

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-CA-0852-2012

(Arising out of MISC. CAUSE NO. 0454 of 2012)

KOLIN INSAAT TURIZM}..... APPLICANTS
SANAYI VE TICARET A.S. }
VERSUS

ABACUS AFRICAN VACATIONS LTD RESPONDENTS

BEFORE HON. MR. JUSTICE MASALU W. MUSENE

RULING:

This was an application by Kolin Insaat Turizm VE Ticaret A. S. (Applicant/Judgment Debtor). Under O. 22 r 23 (I) and Rule89 (I) of the Civil Procedure Rules and S. 98 of the Civil Procedure Act for Orders that:-

- (i) Execution of the decree in Civil Suit No 545 of 2012 be stayed.
- (ii) The Judgment and Decree in Civil Suit No 545 of 2012 be set aside.
- (iii) The Applicant be given leave to file a defence out of time.
- (iv) Costs of the Application.

The Respondent Judgment Creditor is Abacus African Vacations. The Applicant was represented by M/s Claire Amanyama and Mr. Duncan Ondipo, while Mr. David Kagwa appeared for the Respondent.

M/s Claire Amanyama submitted that the grounds in support of the Application as set out in supporting affidavit by Tatatay GAG were that the Applicant was never validly or legally served with any court process in the main suit or at all, and was therefore not given the

opportunity to be heard. The other ground was that the Applicant has a good defence to the main suit which should be heard on the merits. She also referred to paragraph (7) of the supporting affidavit, to the effect that the Applicant came to learn about the suit when served with warrant of attachment and sale on 19/12.2012. and that without delay, filed an application for stay of execution.

She concluded that sufficient cause of Applicant not being valid served had been shown as defendant was not served in person. She challenged the service of the court process on the receptionist of the Applicant. She quoted the case of **August Okurut Vs Gerald Wasula and Produce Marketing Board (1998-1990) HCB 164**; where it was held that service on the secretary of the General Manager was not effective service. M/s Claire Amanyanya also submitted that the Applicant has given security for due performance of the decree of Shs76,640,000/=.

In reply, Mr. David Kagwa for the Respondent opposed the application on ground that service was effective as per the affidavit of service on record. He also submitted that there are not triable issues disclosed, and that in the event the court is inclined to allow the application, then further security be deposited in court.

This court has considered the submissions on both sides and I have also read through some of the decided cases quoted by M/s Claire Amanyanya for the Applicant. One of the cases as **Dr. Ahamed Muhamed Kisule Vs Greenland Bank, C. A. No. 11 of 2010** which set out the conditions to be satisfied if an application for stay of execution is to be granted. They are:-

- (1) The Applicant will suffer irreparable damage if the order is not granted
- (2) The Applicant was made without unreasonable delay.
- (3) Security has been given for due performance of the decree.

And it was the contention of counsel of the Applicant that the above condition had been met. She alluded to irreparable damage by making reference to paragraphs. 13 and 14 of the supporting affidavits paragraph 14 states:-

“14. That the applicant stands to suffer substantial and irreparable loss and damage if execution is not stayed and the judgment and decree is not set aside as the vehicle under execution is for key central personnel who are in charge of the project which can lead to loss of the government contract.”

Whereas this court finds that alternative vehicles could be secured to enable performance of government contracts thereby no irreparable damages as alleged, I find that grounds No. 2 and 3 have indeed been fulfilled. The Applicant filed the Application without in due delay and has deposited in court security of Shs76,640,000/=

Although Mr. David Kagwa for Respondent prayed for additional security, this court finds that it is not necessary in view of the standing of the applicant in the Road Construction Industry. In the premises, I am satisfied that the conditional for Stay of Execution in this case have been made.

As to whether the Judgment and decree should be set aside, relates on the issue of service. Under O. 5 r1 of the Civil Procedure Rules, service is to be on the defendant in person or his or her agent. In the case of **Augustine Okurut Vs Gerald Wasula and another (Supra)**, it was held that service of court process on a secretary of the manager was not effective. In the present case it was a receptionist who was served, and by all standards, a receptionist of a company of Applicants magnitude cannot be said to be a dully authorized and agent for purposes of receiving court process.

In my view, the receptionist should have led the process server to a more responsible manager in the Applicants office if the managing director was absent. I therefore find that the service was not proper as it offended O.5 r 10 of the Civil Procedure rules.

In the premises, and without making a further order of security then is one already on record, I am inclined to allow the application and grant the order prayed for save for costs. Each party is

to meet their own costs. The Applicant is given one week within which to file a Defence and serve it on the Respondent so that the case can be heard on the merits without further delay.

Judge

22.2.2013

M/s Claire Amanyia for Applicant

M/s Irene Nasuuna for Respondent

Mr. Ojambo Court Clerk present

Court: Ruling read out in open court

Hon Justice M. W. Musene

HIGH COURT JUDGE