

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
MISC. APPLICATION NO. 130 OF 2021
(Arising from Civil Suit No. 733 of 2016)**

KINGS INVESTMENT LIMITED..... APPLICANT

VERSUS

GEMEX (U) LTD RESPONDENT

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

RULING

Introduction

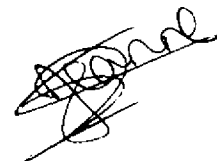
This application was brought by way of Notice of Motion under Sections 64(e) & 98 of the Civil Procedure Act, Cap 71, Section 33 of the Judicature Act, Cap 13, Order 43 Rule 4(1), (5), Order 52 Rules 1 & 3 of the Civil Procedure Rules, SI 71-1 for order that:

1. Execution of the decree in Civil Suit No. 733 of 2016 be stayed pending determination of the appeal; and
2. Costs of this application be provided for.

Background

The Respondent sued the Applicant vide Civil Suit No. 733 of 2016 (hereafter referred to as the main suit) seeking recovery of USD 70,000 arising out of breach of contract, interest and costs. This court on 7th February, 2019 delivered judgment in the main suit in the Respondent's favour and ordered the Applicant to pay the sums claimed, general damages, interest, and costs. The Respondent has since filed its bill of costs in the main suit, and the same awaits taxation.

A notice of appeal was filed in the Court of Appeal on 18th February 2019 by the Applicant. However, no memorandum of appeal has been filed. The Applicant though claims that its appeal has a high likelihood of success based on the proposed memorandum of appeal. That if this application is not granted, the appeal will be rendered nugatory. The Applicant also claims that it will suffer irreparable damage because it will be forced to make payments on a contract that was rescinded.



Representation

At the hearing, the Applicant was represented by Allan Kyakuwa. The Respondent and its lawyers did not enter appearance because the Applicant had, per counsel's own admission, not served them with the application.

Counsel Kyakuwa was directed to serve the Respondent and write to it informing it of the set timelines for pleadings and submissions, and furnish court with evidence of the same. This was not done. The Applicant's actions were in direct contradiction of court orders, and contemptuous too.

Resolution

Issue: Whether execution of the decree in Civil Suit No. 733 of 2016 should be stayed pending appeal.

The Supreme Court clearly laid out pre-requisites to be met before an order for stay of execution pending appeal may be granted. The court held in **Lawrence Musiitwa Kyazze -v- Eunice Busingye, Supreme Court Civil Application No. 18 of 1990** that before an application for stay of execution can be granted it must be clear:

- 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.

This court observes that the Applicant has not yet lodged an appeal in the Court of Appeal. Per the Applicant's Managing Director's (Kareem Jassani) admission in paragraph 3 of his affidavit in support, the Applicant has only lodged a notice of appeal in the Court of Appeal. An appeal is deemed fully lodged upon filing of a memorandum of appeal. See **Andrew Kisawuzi -v- Dan Oundo Malingu, Misc. Application No. 467 of 2013**.

Kareem Jassani explains in paragraph 4 of the affidavit in support that all of their attempts to obtain a certified copy of the record of proceedings and judgment in the main suit have been futile. The Applicant attached letters dated 15th February, 2019, and 5th October, 2020 to prove their futile requests for the record of proceedings and judgment. On the main suit file is also a letter dated 9th November, 2020 still requesting for the same documents to enable them file a memorandum of appeal. This court on 11th November, 2020 wrote to the Applicant's lawyers, Anguria & Co. Advocates, in response to their 9th November, 2020 letter informing them that the certified typed copies of the proceedings



requested were ready for their collection. The same were received by Nyacheo Mary, a lawyer at the said chambers on 3rd February, 2021. It was on this same day that this application was filed.

This disproves the Applicants assertions in the affidavit in support. It is clear that at the time of hearing this application the Applicant had had every opportunity to fully lodge an appeal in the Court of Appeal but had not. Since there is no appeal pending, this application fails.

The impact of the above finding is that the Applicant's averment that it will suffer irreparable damage and the appeal will be rendered nugatory are left baseless, without an actual appeal to base them on. It can only be concluded that this application was designed to delay court process further.

This application has been brought with delay. The decree in the main suit was issued on 7th February, 2019. The Plaintiff/Respondent filed its bill of costs in the main suit on 28th August, 2020. This application was lodged on 3rd February, 2021, six months after the actual threat of execution occurred. On this basis, the application is also denied.

I am further fortified to dismiss the application because the Applicant's conduct in this application has been in contemptuous and in abuse of court procedure and justice. The Applicant admittedly did not serve the Respondent with the application. The Applicant also did not execute court's orders to serve the Respondent with the application and communicate to it by way of letter the fact the timelines set by court for filing of pleadings and submissions. The Applicant itself did not file submissions in this application. All of these happenings read together leave this court with no other conclusion, but that the Applicant instituted this application to orchestrate further delay in conclusion of this case.

Conclusion:

I therefore dismiss this Application. Since the Respondent did not enter appearance or incur any costs in the application, costs will not be awarded to it.

I so order.



Jeanne Rwakakooko

JUDGE

21/06/2022

This Ruling was delivered on this 28th day of June, 2022