

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)**

**MISCELLANEOUS APPLICATION NO 443 OF 2017**

**(ARISING FROM MISCELLANEOUS APPLICATION NO 197 OF 2017**

**ARISING FROM MISCELLANEOUS APPLICATION NO 137 OF 2017**

**ARISING FROM CIVIL APPEAL NO 19 OF 2014)**

- 1. TULLOW UGANDA LTD}**
- 2. TULLOW UGANDA OPERATIONS PTY LTD}.....APPLICANTS**

**VERSUS**

**JACKSON WABYONA}.....RESPONDENT**

**AND**

**UGANDA REVENUE AUTHORITY}.....NECESSARY AND PROPER PARTY**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**RULING**

The Applicants commenced this application under section 98 of the Civil Procedure Act and section 33 of the Judicature Act as well as the enabling rules Order 52 rule 1 and 3 of the Civil Procedure Rules for proceedings in Civil Application Number 137 of 2017 and all applications arising there under to be stayed pending the final disposal of the Applicants intended appeal to the Court of Appeal. It is also for costs of the application to be provided for.

There are 8 grounds of the application set out in the Notice of Motion. Grounds 1 – 4 give the background to the application as follows: on 21st February, 2017 the Respondent filed Civil Application Number 137 of 2017 seeking to review and set aside the decree/order entered into between the Applicants and Uganda Revenue Authority on 19<sup>th</sup> June, 2015. On 10<sup>th</sup> March, 2017, pursuant to Order 6 rule 30 (1) of the Civil Procedure Rules, the Applicants raised a preliminary objection by way of Miscellaneous Application Number 197 of 2017 seeking to strike out the review application on point of law on the basis that the Respondent has no locus standi to bring the application. On the 12<sup>th</sup> May, 2017 this court delivered its ruling in Miscellaneous Application Number 197 of 2017 and dismissed/overruled the preliminary objection. On the 15<sup>th</sup> of May 2017, the Applicants being dissatisfied with the ruling and orders of this court, filed a

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notice of appeal against the whole of the ruling/order and wrote a letter requesting for the typed record of proceedings.

In ground 5 the applicant avers that the intended appeal involves controlling questions of law which if resolved in favour of the Applicants would dispose of the review application. Additionally, the ruling and the intended appeal raises novel points in un-navigated areas of law that merit careful consideration on appeal. In ground 6, it is averred that if the proceedings are not stayed, the intended appeal would be rendered nugatory. In ground 7, the applicant advances that the intended grounds and arguments on appeal are as follows:

- The learned trial judge erred in law in holding that while the Respondent indeed lacked the requisite locus standi to bring the review application under order 46 rule one of the civil procedure rules and as such was not "a person aggrieved", nonetheless, the application was in substance a "public interest litigation" merely filed under an incorrect procedure and accordingly the wider test of "sufficient interest" was the applicable based on locus standi.
- The learned trial judge erred in law in effectively transforming without amendment only filing an "interlocutory" Order 46 rule 1 review application into an originating cause by way of judicial review notwithstanding the entirely different considerations and time limits applicable to both.
- The learned trial judge erred in law in construing Order 46 rule 1 review application as an originating cause under article 17 of the constitution to the prejudice of the Applicants were entitled to have their rights determined in the properly pleaded originating plaint or summons setting out the facts and the legal basis of the claim against them in response to which they would then be entitled to file a defence as opposed to facing a substantive claim framed as a review application in response to which it would be limited to filing an affidavit in reply that can only properly contain evidence and no more.

In ground 8, the Applicants aver that the stay application has been brought without unreasonable delay and it is just and equitable that it is granted.

The application is supported by the affidavit of Mariam Nampeera Mbowa (Mrs) that initially repeats the facts and background of the application. I have carefully considered the affidavit and it does not add anything different to the notice of motion. It attaches the relevant ruling of the court dated 12<sup>th</sup> May, 2017, the notice of appeal filed on 15<sup>th</sup> May, 2017 and a letter requesting for a copy of the typed proceedings of the court.

In further support of the application is the affidavit of Haluna Mbetta supervisor in the Legal Services and Board Affairs Division of Uganda Revenue Authority. The affidavit only deposes that he had prayed that this sworn affidavit of Mrs Mariam Nampeera Mbowa in support of Miscellaneous Application Number 443 of 2017 for stay of proceedings in Civil Application

Number 137 of 2017 and all applications arising there under. That it is just and proper that the application is granted to afford the issues raised in the appeal to be determined.

In reply the Respondent Mr. **Jackson Wabyona** deposed to an affidavit on 1<sup>st</sup> June, 2017 in which he states as follows:

He was advised by his Counsel Ms. Patricia Nyangoma that the Commercial Court where the present application for stay of proceedings has been filed has no jurisdiction to hear and grant orders staying proceedings.

Furthermore, the Applicants have not established the requirements and conditions for an order of stay of proceedings. Proceeding with Misc. Application No. 137 of 2017 and all applications arising there from including Misc. Application No. 203 of 2017 would not render the Applicants' intended appeal nugatory. Instead, it would best serve the interest of justice and prevent the creation of case backlog to determine Misc. Application No. 137 of 2017 and all applications arising there under and thereafter those dissatisfied with any of the decisions can appeal and have the appeal heard at once. The decision in Misc. Application No. 137 of 2017 can be appealed by either party aggrieved by the decision of court and at such time the Applicants can appeal against the ruling of Court in Misc. Application No. 197 of 2017.

No irreparable damage, loss or injury shall be occasioned to the Applicants through continuing and disposing of Misc. Application No. 137 of 2017. There are no pending attachment or execution proceedings against the Applicants. A decision rendered in Misc. Application No. 137 of 2017 is appealable to the Court of Appeal and the Applicants shall not be prejudiced or suffer any irreparable loss, injury or harm if it is heard and disposed of by Court at this stage. Instead there is substantial danger in staying the proceedings in Misc. Application No. 137 of 2017 as the Applicants are in the process of exiting Uganda and have a pending firm down to dispose of their remaining assets in the Joint Venture with CNOOC and Total E & P. It is in the interest of justice that the Court safeguards and protects the interest of Ugandans in Misc. Application No. 137 of 2017 by denying the stay of proceedings which is meant to either stifle the final disposal of the review through an indeterminate delay to hear and dispose of Misc. Application No. 137 of 2017 thereby giving the Applicants an opportunity to exit Uganda without paying taxes that may be found to have been cheated through setting aside the impugned consent decree. It is fair and appropriate that the Applicants deposit US\$ 471,612,020 being the amount recoverable as taxes in Misc. Application No. 137 of 2017 (as of 16<sup>th</sup> February, 2017) before letting the Applicants enjoy indeterminate timelines to defend Misc. Application No. 137 of 2017 by way of stay of proceedings.

The Applicants' objective and purpose is to stifle the Respondent's claim in Misc. Application No. 137 of 2017 that clearly expose the fraudulent, corrupt and illicit acts of the Applicants that caused loss of over US\$ 471,612,020.72 to Ugandans. The Applicants are co-Respondents with Uganda Revenue Authority in Misc. Application No. 137 of 2017. As such it is only the Applicants who want to stay Misc. Application No. 137 of 2017. Uganda Revenue Authority as a party is ready to proceed with Misc. Application No. 137 of 2017 and has filed its reply. On the balance of convenience, the Applicants will inconvenience the other parties in Misc. Application No. 137 of 2017 who want to proceed with the review application.

Finally the Respondent deposed that the Applicants have not furnished security for costs due and payable in Misc. Application No. 197 of 2017 wherein they were ordered to pay costs.

At the hearing of the application, the Applicants were represented by Counsel Masembe Kanyerezi appearing jointly with Counsel Oscar Kambona and assisted by Counsel Timothy Lugaizi. The Respondent was represented by Counsel Mohammed Mbabazi.

Counsel Masembe set out the 8 grounds of application. In summary he submitted that the test is whether what is involved is a controlling question of law which if resolved would dispose of the whole case. The application is for stay of proceedings pending determination of an interlocutory appeal. The question therefore was whether the interlocutory appeal will materially advance the ultimate determination of the matter if decided in favour of the Applicants.

The applicant's Counsel submitted that the intended grounds of appeal raises points of law in areas which have not been navigated before. The applicant's case is that the court erred in holding that the Respondent had no locus standi to bring an Order 46 rule 1 application as he was not a person aggrieved, nonetheless the application was in substance public interest litigation merely filed under an incorrect procedure and the wider test of sufficient interest was the applicable one to determine locus standi. Secondly, there is a serious question to be tried. The court erred in transforming without amendment an interlocutory Order 46 review application into an originating cause by way of judicial review notwithstanding the entirely different considerations and time limits applicable. The last ground is that the court erred in construing an Order 46 rule 1 review application as an article 17 of the Constitution originating cause to the prejudice of the Applicants who are entitled in an article to have their rights determined in a properly pleaded plaint or summons setting out the facts and legal basis of the claim against them. They would file a defence and not an affidavit in defence thereof. He contended that the issue for consideration is not whether the grounds are good or not but whether they raise serious questions.

Generally the Applicant's Counsel submitted that if the appeal is allowed, it would dispose of the underlying case. He relied on the cases of **James Rwanyarare and 5 Others vs. Peter Walubiri and 2 others H.C.C.S. NO. 646 of 2005** for the proposition that a party can appeal an

interlocutory order where the order appealed from is a controlling question of law which on being resolved would have the whole suit determined. In **Hassan Basajja and 8 Others vs. Standard Chartered Bank (U) Ltd High Court Miscellaneous Application No. 215 of 2014 (arising from HCMA NO. 234 of 2013 and also arising from HCCS No. 234 and 572 of 2012)** it was held by Hon Lady Justice Hellen Obura Judge of the High Court as she then was that the question of whether the suit is res judicata raises controlling questions of law and granted the application of stay of proceedings. She held that if the appeal succeeds it would be a total waste of court's time to proceed.

The Applicant's Counsel pointed out that many of authorities which deal with stay of proceedings deal where the appeal is with leave to appeal. In this case the ruling is appealable as of right under Order 6 rule 30 (2) of the CPR.

On questions which arise from the affidavit in reply: The first point in paragraph 3 is that this court has no jurisdiction to order a stay of proceedings. The Applicants Counsel submitted that the point is erroneous because there is a specific rule in rule 6 (b) of Court of Appeal Rules to stay high court proceedings. The High Court has inherent powers. He relied on the following authorities: In *Haji Ali Cheboi vs. Kiroko Mesulamu* Court of Appeal Miscellaneous Application No. 3 of 2014, it was held that the High court has jurisdiction and the application can first be made to the High Court. In **Halsbury's Laws of England Vol. 37, 4<sup>th</sup> Edition** paragraph 437 it is written that the object of a stay order is to avoid the trial or hearing of the action where the court thinks it is just and convenient to make the order, to prevent undue prejudice being occasioned to the opposite party or to prevent the abuse of process. The order is discretionary and exercised in exceptional circumstances under the inherent jurisdiction of the court. The major point is that the High Court has jurisdiction to make the order.

With reference to paragraphs 4 – 8 of the affidavit in reply there are statements that one of the grounds of stay has not been met. The other point is that one can appeal the eventual decision. The Applicant's Counsel submitted that generally interlocutory appeals should relate to questions of controlling nature and this is an exception to the general rule.

With reference to paragraphs 9 – 11 of the affidavit in reply the Respondent deposed that the applicant is in the process of exiting Uganda and wants to dispose of all its existing assets and what is sought in the review application will be rendered nugatory. The statement is mischievous and claimed to come from the applicant's website. Annexure A1 to affidavit is about a 'firm down'. The extract says the contrary. The Applicants will remain with substantial assets which will continue to grow. The extract is that the Applicants will cease to be an operator. The term 'Operator' means a licensee who runs the day to day management of the undertaking. Secondly, they would retain 11% even if they are not the 'operator' and they remain shareholders.

On the issue of whether the stay should be granted on deposit of tax in court US\$ 471,000,000, this is not an application for attachment before judgment. The Applicants are not exiting jurisdiction to avoid creditors. If the Respondent succeeds, it means that the Tax Appeals Tribunal will first hear the appeal and therefore the Respondent's arguments are flawed. Lastly the Applicants Counsel submitted on the issue of whether the applicant should first deposit security for costs. He contended that costs should be taxed once and there is no bill of costs attached. He reiterated earlier submissions and prayed that the order be granted as applied for.

In reply Counsel Mohammad Mbabazi submitted as follows:

The first question is whether this court has jurisdiction to stay its own proceedings. He invited the court to look at Judicature Court of Appeal Rules and rule 2 thereof. The term "court" as defined therein means Court of Appeal. Stay of proceedings and all related matters refers to the Court of Appeal. Rule 6 (2) thereof also refers to applications to the Court of Appeal. Rule 53 refers to "court" which expression includes a single judge of the Court of Appeal. If the court reads these rules certain matters where high court has jurisdiction such as leave to appeal where there is concurrent jurisdiction are expressly set out. Where there is interpretation contrary, the interpretation relates to stay of execution and not stay of proceedings.

The Respondent's Counsel further submitted that there must be exceptional circumstances for there to be stay of proceedings. Counsel further submitted that there has to be a balancing act. Expeditious conduct versus delay. Court should decline jurisdiction save for exceptional circumstance. There should be a bona fide pleaded action. He relied on the case of **Bivac International SA (Bureau Viritas) [2006] 1 EA 26** for the proposition that there is a higher test of scrutiny for stay of proceedings compared to an application for stay of execution. Stay should not be allowed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue. The intended appeal cannot be rendered nugatory.

On how courts have treated interlocutory appeals the Respondents Counsel relied on authorities in the trial bundle namely **The Returning Officer of Kampala vs. Catherine Naava Nabagesera Civil Appeal No. 39 of 1997**; **DFCU Ltd vs. Begmohamed Ltd Civil Application No. 65 of 2005**; **Commodity Export International & Another vs. MKM Trading Company Ltd and Another Civil Application NO. 96 of 2005**; **Sanyu Lwanga Musoke vs. Sam Galiwango Civil Appeal No. 48 of 1995** and **J. Hannington Wasswa Semukulu & Co. Ltd vs. Maria Ochola & 3 Others Civil Appeal No. 5 of 1990**. The import the authorities is that court is averse to multiplicities on appeals upon incidental orders when they can be considered in an appeal from the final decision. There is a right of appeal. The appeal cannot be rendered nugatory. The authorities are against creation of backlog. In **DFCU Ltd vs. Begomohamed Ltd** (supra) the Court of Appeal held at page 6 of their judgment that they were uncomfortable with stay of proceedings as that would increase backlog of cases in the court. Furthermore the power of the court to stay proceedings is discretionary. The Respondents Counsel further submitted on

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the issue of where the stay if granted should be with conditions. This is demonstrated by the cases of **Akankwasa Damian vs. Uganda Constitutional Application No. 070 of 2011**. In that case it was held that the application must disclose a prima facie case and would suffer irreparable injury and the court can decide where balance of convenience lies etc. there has to be exceptional circumstances for the application to be granted. In the Kenyan case of **Silverstein vs. Chesoni** (supra) the ruled that stay of proceeding is different from stay of execution. The applicant has to demonstrate that the appeal will be rendered nugatory.

Regarding the ‘firm down’ the Respondents Counsel submitted that it has not been denied that the Applicants would remain with only 11% and this would reduce to 10%. The Applicants would no longer be substantial owners. The Respondent Counsel contended that the public interest lay in not stifling the case from being heard and not prolonging the litigation. With reference to the case of Hajji Ali Cheboi (supra) cited by the applicant’s Counsel, the court did not consider interpretation of the word court. In that case they held that the conditions under Order 39 (now revised Order 43 of the Civil Procedure Rules), have to be met.

With reference to preliminary objection the Respondents Counsel relied on the case of **Engineer Yaswant Sidpra vs. Sam Odaka and 4 Others Civil Suit No. 365 of 2007** for the holding that not all preliminary objections promote efficient management of cases. He submitted that in this case there is an intended appeal against a ruling in a preliminary objections and the same reasoning **Eng Yaswant Sidpra** (supra) should be applied. He prayed that the application is dismissed with costs and the suit proceeds

In rejoinder the Applicants Counsel submitted that the area of jurisprudence on stay of proceedings is well settled. He had cited three cases which expressly deal with stay of proceedings. The other authorities deal with stay of execution. The criteria used are different. Order 43 (rule 4 (3)) of the Civil Procedure Rules gives grounds for stay of execution pending appeal from a Magistrates court to the High Court. There is no loss or decree which can be executed in this case. The principles cannot be interposed here. The same applies to **Akankwasa Case** where the court applied principles for grant of an injunction which are inapplicable in a stay of proceedings application which principles are not relevant to stay of proceedings. In the main the applicant’s Counsel reiterated earlier submissions on the novelty of the issue for appeal, the fact that the issue appealed from is a controlling question that can wholly dispose of the suit if the appeal succeeds. He advised the court not to rely on authorities from the Caribbean countries when the appellate courts in Uganda have ruled on similar issues

Counsel Oscar Kambona in further rejoinder submitted that even URA supported the application to have the appeal heard before proceedings take place in the High Court.

## **Ruling**

I have carefully considered the application for stay of proceedings. The court was primarily moved under the provisions of section 98 of the Civil Procedure Act and section 33 of the Judicature Act. I have further considered the submissions of learned Counsel set out above and I do not need to refer to them in detail. I have also considered some of the authorities relied upon by both Counsel.

The first question for consideration ought to have been a preliminary point of law because it objects to the application on the ground of jurisdiction of this court to grant an order of stay of proceedings pending appeal from an interlocutory ruling. The genesis of the application for stay of proceedings is that the Applicants by application under Order 6 rule 30 of the Civil Procedure Rules objected to this suit on the ground that the Respondent had no locus standi to bring an application for review of the consent judgment. The objection was overruled and to be precise because it was made by a formal application, the application was dismissed.

Order 6 rule 30 deals with striking out pleadings on the ground that it discloses no reasonable cause of action or answer or that it is frivolous or vexatious. The court would make its order upon application. Following the dismissal of the application, the applicant lodged an appeal to the Court of Appeal. The submission of the Applicants is that, they have an automatic right of appeal under Order 6 rule 30 (2) of the Civil Procedure Rules which provides that "all orders made in pursuance of this rule shall be appealable as of right."

The objection was that the applicant had no locus standi to bring an application for review under Order 46 rule 1 of the Civil Procedure Rules. The Applicants now seek an order of stay of proceedings pending appeal. I must in the passing say that the issue of locus standi is a point of law which may have been raised under Order 6 Rule 29 of the Civil Procedure Rules without the need to file a formal application. Locus standi is not about the vexatious nature or the frivolity of the application but rather about the right of the plaintiff or applicant to be heard in the application. Someone without locus standi should not be heard. Order 6 rule 30 of the Civil Procedure Rules has a very clear wording and it provides as follows:

“30. Striking out pleading.

(1) The court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may be just.

(2) All orders made in pursuance of this rule shall be appealable as of right.”

The power of the court is to strike out the pleading on the ground that it discloses no reasonable cause of action or answer (where it is the plaintiff) or in cases where this suit is shown by the



pleadings to be frivolous or vexatious whereupon the suit may be stayed or dismissed (in the case of the plaintiff/applicant). On the other hand someone who has no locus standi has no cause of action. That could be raised by pleadings as a point of law whereupon the defendant can apply under Order 6 rule 28 and 29 of the Civil Procedure Rules on a point of law. Similarly, where it is raised in the pleadings Order 7 rule 11 of the Civil Procedure Rules allows the plaint to be rejected where it discloses no cause of action. The plaint can also be rejected where it is shown to be frivolous or vexatious. The rejection of the plaint does not preclude the plaintiff under Order 7 Rule 13 of the Civil Procedure Rules from bringing a fresh plaint. Similarly where a pleading has been struck out, a fresh pleading may be filed unless the suit is dismissed. The question of locus standi can only lead to dismissal of the suit on the ground that the party bringing this suit has no right to do so. The ruling of the court would result into any adjudication which conclusively determine the rights of the parties and would result in a decree. Section 2 of the Civil Procedure Act defines a decree to include an order rejecting the plaint. The substance of the applicant's application objecting to the Respondent was therefore on the issue of whether the Respondent had any right to bring the application for review. While the issue could have been limited to whether he had a right under Order 46 Rule 1 of the Civil Procedure Rules, the issue was considered on the ground of whether he was an "aggrieved party" under order 46 rule 1 of the CPR. At page 26 of the ruling of the court attached to this application, it is not true as indicated in this application that the court held that Order 46 Rule 1 could be extended. Quoting from the judgment of Odoki JSC in the case of **Ladak Abdulla Mohammed Hussein versus Griffiths Isingoma Kakiiza and others Supreme Court civil appeal number eight of 1995**, this court clearly noted that the Supreme Court in that case held that in a suitable case a third party may apply for review "under the inherent powers of the court". The Supreme Court therefore already determined that in a suitable case, a third party can apply for review under the inherent powers of the court. This application would be to review a judgment and is interlocutory in nature. This court wholly adopted that ruling in paragraph 1 at page 26 of the ruling. Ground 7 of the application is therefore misleading and seems to suggest that the extension of the expression "person aggrieved" to public interest litigation was made under Order 46 rule 1 of the Civil Procedure Rules. In the intended appeal, the Applicants intend to appeal the entire ruling and not just portions of it. This is even made clearer by ground 7 (ii) where it is written that the trial judge erred in law in effectively transforming without amendment or re-filing an "interlocutory" Order 46 rule 1 review application into an original cause by way of judicial review notwithstanding the entirely different considerations and time limits applicable to both. The conclusion of the court is at page 26 from line 6 from the top that: "As far as third parties are concerned, a suitable person can apply under the inherent powers of the court." That is what I picked from the Supreme Court. Locus standi is not about procedure and I do not see how that can be made a ground of appeal. It is about the right of the litigant to be heard in court.

The deceptiveness in the application is made more apparent by emphasising judicial review rather than an application for review which is what the applicant's suit is. It is for review of a

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judgment. There can be no judicial review of a judgment but only a review thereof. The intention is to set aside the judgment or order or vary the terms. On the other hand judicial review leads to certiorari, mandamus or prohibition (injunctions) and damages in appropriate cases. The examples of judicial review were used in considering the locus standi and the use of the expression "person aggrieved" even in the authorities relied on by the Applicants. The expression "person aggrieved" is used in various contexts and not necessarily in an application for judicial review. It can be used under a statute as in **R vs. London Sessions Appeal Committee Westminster City Council [1951] 1 All ER** (See page 26 of the ruling of this court). The discussion of the expressions can be found at pages 27 – 29 of the ruling.

I will go to the preliminary issue as to whether this court has jurisdiction to grant an order of stay of proceedings. The Respondents Counsel relied on the definition of "court" to mean the Court of Appeal of Uganda established under article 129 of the Constitution and any division of the court and a single judge exercising any power vested in him or her sitting alone. On the other hand the expression "High Court" means the High Court of Uganda established under article 129 of the Constitution. The contention of the Respondents Counsel is that whenever the expression "court" is used, it means the Court of Appeal of Uganda.

I agree with the Respondents submission that the rules 6 (2) (b) of the Judicature (Court of Appeal) Rules does not apply to the High Court. It provides as follows:

"in any civil proceedings, where 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."

The expression "as the court may think just" means "as the Court of Appeal may think just". It does not apply to the High Court and does not confer any authority on the High Court to order a stay of proceedings pending appeal to the Court of Appeal. Furthermore, in applications for a certificate of importance or for leave to appeal in civil matters from the High Court to Court of Appeal, it is expressly provided under rule 40 of the rules of the Court of Appeal that the application should in the first instance be made in the High Court. Rule 40 does not apply to applications for stay of proceedings.

The only conclusion is that an application for stay of proceedings is made to the High Court under its inherent powers just like an application for stay of execution pending appeal because there is no specific rule dealing with applications for stay of proceedings pending appeal to the Court of Appeal from the High Court. Furthermore, Order 43 rule 4 of the CPR deals with appeals to the High Court and not appeals from the High Court.

I have accordingly considered the authorities cited by the applicant's Counsel on the issue of stay of proceedings. The case of **Hajji Ali Cheboi versus Kiroko Mesulamu Civil Miscellaneous Application Number 105 of 2014** is a ruling of the single judge of the Court of Appeal in an

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application for an interim order of stay of execution pending appeal to the court. The honourable judge of the Court of Appeal was not addressed on the question of jurisdiction of the High Court in an application for stay of proceedings. His conclusion at page 9 is that he saw no reason why a litigant should bring the application to the Court of Appeal when in fact it could have been easily disposed off in the High Court where it is faster and cheaper. He declined to entertain the application on that ground.

The case of **Hassan Basajja and 8 others versus Standard Chartered Bank (U) Ltd and 2 Others Miscellaneous Application No. 215 of 2014** is a ruling of Honourable Lady Justice Helen Obura in an application for leave to appeal and for proceedings to be stayed pending appeal to the Court of Appeal. It is a ruling of the High Court. The issue of jurisdiction to entertain an application for stay of proceedings is raised at page 3 and 4 of the ruling by way of an objection to the application. She held that the points raised of res judicata raise controlling questions of law which if resolved in favour of the Applicants would determine the whole case before the court. She granted the application for stay of proceedings at page 12 of her ruling and said it was granted for the simple reason if the matter proceeded and the appeal succeeded, it would have been a waste of the courts time to have proceeded with the matter in the High Court. She did not consider the question of jurisdiction as raised by the Respondents Counsel in this case or in that case but rather used her inherent powers of case management to order a stay of proceedings pending appeal.

In the case of **National Housing and Construction Corporation vs. Kampala District Land Board and the Chemical Distributors Ltd, Civil Application Number 6 of 2002**, the application was brought under the rules of the Supreme Court. The court interpreted its own rules in that case and particularly in considering authorities to the effect that where an appellant is exercising a right of appeal, the court would stay execution pending appeal in order not to render the intended appeal nugatory. The court opted to rely on the rule 5 (2) (b) which is now 6 (2) (b) that where a notice of appeal has been lodged, the Court of Appeal may stay execution, grant injunction or stay proceedings from which the appeal emanated. The court was not addressed on the question of whether the High Court has jurisdiction to stay its proceedings pending appeal.

Finally I have considered applications for stay of execution. In **Mugenyi and Company Advocates vs. National Insurance Corporation Civil Appeal No. 13 of 1984 reported in [1992 – 1993] HCB**, it was held that the High Court can be moved under its inherent powers to stay execution of any of its orders but it has no specific rule for stay of execution of its orders pending appeal. This is also the holding of the Supreme Court in **Francis Mansio Nuwa versus Nuwa Walakira, Supreme Court Civil Application No. 9 of 1990 also reported in [1992 – 1993] HCB 88** that there is no specific provision enabling the High Court to grant a stay of execution in the event that an appeal is preferred from a decree of the High Court to the Court of Appeal. There is no provision in the Civil Procedure Rules and the Court of Appeal rules must apply. An application for stay should be made in the Supreme Court directly. They also held that  
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the High Court has inherent jurisdiction to grant a stay of its own decree pending appeal. They observed that it would be unwise in some circumstances to defeat the statutory right of appeal by for instance demolishing the subject matter of the suit when the matter is on appeal rendering the appeal nugatory.

In this particular case, the Applicants maintain that the Respondent has no locus standi. I cannot comment much on how the application was brought other than my first observation that it could have been raised as a point of law. If that had been done, the matter could have been argued as one of the points in contention and the Applicants could have appealed the entire ruling of the court, if the ruling went against them. However the Applicants chose to raise it by way of an application under Order 6 rule 30 of the Civil Procedure Rules. Locus standi is a preliminary point of law and for the moment the issue has been determined by the court and I cannot revisit it. The Applicants have a right of appeal from this preliminary ruling. In my ruling I made it clear that locus standi is a preliminary issue and ought to be determined before the matter proceeds. I reiterate that ruling because locus standi can be raised from the pleadings alone. It is a question of whether the applicant has a right to bring the application and not whether the applicant made the wrong application by citing the wrong rule because the Court of Appeal has already ruled that citation of a wrong rule cannot prejudice the Respondent and the right rule can be inserted. That ruling is binding on this court and was cited in the ruling at page 34 and is the case of **Saggu versus Roadmaster Cycles (U) Ltd [2002] 1 EA 258**. In any case, the applicant could move under the inherent powers of the court as held in the case of **Ladak Abdulla Mohammed Hussein versus Griffiths Isingoma Kakiiza and two others Supreme Court Civil Appeal Number 8 of 1995** and specifically the judgment of Odoki JSC that in a suitable case a third party can apply for review of the decision under the inherent powers of the court. All those authorities are binding. The question of locus standi therefore can only be restricted to the issue of whether the applicant has a right to file an application challenging the consent order in this court but not with the question of procedure because no prejudice has been occasioned to the Respondent in that suit or the applicant in this application. Finally the question is whether a member of the public can on a point of law challenge Uganda Revenue Authority for entering into an agreement which results into a consent judgment on the ground that the agreement is contrary to law. This is the entire import of the applicant's application and entire appeal. It is only in the interest of enhancing the jurisprudence in the area law that it is attractive to have the issue determined by the court of appeal.

Secondly, I do not agree with the Respondent's Counsel that the Applicants are likely to relinquish their interests and therefore, if the Respondent succeeds in future, Uganda Revenue Authority would find it difficult to collect taxes from them.

The issue raised in the intended appeal involves an important point of law as to whether such an agreement which allegedly waived some taxes can be challenged by a member of the public. In my holding it can be challenged because Uganda Revenue Authority is a public authority which  
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is required to act within the law. In the premises the question of locus standi also goes to the substance of the suit rather than the question of what procedure should be followed in the suit only.

In the premises, I would exercise the inherent powers of the court to grant an order of stay of all proceedings in this matter pending appeal. The Respondent would have an opportunity to argue the same grounds at an appellate level. There is no imminent danger of the public authority losing taxes as the matter is yet to be determined and the Applicants are collectable persons who are unlikely to convey property out of the jurisdiction of this court because they are involved in building a pipeline and have vested interests therein. I agree with the submissions of the Applicants Counsel in that regard and I do not need to regurgitate them here.

The above notwithstanding, the costs of the application shall abide the outcome of the appeal. I do not agree that this order should be made conditionally and I see no prejudice to the Respondent who is not going to lose any immediate benefits. It is up to the Respondent to apply to have his costs taxed and the issue of execution or stay thereof is not a matter before this court.

Ruling delivered in open court on 13<sup>th</sup> June, 2017

**Christopher Madrama Izama**

**Judge**

Ruling delivered in the presence of:

Counsel Masembe Kanyerezi appearing jointly with Counsel Oscar Kambona and assisted by Counsel Timothy Lugaizi

Counsel Hamza Kyamanywa holding brief for Counsel Mohammed Mbabazi

Barbara Nabuweke Assistant Head Legal of the Applicants in court

Respondent is absent

Charles Okuni: Court Clerk

Julian T. Nabaasa: Research Officer Legal

**Christopher Madrama Izama**

**Judge**

*Decision of Hon. Mr. Justice Christopher Madrama Izama \*^\*~ \*&\*\$\$\$# xtra+ maximum735securityx 2017 style*

**13<sup>th</sup> June, 2017**