Suit No. 036 of 2019 and or restraining the Respondent from taking any steps
25 or carrying out any actions of any nature, capable of



interfering with, or affecting Civil Appeal No. 001 of 2023 until the hearing and determination of the appeal.

6. On 19th March 2023, His Lordship Hon. Justice Oscar John Kihika allowed Civil Application No. 113 of 2023 in part by granting the Applicant a temporary injunction restraining the Respondent from carrying out any steps or interference with the suit property comprised in Block 12 Plots 251 and 825 Mengo and Block 12 Plot 250 Mengo until the hearing and determination of Civil Appeal No. 001 of 2023 but declined to issue an order of stay of execution to the Applicant.
7. On 27th September 2023, the Applicant filed a reference seeking to refer the Applicant's application for an order of stay of execution in Civil Application No. 113 of 2023 to a bench of three (3) Justices of Appeal for hearing and determination and variation of the decision of the single Justice of Appeal.
8. The Applicant's reference and application for extension of time within which to file the same are pending determination by this Honorable Court.
9. The Applicant's appeal is meritorious, raises serious questions and has a high likelihood of success.
10. The Applicant's reference is equally meritorious and has a high likelihood of success.
11. There is a serious and imminent threat of execution of the decree and orders of the High Court in Consolidated Civil Suits No. 464 of 2018 and No. 036 of 2019.

12. The Applicant filed a substantive application for stay of execution of the decree of the High Court (Commercial Division) in Consolidated Civil Suits No. 464 of 2018 and No. 036 of 2019 vide Civil Application No. 113 of 2023 and the same is pending hearing and determination by a bench of 3 justices of this Honorable Court in Civil Reference No. 113 of 2023.

13. The Applicant shall suffer irreparable damage and/ or substantial loss if this application is not granted.

The respondent filed an affidavit in reply deposed by MUSHEMEZA CHEGUEVARA of Kampala Associated Advocates sworn on 20th October 2023 opposing the application and stated briefly that;

1. The Respondent has not taken any steps to execute the Judgment of Court in Consolidated Civil Suits No. 464 of 2018 and 36 of 2019 and the above application is premature.

2. On the 22nd day of February, 2016, the Applicant obtained a facility worth UGX. 5,000,000,000(Uganda Shillings Five Billion only). This facility was in addition to other facilities already obtained by the Applicant. The aforementioned facility was secured by property comprised in Block 12 Plots 251 and 825 Mengo and Block 12 Plot 250.

3. The facility was for construction of a mall on Kibuga Block 12 Plots 250 and 251 Mengo, however, it was misapplied by the Applicant to construct on an adjoining plot Kibuga Block 12 Plots 252, land at Kisenyi.

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4. On the 16th may, 2016, the Applicant obtained a further overdraft facility for UGX. 100,000,000 for the completion of a shopping mall on Block 12 Plots 250 and 251 Mengo, Kisenyi.
5. The Applicant through a letter dated 26th May 2016 requested for financing of UGX. 1,500,000,000. On the 5th July, 2016, he obtained a further facility worth UGX. 1,500,000,000(One billion, Five Hundred Million Shillings) and it was secured by properties comprised in Block 12 Plots 250, 251, and 252 Mengo Kisenyi.
6. As a condition of facility dated 5th July,2016, the Applicant through this letter dated 14th July,2016, undertook to route rental proceeds from Segawa Mall (Plots 250, 251 and 252 Kibuga Block 12) through the Respondent.
7. Upon failing to meet his loan repayment obligations, the Applicant through a letter dated 14th October 2016 requested for consolidation of his existing loans with the Respondent into one term loan with a single monthly instalment amortized for a period of 5 years.
8. That the Respondent through its letter dated 18th October 2016 referred to the Applicant's request for amalgamation and informed him its acceptance of the amalgamation and that his account was in excess of UGX, 184,903,184/= (Uganda Shillings One Hundred Eighty-Four Million Nine Hundred Three Thousand One Hundred Eighty-Four only). The Respondent demanded the payment of the outstanding within 30 days.
9. That the Respondent amalgamated the Applicant's loans and offered him a loan facility in its letter dated 12th October 2016

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consolidating the Applicant's loan facilities as per offer letters OBL/ADV-3952/112/112 dated 5th July, 2016 for term loans UGX. 2,805,883,000/- (Uganda Shillings Two Billion Eight Hundred Five Million Eight Hundred Eighty-Three Thousand only) and UGX. 6,439,629,000 (Uganda Shillings Six Billion Four Hundred Thirty-Nine Million Six Hundred Twenty-Nine Thousand); and overdraft of UGX. 450,000,000 (Uganda Shillings Four Hundred Fifty Million only).

10. That the Applicant continued to unsatisfactorily meet his monthly repayment obligations and the Respondent issued a notice of default dated 22nd December, 2016.

11. That after persistent default and failure by the Applicant to meet his monthly repayment obligations for close to a year, the Respondent issued the Applicant with a notice of default through its former lawyers dated 15th June, 2017 demanding for the repayment of the entire outstanding of UGX. 10,294,334,391/- Uganda Shillings Ten Billion Two Hundred Ninety-Four Million Three Hundred Thirty-Four Thousand Three Hundred Ninety-One only).

12. On the 23rd day of December 2022, the High court delivered its judgment in consolidated Civil Suits No. 464 of 2018 and Civil Suit No. 36 of 2019 wherein it decreed and ordered that the Applicant, Mr. Haruna Sentongo, is indebted to the Respondent, I & M Bank (Uganda) Limited formerly Orient Bank Limited in the sum of UGX. 10,384,308,959 (Ten Billion Three Hundred Eighty-

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Four Million Three Hundred Eight Thousand Nine Hundred and Fifty-One).

13. The Applicant filed an appeal in this court vide Civil Appeal No.0001 of 2023 against the decision of the High Court and filed Civil Application No. 113 of 2023 seeking an order of stay of enforcement and or execution of the Judgment and Decree of the of the High Court.

14. Court, in its ruling dated 19th May 2023 granted an order of a temporary injunction restraining the respondent from carrying out any steps or interference with the suit property in Civil Suits No. 464/2018 and 36/2019.

15. Dissatisfied with the said ruling of the single justice, the Respondent filed a Reference vide Civil Reference No. 005 of 2023 for reference of Civil Application No. 113 of 2023 to a panel of three Justices and the same is still pending.

Background

In December of 2015, the Applicant embarked on a project of constructing a commercial property known as Segawa Market, on land situated on Kibuga Block 12 Plots 250 & 251, Kisenyi. The Applicant approached the Respondent for a financial facility for completion of the commercial blocks for Segawa Market, which was to be rented out to tenants to derive rental income. Both parties executed a facility letter dated 22nd February, 2016, for a Loan of UGX 5,000,000,000 (Five Billion) and it was agreed, that the facility would only be serviced through rent collections from Segawa Market

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if the Respondent Bank funded the development. It was the Applicant's case that the Respondent Bank breached the facility contract by failing to disburse the agreed sums of monies.

According to the Applicant, the Respondent Bank would purport to credit his account, and synonymously liquidate the loan, paying itself back immediately with the sums credited, and the sums it would repay itself were always reflected as "Loan amounts recovered". The Respondent Bank on the other hand, claimed that between February to October 2016, the Applicant was granted several loan facilities. These loan facilities were, at the request of the Applicant, consolidated into one term loan with a single monthly instalment amortized for a period of five years. The Applicant, however, failed to meet his loan repayment obligations consequent upon which the Respondent Bank issued with two notices of default; one on the 22nd of December 2016 and the other on 15th June 2017.

The Applicant then instituted Civil Suit No. 464 of 2018 in the High Court of Uganda disputing the credit facilities granted to him by the Respondent. The Respondent, in turn instituted High Court Civil Suit No. 036 of 2019 against the Applicant seeking to recover the sum of UGX 10,384,308,959/= on account of the credit facilities advanced to the Applicant.

Both suits were consolidated and on the 23rd of December 2022, judgment entered in favor of the Respondent wherein the Applicant was ordered to pay the sum of UGX 10,384,308,959 being the



decretal sums owing to the Respondent and UGX 150,000,000/= as general damages.

The Applicant then filed in the High Court Miscellaneous Application No. 009 of 2023 seeking for orders of stay of enforcement and execution of the orders of the court. On the 10th of February 2023, the Court granted the Applicant's application for stay of execution on condition that the Applicant deposits a Bank Guarantee for the sum of UGX 7,227,479,035.464 within one month form the date of the ruling. The Applicant,failed to comply with the conditions as stipulated by the Court order.

The Applicant then filed Civil Appeal 001 of 2023, appealing the decree and orders in consolidated Civil Suits No.464/2018 and No.036/2019. The Applicant also filed the instant application in which he seeks an order of stay of enforcement and or execution, staying enforcement, and execution of the Judgment, Decree and or Orders of the High Court, made in **Haruna Sentongo Vs Orient Bank (U) Ltd, Civil Suits HCCS No. 464/2018 and HCCS No. 036/2019** and or restraining the Respondent from taking any steps or carrying out any actions of any nature, capable of interfering with, or affecting Civil Appeal No. 0001 of 2003, until the hearing and determination of Civil Appeal No. 1 of 2023.

The Applicant filed Civil Application No. 113 of 2023 seeking for an order of stay of enforcement and or execution of the Judgment and Decree of the of the High Court and the court granted an injunction against the respondents from interfering with the suit property but

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denied a stay of execution. The Respondent filed Civil Reference No. 005 of 2023 for reference of Civil Application No. 113 of 2023 to a panel of three Justices and the same is still pending. The Applicant also filed Civil Reference No. 023 of 2023 for reference of Civil Application No. 113 of 2023 to a panel of three Justices and also filed this Application for interim stay of execution pending the determination of Civil Reference No. 23 of 2023. The Applicant also filed Civil Application No. 1062 of 2023 for extension of time and/or validation of Civil Reference No. 023 of 2023.

Representation

At the hearing of this application, Derrick Bazekuketta appeared for the Applicant, with the Applicant in attendance, while Bruce Musinguzi and Joachim Kunta Kinte appeared for the respondent. Both counsel submitted orally at the hearing of the Application and I commend them for their presentations which were delivered with remarkable precision and eloquence.

Applicant's Submissions

Mr. Bazekuketta submitted that the instant application seeks to stay execution pending determination of Civil Reference Number 023 of 2023 which reference seeks for the determination of Civil Application Number 113 of 2023 by a bench of three (3) Justices of Appeal. He submitted that there are three grounds upon which applications of this nature are granted and these include; there must be a competent notice of appeal, the substantive application for stay of execution and existence of a serious threat of execution as were summarized by the

Supreme Court in **Zubeda Mohammed and another Vs Lalia Kaka Walia & Anor ,Supreme Court Civil Ref. No. 7 of 2016.**

Counsel submitted that a Notice of Appeal was filed together with a Memorandum of Appeal vide Civil Appeal No. 001 of 2023. Regarding
5 the existence of a substantive application for stay of execution, counsel submitted that the Applicant filed Civil Reference Number 023 of 2023 which is pending before this court. That the reference put Civil Application Number 113 of 2023, the application for a stay of execution before a panel of three justices and under civil reference
10 system once an applicant files for a reference, the substantive application determined by a single justice is put in issue and becomes pending before the court.

Mr. Bazekuketta relied on the Supreme Court decision in **Goodman Agencies Ltd vs. Hasa Agencies (K) Ltd, Civil Reference No. 1 of**
15 **2011** for the proposition that when a reference is made, the substantive application from which it arises is put before court and the same application is fixed for hearing. Counsel submitted that they also filed an application for validation of the Civil Reference vide Civil Application No. 1062 of 2023 which is also pending before this
20 court and argued that pendency of an application for leave does not affect an application for an interim order.

Regarding serious threat of execution, counsel submitted that the respondent has filed a bill of costs in High Court vide Taxation Application Number 158 of 2023 and the same has been fixed.
25 Counsel argued that in the taxation application, the Respondent

seeks over 1 billion shillings in costs only. Counsel submitted that whereas the Respondent averred in the affidavit in reply that taxation does not constitute a serious threat of execution, the Supreme Court decided otherwise in the case of **Osman Ramathan vs. Century Bottling Company Ltd, Supreme Court Civil Application Number 35 of 2019**. The Supreme Court held that execution is a process and not an event and one of the processes of execution is taxation of costs.

Respondent's submissions

10 In reply, Mr. Musinguzi submitted that the conditions for the grant of an interim order of stay of execution are that there should be a competent Notice of Appeal or competent reference, a substantive application and a threat of execution. Counsel argued that the Applicant filed an application for extension of the time to have filed
15 Reference Number 23 of 2023, which is supposed to be the basis of the application and submitted that civil reference No. 23 of 2023 is not competent before this court for having been filed out of time. Counsel relied on **Rule 55(1)** of the **Court of Appeal Rules Directions** which provides that such a civil Reference has to be filed
20 within a period of 7 days. In that regard, counsel submitted that there is no competent appeal before the court.

Counsel relied on the decision in **Osman Kassim Ramathan Vs Century Bottling Company, Civil Application No. 34 of 2019** in which the interim order dated 13th March 2020 in Misc. Application
25 Number 35 of 2019, which was cited by Mr. Bazekuketta was

vacated. Counsel argued that the Applicant had to attach Civil Application No. 1062 so that both the court and the respondent have an idea of the basis of the application so that court can ascertain whether it is actually frivolous or not.

5 While arguing the existence of a substantive application, Mr. Musinguzi submitted that the applicants do not have a substantive application in this case because Civil Application Number 113 of 2023 was heard and determined by Justice Oscar Kihika and as such, there is no pending substantive application from which the
10 interim arises.

Counsel submitted that there is no threat of execution in the instant case. **Section 38** of the **Civil Procedure Act** lists all manner of execution and does not include taxation of a bill of costs as a form of execution. Counsel relied further on the decision in **Mohammed**
15 **Mohammed Hamid Vs Roko Construction Ltd, Misc. Cause No. 18 of 2017** for the proposition that taxation does not amount to a threat of execution and the court found that the applicant therein had not adduced any evidence of execution of the judgment.

Applicant's submissions in rejoinder

20 Mr. Bazekuketta submitted that **Civil Application Number 35 of 2019 Osman Kassim Rmathan Vs Century Bottling Company** and **Civil Application Number 34 of 2019** are two different applications. No. 34 of 2019 was a substantive application while No. 35 of 2019 was the interim application and once a substantive application is
25 determined, the interim order ceases to apply and that explains why

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it was vacated. That the order in **Civil Application Number 35 of 2019** was not vacated by a panel of three justices by way of reference.

Counsel submitted that the applicant's Civil Application Number 1062 of 2023 is for extension of time within and/or validation of Civil
5 Reference No. 23 of 2023 and this application was alluded to by the Respondent in paragraph 10 of the affidavit in reply. In paragraph 10 of the affidavit in reply, the applicant stated that there is an application for extension of time within which to file the reference and reference was made to civil application number 1062 of 2023
10 and as such, the Respondent cannot deny that the application for extension of time does exist.

Consideration of the Application

The jurisdiction of this Court to grant an order of interim stay of execution derives from **Rule 2(2)** and **Rule 6 (2)** of the Rules of this
15 Court. Under these Rules, this Court is given wide powers to exercise its jurisdiction for the ends of justice. Okello, JSC set out the requirements which ought to exist before an interim stay of execution can be granted in **Hwan Sung Industries Ltd V Tajdin Hussien and 2 others SCMA No. 19 of 2008** which was cited with approval in
20 **Francis Drake Lubega V The Attorney General & 2 others Supreme Court Misc. Application No.13 of 2015**; that 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
25 application.

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At this stage, it is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.

The Supreme Court had earlier in **Dr. Ahmed Muhammed Kisuule V Greenland Bank (In liquidation) Supreme Court Civil Application No. 7 of 2010** stated that for an application in this Court for a stay of execution to succeed the applicant must first show subject to other facts in a given case, that he/she has lodged an appeal.

Notice of Appeal

The first consideration for court to grant an interim order of stay of execution is to ascertain whether the Applicant has filed a Notice of Appeal. The instant application arises out of Civil Reference No. 023 of 2023, which referred the decision of a single Justice in Civil Application No. 113 of 2023 to a panel of three Justices. The Applicant also filed Civil Application No. 1062 seeking to validate and/or extend time within which to file the Civil Reference No. 023 of 2023. The respondent contends that this application is incompetent before this court for reasons that the Civil Reference from which it arises was filed out of time.

The Applicant has however filed an application for validation of the Civil Reference vide Civil Application No. 1062 of 2023 and alluded to the same in paragraph 10 of the Applicant's affidavit in support of the application. I note that the Respondent did not respond to paragraph 10 of the Applicant's affidavit in support, but the



Respondent's counsel, in his submissions was able to refer to Civil Application No. 1062 which he rightly noted is an application for extension of time and not a substantive application for stay of execution.

5 This court in **Krone Uganda Ltd Vs Kerilee Investments Ltd Miscellaneous Applications No. 66 and 67 of 2020** was faced with a somewhat similar issue. In that case, the Applicant filed an application for stay of execution arising out of an appeal in which no right of appeal existed. the application arose out of an order granted
10 under Order 22 rule 23(3) of the Civil Procedure Rules which was not appealable to the Court of Appeal as of right. The applicant thus filed a Notice of Appeal, an application for leave to appeal and an application for an interim order of stay of execution. The learned Justice granted an order of stay of execution having considered that
15 it suffices for there to be an application for leave to appeal pending before court.

Likewise in **G Vs C, Supreme Court Civil Application No. 03 of 2013**, the Applicant filed an application for stay of execution and an application for validation of the appeal. The Respondent opposed the
20 application for interim stay of execution on grounds that the application was not tenable since there was no Notice of Appeal filed in accordance with the Rules. Hon. Justice Katureebe, (CJ) (E) held as follows;

25 ***"I am satisfied that the applicant has filed two applications in this court for stay of execution and for***

validation of the appeal that was already filed in this court. I cannot at this stage inquire into the merits of those applications, but I am of the opinion that in the interests of justice, they should be heard.”

5 In **Katayira Francis Vs Rogers Bosco Bugembe, Supreme Court Civil Reference No. 09 of 2017** the Applicant filed a Civil Reference against the decision of a single Justice dismissing and application for an interim order of stay of execution. In its ruling, the panel of three Justices of the Supreme Court held as follows;

10 ***“The learned single Justice was alive to the case of Zubeda Mohammed (Supra) on which she heavily relied. However, the learned Justice delved into matters, related to whether the applicant had an automatic right of appeal and whether the applicant had an appeal at the Court of***
15 ***Appeal after his notice had been struck out. Respectfully we find those were beyond the scope of the application before her. She went into the merits of the appeal in determining the appeal itself.”***

In the same respect, the applicant before me has filed an application
20 vide Civil Application No. 1062 of 2023 which he referred to in paragraph 10 of the affidavit in support to be an application for extension of time.

It is not necessary, in my view, for me to delve into the merits of the application for extension of time which will be heard by a full bench.
25 It is sufficient enough that the applicant has filed an application for

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extension of time and/or validation of the Civil Reference. I note that the Applicant has also filed a Notice of Appeal and a Memorandum of Appeal filed in this court in Civil Appeal No. 1 of 2023. I therefore find that the applicant has satisfied the first condition.

5 **Existence of a substantive application for stay of execution**

The Applicant's counsel submitted that the substantive application from which this application arises is Civil Application No. 113 of 2023. **Haruna Sentongo Vs I& M Bank (formerly Orient Bank Uganda Ltd), Civil Application No. 113 of 2023** was heard and
10 determined by this court before Hon. Justice Oscar Kihika. For proper determination of this element, it is necessary for me to go briefly into the reference system in this court, being an appellate court.

Rule 55 (1) (b) of the Judicature Court of Appeal Rules Directions
15 provides as follows;

55. Reference from decision of a single judge.

(1) Where under section 12(2) of the Act, any person being dissatisfied with the decision of a single judge of the court—

20 ***(a) ...***

(b) in any civil matter wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the court, the applicant may apply for it informally to



the judge at the time when the decision is given or by writing to the registrar within seven days after that date.

When a reference is filed under Rule 55 above, the application that was heard by the single Justice is placed before a panel of three justices. The Supreme Court clarified this principle in the case of **Goodman Agencies Ltd Vs Hasa Agencies (K) Ltd Civil Reference No. 01 of 2011**. The learned Justices of the Supreme Court held as follows;

The procedure which is to be followed is as follows: Where an oral application for a reference is made before a single Judge, that Judge should pass the file to Registrar with direction that the number of appropriate copies of pleadings and proceedings before him or her be produced so that the application is fixed for hearing by three Justices. Where an application in writing is made to the Registrar, the Registrar shall ensure that an appropriate number of copies of the pleadings and proceedings before the single Justice is produced after which the application is fixed for hearing. Thereafter the parties should be served with hearing notices.

In essence, a party filing a reference is not required to file a fresh application. The application that was determined by the single Justice is the very application placed before a panel of three justices. This essentially means that the application will now be pending before a panel. Civil Application No. 113 of 2023, which was



determined by a single Justice is the same application that is now pending before a panel of three justices by virtue of filing Civil References No. 005 and No. 023 of 2023.

It is therefore my considered view that there is a substantive application pending in this court vide Civil Application No. 113 of 2023 which was placed before the panel by virtue of Civil Reference No. 023 of 2023.

Existence of a serious threat of execution

The Respondent contends that there is no threat of execution and that the Respondent has not taken any steps to execute the decree in Consolidated H.C.C.S No. 464 of 2018 and No. 036 of 2019. On his part, the Applicant alleges that the Respondent has filed a bill of costs in the High Court vide Taxation Application Number 158 of 2023 and the same has been fixed for hearing on 27th November 2023.

Both counsel had heated arguments on the applicability of **Osman Kassim Ramathan Vs Century Bottling Company, Supreme Court Civil Application No. 35 of 2019**, the application for interim stay of execution, and **Osman Kassim Ramathan Vs Century Bottling Company, Supreme Court Civil Application No. 34 of 2019** an application for a substantive application for stay of execution. Mr. Bazekuketta relied on **Osman Kassim Ramathan Vs Century Bottling Company, Civil Application No. 35 of 2019** in which an interim order of stay of execution was granted by His Lordship Justice Ruby Opio Aweri (RIP). The Respondent, in that case,



contended that there was no threat of execution in that mere taxation of costs did not constitute any threat of execution. His Lordship held that;

5 ***“With greatest of respect, it is not true that taxation of costs is not a threat imminent or otherwise, of execution.***

Execution is a process and not an event. One of the processes of execution is taxation of costs. Execution in its widest sense signifies the enforcement of or the giving effect to the judgments or order of Courts of Justice. Blacks’s Law Dictionary 5th Edition defines execution in the following terms:-

10 ***“..... it is the carrying out of some act or course of conduct to its completion and putting into force, completion, fulfillment, or perfecting of anything or***
15 ***carrying it into operation and effect”.***

It is clear from the above definition that taxation of costs is a process of law for the enforcement of or giving effect to judgments or orders of a Court of justice and accordingly constitutes imminent threats to execution.”

20 Mr. Musinguzi relied on **Supreme Court Civil Application No. 34 of 2019 Osman Kassim Ramathan Vs Century Bottling Company** and argued that the interim order in Civil Application No. 35 of 2019 was vacated and should no longer be an authority.

For clarity, I must state that an interim order of stay of execution is granted by court pending the determination of the substantive application for stay. Thus, the validity of an interim order comes to an end when the substantive application is heard and determined by the court. When the substantive application in **Osman Kassim Ramathan Vs Century Bottling Company, Supreme Court Civil Application No. 34 of 2019** was heard by the panel, their Lordships dismissed the application and issued an order vacating the interim order as earlier granted by Justice Ruby Opio Aweri (RIP) in **Supreme Court Civil Application No. 35 of 2019**. The order was vacated by the determination of the substantive application for stay of execution. I therefore do not agree with Mr. Musinguzi that the determination of Civil Application No. 34 of 2019 rendered the ruling in Civil Application No. 35 of 2019 unauthoritative.

An interim order granted by a single Justice is only vacated when a party successfully files a reference to a panel against the decision of a single Justice and the same is heard and determined or when the substantive application is determined by court. In the case of a reference, the decision of a panel replaces the decision of a single Justice and accordingly, the ruling of the single Justice is set aside and is therefore unauthoritative. On the other hand, the determination of the substantive application does not nullify the ruling of the single Justice but rather brings the life of the interim order to an end. The ruling of the single Justice remains authoritative as far as applications for interim orders are concerned. This means

that the ruling in Civil Application No. 35 of 2019 is good law for reasons that no reference was filed against it.

In **The Registered Trustees of The Hindu union Vs Kagoro Epimac and 2 others, Civil Application No 304 of 2017**, this court, while

5 granting an order of stay of execution, held that;

“Counsel has also extracted a decree arising from the said Judgment and has further lodged a bill of costs for taxation purposes in the High Court. In my opinion, this is being done in preparation for execution of the award. I am
10 ***satisfied that special circumstances exist for the grant of interim stay of execution in this matter.”***

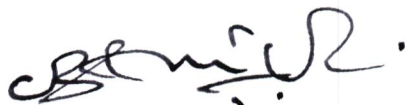
It is my considered view that taxation of the bill of costs is the first step to realization of the fruits of a judgment. Execution without taxation would be premature. In the instant case, it is not disputes
15 that the Respondent filed the bill of costs and the same has been fixed for hearing. I find that the Applicant has proved that there is a serious threat of execution.

In conclusion and for the foregoing reasons, I find that the Applicant has met the conditions for the grant of an interim order of stay of
20 execution. I am fully aware that Rule 2(2) of the Rules of this Court confers upon the court discretionary powers in the pursuit and fulfillment of the exercise of substantive justice. I therefore allow this application and make the following orders;

1. An interim order is hereby granted staying the execution of the decree of the High Court (Commercial Division) in Consolidated Civil Suits No. 464 of 2018 and No. 036 of 2019 until the determination of Civil Reference No. 023 of 2023 and Civil Application No. 113 of 2023 by a bench of three (3) Justices of Appeal.
2. The Applicant shall be required to comply with regulation 13(1) of the Mortgage Regulations No. 2/2021
3. The Registrar of this court is directed to fix Civil Reference No. 023 of 2023 in the nearest available session
4. Each party shall bear its own costs.

Dated this 18th day of November 2023

Signed



Christopher Gashirabake
JUSTICE OF APPEAL