

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
MISC. APPLICATION NO. 697 OF 2019
(Arising from Civil Appeal No. 30 of 2019)
(Arising from TAT Application No. 15 of 2017)**

UGANDA REVENUE AUTHORITY..... APPLICANT

VERSUS

M-KOPA UGANDA LTD RESPONDENT

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

RULING

Introduction

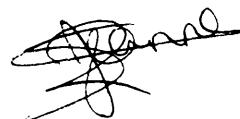
This application was brought by way of Notice of Motion under Section 28(1) of the Tax Appeals Tribunal, Section 98 of the Civil Procedure Act, Cap 71, and Order 52 of the Civil Procedure Rules, SI 71-1 for orders that:

1. An order of interim stay doth issue, restraining the Respondents, their agents, assignees and those claiming under them, and all banks holding the Applicant's bank accounts, from executing of the orders of the Tax Appeals Tribunal, pending the final disposal of the Applicant's main Application for stay of execution.
2. Costs of this application abide by the outcome of the appeal.

Background

In an affidavit in support sworn by Christa Namutebi, an advocate working in the Legal Department of the Applicant, the Applicant laid out its case as follows. The Respondent filed a suit against the Applicant before the Tax Appeals Tribunal vide TAT Application No. 15 of 2017 contesting a tax assessment of Ugx. 429,603,357/= on solar equipment imported and supplied by the Respondent. The tribunal set aside the tax assessment and found in favour of the Respondents. The Applicants, dissatisfied with the said decision, appealed to this court.

The Respondent has since demanded for a refund of 30% of the tax in dispute. The Applicant contends that the Respondent shall execute the orders of the Tax Appeals Tribunal unless execution of the same is stayed. That the Applicant's



appeal would otherwise be rendered nugatory if stay of execution is not granted. The Applicant is also willing to furnish security for the due performance of the decree as may be ultimately binding upon it.

The Respondent, through Diana Ssali's (Head of Finance at Respondent company) affidavit averred that pendency of an appeal is not a bar to enforcement of a decree. Secondly that the sums demanded by the Respondent from the Applicant was not execution or a threat of execution of the Tax Appeals Tribunal ruling, but was instead paid as the 30% of the tax in dispute required by the law. The Respondent contends that the appeal will not be rendered nugatory if this application is not granted. Also that the appeal does not have a likelihood of success, and the Applicant has not provided security for due performance. Lastly, that the application was brought unreasonably late.

Representation

At the hearing, the Applicant was represented by Ronald Baluku, Diana Kagonyera Mulira and Alex Ssali Aliddeki. Patrick Kabagambe appeared for the Respondent.

Parties filed written submissions as directed by the court. However, only the Applicant filed submissions. I shall refer to them and the pleadings in resolution of this application.

Resolution

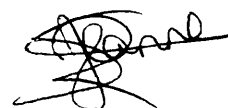
Issue: Whether the application discloses sufficient grounds for grant of stay of execution pending appeal

Order 43 Rule 4 of the Civil Procedure Rules provides that:

4. Stay by High Court.

(1) An appeal to the High Court shall not operate as a stay of proceedings under a decree or order appealed from except so far as the High Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the High Court may for sufficient cause order stay of execution of the decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing from the decree, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.



(3) No order for stay of execution shall be made under subrule (1) or (2) of this rule unless the court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

(4) Notwithstanding anything in subrule (3) of this rule, the court may make an ex parte order for stay of execution pending the hearing of the application.

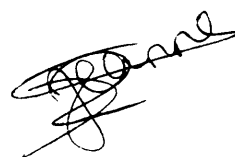
(5) Applications under subrules (1), (2) and (3) of this rule shall be by motion on notice; an ex parte order under subrule (4) of this rule may be made on a summons in chambers.

The Supreme Court laid out similar considerations in **Lawrence Musiitwa Kyazze -v- Eunice Busingye, Supreme Court Civil Application No. 18 of 1990** before an application for stay of execution can be granted. These are:

- a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- b) that the application has been made without unreasonable delay; and
- c) that security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

It is not in dispute that the Applicant has lodged an appeal. On file is a Notice of Appeal lodged on 13th May, 2019 for the commencement of Civil Appeal No. 30 of 2019. On whether the Applicant may suffer substantial loss if stay of execution is not granted, the Applicant's counsel submitted that the sums contested are substantial and payment of the sums would be prejudicial to the Applicant in the likely event that the appeal succeeds.

The Applicant's affidavit in support of the application does not state what substantial loss it stands to suffer if the application for stay of execution is not granted. Counsel's submission can only therefore be interpreted as evidence from the bar which is inadmissible before this court. Affidavits in an application serve as evidence to support the remedies sought in the application. This was demonstrated in **Nalwoga Gladys -v- Edco Limited & 2 Others, Revision Cause No. 05 of 2012**.

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In the absence of evidence to support this consideration, I can't confirm that the Applicant will actually suffer any substantial loss if the order for stay of execution is not granted.

This application was lodged on 15th August 2019. The Tax Appeals Tribunal ruling was delivered on 29th April, 2019 and was received by the parties on the same date. Civil Appeal No. 30 of 2019 was lodged on 13th May, 2019. It was three months from lodgment of the appeal that the Applicant lodged this application. I find this to have not been inordinate delay in the context of the case.

The Applicant has expressed a willingness in paragraph 10 of the affidavit in support to furnish security for the due performance of the decree and order that may be ultimately be binding upon it.

Whereas that fulfills the third criterion for grant of stay of execution, I find that this application still fails because there is no substantial loss to guard against in the event that the Respondent does effect execution of the Tax Appeals Tribunal decree. The Supreme Court held in similar fashion when faced with a comparable set of circumstances in **Dr. Ahmed Muhammed Kisuule -v- Greenlad Bank (In Liquidation), Supreme Court Civil Application No. 07 of 2010.**

Conclusion:

This application is therefore dismissed with costs with costs to the Respondent.

I so order.



Jeanne Rwakakooko

JUDGE

12/04/2022

This Ruling is delivered on this 12th day of April, 2022