

Court also addressed and resolved the issue raised by the Respondents regarding the misnomer of the numbering of the Application.

25 In its Ruling, Court noted that, whereas the process of withdrawal was faulted for belated service of the Notice of withdrawal on the Respondents, contrary to the Respondents contention that the learned Registrar did not have the mandate to handle withdrawal of appeal, she indeed has such powers.

30 However, owing to the then pending proceedings filed by the Respondents at the Court of Appeal, most critical of which was the application challenging Civil Appeal No. 320 of 2019 (erroneously registered as No.230 of 2019) and the validity of the its withdrawal/dismissal order, this Court refrained
35 from making final orders in the instant Application MA 1112 of 2019, pending resolution of the pending Applications at the Court of Appeal.

On the on the 2nd September 2020, 10th September 2020 and 9th September 2020 this Court was served with letters
40 respectively dated 2nd September 2020 and 10th September 2020 from the Applicants and one dated 8th September 2020 from the Respondents.

In the Applicants letter dated 2nd September 2020, they notified this Court that the parties had appeared before Hon. Justice Kenneth Kakuru JA, for directions regarding the pending Applications at the Court of Appeal, following which the Respondents herein /Applicants in CA 129/2020(CA) withdrew Civil Application No. 129 of 2020(CA).

The averments in the Applicants letter were confirmed by the Respondents in their letter of 8th September, 2020 in which they confirmed that that Civil Application No. 129/2020, (Arising from Civil Appeal No. 320/2018: Haruna Sentongo vs. Orient Bank Ltd. was voluntarily withdrawn by the Applicant therein, before the Court of Appeal.

They however also clarified that Civil Application. No. 016/2019: (Arising from Civil Appeal No. 230/ 2019: Haruna Sentongo vs. Orient Bank Ltd) is still subsisting and is pending before the Court of Appeal. They also put this Court on Notice that, HCMA No. 1112/ 2019: Orient Bank Ltd. vs. Haruna Sentongo, and matters arising therein, were now the subject of Constitutional Petition No. 1S/2020: Haruna Sentongo vs. Attorney General & Orient Bank Ltd, before the Constitutional Court.

In their letter of 10th September 2020, in which they acknowledge the Respondents letter of 8th September 2020,

the Applicants reiterated the fact that Civil Appeal No. 320/2018 and Civil Application No. 129 of 2020 had been withdrawn and dismissed, that it was therefore incomprehensible that Civil Application No. 016 which
70 sought to strike out Civil Appeal 320 of 2018 still subsists and is pending before Court.

Premised on the foregoing correspondences, this Court is now in a position to make further orders in MA 1112 of 2019. There is common ground that both Civil Appeal 320/2018
75 and Civil Application 129/2020 which had been filed challenging Civil Appeal 320/2018 have been effectively withdrawn and dismissed.

There however, remains a contest over whether Civil Application 016 of 2019 (arising from Civil Appeal No. 320 of
80 2018) is indeed overtaken by events as contended by the Applicants in their correspondence to Court.

CA 016/2019, sought to strike out Civil Appeal 320 of 2019, otherwise serial numbered as Civil Appeal 230 of 2019.

Whereas the pendency of CA 016/2019 in the Court system,
85 as communicated by the Respondents, is factually correct, both parties having confirmed the withdrawal and dismissal of CA 320 of 2018 and CA 129 of 2020, this Court takes

judicial notice of the proceedings at the Court of Appeal by which both CA 320 of 2018 and CA 129 of 2020 were closed.

90 I am in agreement with the Applicants that Civil Applications No. 016 of 2019 which sought to challenge Civil Appeal 320 of 2018 otherwise erroneously referred to as Civil Application 230 of 2018 is effectively overtaken by events and is of no legal and remedial consequence to the Applicants.

95 Much as this Court has no say over how Civil Applications No. 016 of 2019 will be formally closed at the Court of Appeal, I am mindful of the fact that Court processes are not undertaken by parties in jest, actions in Court are intended to deliver real remedies to real issues of controversy between
100 parties. In my view, the outcome of Civil Application No. 016 of 2019 can no longer have consequences for the instant Application, MA 1112 of 2019.

In the circumstances, the proceedings of this Court ought not to be held at bay on account of the pendency of Civil
105 Application No. 016/2019 which is now merely moot for all intents and purposes.

This Court has however been put on Notice that HCMA No. 1112/ 2019 and matters arising therein, are now the subject of *Constitutional Petition No. 1S/2020: Haruna Sentongo vs.*

110 *Attorney General & Orient Bank Ltd*, before the Constitutional Court.

I have addressed my mind to this development and considered previous decision taken in similar circumstances, in this jurisdiction.

115 In the case of **Gurindwa Paul V AG & DPP, Constitutional Application No. 0015 of 2015**, while the Applicant was still facing trial at the High Court where proceedings had gone on in his absence, he petitioned the Constitutional Court to challenge the constitutionality of his trial in his absence. He
120 also sought interlocutory orders staying various proceedings against him in various Divisions of the High Court.

In determining the Application, Eldad Mwangusya, JA, made reference to the case of **Gilbert Asimwe V AG, Constitutional Application No. 15 of 2010** which in turn
125 had cited with approval the a statement of the Constitutional Court in the case of **Jim Muhwezi V Ag, Constitutional Application No. 18 of 2007**, in which Court observed that the Section of the Penal Code Act under which the Applicant was being prosecuted was not being challenged, in which
130 case prosecution could continue despite the challenge in the constitutional Court, which was in respect of the truth and manner of the investigations leading to the charges.

In **Gurindwa Paul V AG & DPP (supra)** Court observed that **all the matters being raised in the Application** were
135 pending before the High Court which is clothed with jurisdiction to hear the case in its original jurisdiction and where need be review its own decisions, with an option to appeal the final decision of the High Court to the Court of Appeal. In that case, Court observed that the High Court was
140 capable of adjudicating over the matter.

The position taken by Court in the cases of **Gurindwa Paul V AG & DPP (supra)**, **Gilbert Asimwe V AG**, and **Constitutional Application No. 15 of 2010** and in **Jim Muhwezi V AG, Constitutional Application No. 18 of**
145 **2007** is that if a matter being brought to the Constitutional Court was one over which the High Court was already handling or had the mandate to handle, then the Constitutional Court/Court of Appeal ought to leave it to the High Court to conclude first, whereupon if a party is
150 discontented with the decision of the High Court, such a party have recourse to the Constitutional Court/ Court of Appeal, on appeal. However, if the issue is one that seeks to challenge the constitutionality of the law under which the proceedings in the High Court are ongoing, then the High
155 Court has no jurisdiction to determine the constitutionality

of the law, in which case, the High Court proceedings ought to be stayed pending resolution of the Appellate /Constitutional Court proceedings in respect of that issue.

160 Similarly, in the case of **Charles Onyango Obbo & Another V AG, Supreme Court Constitutional Appeal No. 2 of 2002**, while the Appellants had been charged under Section 50 of the Penal Code Act in the Magistrates Court, they filed a constitutional petition challenging the very provision under which they were being prosecuted.

165 The Constitutional Court stayed hearing of the Petition before the trial Court proceedings were concluded, on grounds that the Petitioners were trying to preempt the criminal proceedings.

The Petition was eventually heard by the Court of 170 Appeal/Constitutional Court after the trial in the Magistrates Court had been concluded. The Petition was decided against the Petitioners, who then appealed to the Supreme Court.

Justice Mulenga JSC, as he then was, held that the 175 Constitutional Court order staying the petition in the first place was misconceived, he cited Article 137 (7) of the Constitution of the Republic of Uganda, which provides that;

180 “...the Court shall proceed to hear and determine the
Petition as soon as possible and may for that purpose
suspend any matter before it”. That where a Court refers
a question that arises in proceedings before it, it must
await the decision of the question by the Constitutional
Court, and dispose of the case in accordance with that
decision.....where the Constitutional validity of any law
185 or action awaits determination of the Constitutional
Court, it is important to expedite the determination in
order to avoid applying a law or taking action whose
validity is questionable”.

Quoted verbatim, he stated that;

190 “In either case, the Court shall proceed to hear and
determine the Petition as soon as possible and **May,** for
that purpose, suspend any other matter pending before
it”.

195 Could it be the case that Justice Mulenga expressed the
urgency and priority with which the Constitutional Court
ought to have handled the Petition over other matters before
it, and that he was not necessarily faulting the Justices of
Appeal for not having halted the trial proceedings in the
Magistrates Court.

200 My understanding is that the learned Justice was clearly
expressing the urgency with which the Constitutional Court
ought to handle matters challenging the constitutionality of
a law, when brought before them, in **Jim Muhwezi V AG**
(supra), Justice Twinomujuni gives binding interpretation to
205 Justice Mulenga’s statement, that;

“In **Onyango Obbo V AG**, Justice Mulenga seems to have
had in mind situations where there has been a
constitutional reference to this Court (Constitutional
Court) during the trial in the lower Courts. Secondly, the
210 pronouncements apply to situations where the
constitutionality of the law under which the prosecution
is being conducted is in issue. For example in Onyango
Obbo case, the constitutionality of section 50 of the Penal
Code Act, under which they were being prosecuted was
215 in issue in the constitutional Court. It would have been
unjust for such a prosecution to continue when the law
under which they were being prosecuted was being
challenged.....”

In **Jim Muhwezi V AG**, that was not the case and so Court
220 found that the prosecution of Jim Muhwezi could continue
despite the challenge in the Constitutional Court, of the

truth and manner of the investigations leading to the charges in the criminal Court.

225 This Court, being bound by the doctrine of stare decisis and decisions of the Higher Court, is obliged to align its decisions with that of the Court of Appeal/Constitutional Court in the cases of **Jim Muhwezi (supra)** and **Onyango Obbo (supra)**. In the instant case, the fact that the Respondents may, as alleged by the Applicants letter of 10th September 2020, have
230 opted to use the route of filing a Constitutional Petition to stem or frustrate conclusion of final orders in **MA 1112/2019** notwithstanding, Constitutional Petition No 18 of 2020 lodged by the Respondents in the Constitutional Court on 4th September 2020, sets out to challenge the
235 constitutionality of Regulation 13(1) of the Mortgage Regulation. It is the enforcement of this very Regulation that the Applicants seek to give effect in MA 1112 of 2019.

The circumstances of this Application are on all fours with what Twinomujuni, JA envisaged in **Jim Muhwezi (supra)**
240 which therefore has the effect of freezing disposal of MA 1112 of 2019 pending resolution of the Constitutional Petition.

In the event, this Court will not, yet again, make its final pronouncements in MA 1112 of 2019 pending resolution of Constitutional Petition No 18 of 2020.

245 However, the abeyance of MA1112 of 2019 does not affect
progression of the main suit nor does Constitutional Petition
No.1S/2020 because the issue sought to be resolved in the
Constitutional Petition does not go to the root of the issues
in dispute in the main suit-**Civil Suit NO. 424/2018**). The
250 main suit should therefore proceed with more alacrity than
has been demonstrated hitherto.

In the event I order the parties close scheduling and fix the
Civil Suit CS **NO. 424/2018** for hearing to commence and
be heard within 21 days from the date hereof.

255 Before I take leave of this matter, I notice that in my Ruling
of 28th August 2020 in this same Application, the Application
Number is in some instances wrongly stated as *Misc.*
Application 112 of 2019. Mandated by Section 100 of the
Civil Procedure Act, Court hereby corrects the said error, by
260 replacement thereof with the right citation, which is *Misc.*
Application No. 1112 of 2019. The record stands so
corrected.

I so order.

Delivered this 28th Day of September, 2020.

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Richard Wejuli Wabwire

JUDGE

270 Present in Court:

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Richard Wejuli Wabwire

JUDGE

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