



- d) While the appeal was pending, the Respondent attempted to execute against the Applicant by advertising the sale of the Applicant's land comprised in Block 12 Plots 250,251 and 252 at Kisenyi;
- e) The Applicant successfully obtained an injunctive relief against the Respondent;
- f) The Respondent to avoid operation of the Order of the Court of Appeal filed a bill of costs which is pending before this honorable court;
- g) The bill is not only an abuse of the court process but will also occasion irremediable prejudice to the Applicant's Civil Appeal;
- h) Being guided by the peculiar circumstances of the instant case, it is judicious that this honorable court exercises its inherent powers to stay execution proceedings of the Respondent's Bill of Costs;
- i) The issue of costs is a pivotal ground in the Civil Appeal and proceedings to tax the Respondent's bill of costs will render the appeal nugatory and academic; and
- j) It is without any prejudice to either party if the taxation of the Bill of Costs is stayed pending determination and disposal of the civil appeal.

The Affidavit in Reply opposing the application was deposed by Cheguvera Mushemeza, the Legal Officer of the Respondent and it briefly stated that:

- a) The Applicant applied to this honorable court for stay of execution and the court granted him a conditional stay but he failed to comply with it;
- b) The Applicant further applied to the Court of Appeal for an interim injunction against the sale of the mortgaged property and an interim stay of execution of the Decree. The Court partially allowed the application but declined to grant a stay of execution;
- c) The Respondent filed and served its bill of costs in the consolidated suits which was scheduled for taxation on the 7<sup>th</sup> June 2023;
- d) Prior to the taxation hearing date, the Applicant was invited for a pre-taxation hearing on the 5<sup>th</sup> June 2023 but either declined or failed to attend the said meeting;
- e) Learned Counsel for the Applicant – Arthur Matovu on the 7<sup>th</sup> June 2023 applied to have the taxation adjourned so that he could study the Bill of Costs. The taxation was adjourned to the 15<sup>th</sup> June 2023;

*Mushemeza*

- f) On the 15<sup>th</sup> June 2023, the Respondent through its legal counsel was served with the Notice of Motion in Misc. Application No. 0855 of 2023 and was later served with a hearing notice for the same matter for 20<sup>th</sup> June 2023;
- g) The application is an abuse of the court process, does not disclose sufficient grounds or merits; and proceeding with the taxation shall not prejudice the Applicant; and
- h) The application should be dismissed with costs.

The Applicant in his Affidavit in Rejoinder in addition to reiterating what was stated in his affidavit in support of the Application, he stated that he was neither aware of the taxation proceedings nor did he instruct the law firm of M/s Kimara Advocates to handle the taxation.

### **Representation and Appearance**

The Applicant was jointly represented by Josephat Mutesasira and Innocent Nuriat of M/s Sebanja & Co. Advocates while the Respondent was represented by Ronald Oine of M/s Tumusiime, Kabgega & Co. Advocates.

The Parties were given schedules to file their written submissions which they complied with. The Court also ordered that the proceedings in ***Taxation Application No. 0158 of 2023: Orient Bank Limited versus Haruna Sentongo*** be stayed pending the hearing and final determination of this application.

Court has took into consideration the Parties pleadings and submissions in determining this matter.

### **Issue**

Whether the proceedings in Taxation Application No. 0158 of 2023 should be stayed pending the hearing and final determination of Civil Appeal No. 01 of 2022

### **Determination**

I am constrained to determine this matter without giving the background to what transpired after this honorable court delivered its judgement in consolidated civil suit numbers 0464 of 2018 and 0036 of 2019.

This honorable court delivered its judgement in consolidated civil suit numbers 0464 of 2018 and 0036 of 2019 on the 23<sup>rd</sup> December 2022. On 9<sup>th</sup> January 2023 the Applicant filed ***Miscellaneous Application No. 0009 of 2023: Haruna***



***Sentongo versus Orient Bank Limited*** seeking for an Order of Stay of Enforcement and or Execution staying the enforcement, execution or the taking of any steps or carrying out of any related proceedings the enforcement or execution of the Judgment, Decree, or Orders in Consolidated Civil Suits HCCS No. 464 of 2018 and HCCS No. 036 of 2019: Haruna Sentongo vs. Orient Bank (U) Ltd pending appeal by the Applicant.

This honourable court on the 10<sup>th</sup> February 2023 determined Miscellaneous Application No. 0009 of 2023 by granting the Applicant a stay of execution pending appeal on condition that the Applicant deposited a bank guarantee in the sun of Ugx. 7,227,479,035.464/= with the Registrar within a period of one month from the 10<sup>th</sup> February 2023. (emphasis is mine).

The Applicant on the 17<sup>th</sup> February 2023 filed in this honourable court ***Miscellaneous Application No. 0271 of 2023: Haruna Sentongo versus Orient Bank Limited*** seeking the following orders from Court:

- a) That leave be granted to the Applicant to lodge an appeal against the decision of this Honorable Court in Miscellaneous Application No. 0009 of 2023;
- b) That the enforcement of the Order to deposit Ug. Shs. 7,227,479,035.464 as security for due performance be stayed pending determination of the Appeal; and
- c) Costs of the Application.

The Applicant did not pursue/ prosecute the said application and on the 22<sup>nd</sup> March 2023, a notice withdrawing the application was lodged in court. The court obliged and closed the file by withdrawing the application with costs to the Respondent.

It also came to the attention of this honorable court that the Applicant filed ***Civil Appeal No. 0113 of 2023: Haruna Sentongo versus I & M Bank Limited (formerly Orient Bank Limited)*** in the Court of Appeal. The Application was for orders that an order of stay of enforcement and /or execution doth issue, staying enforcement, and execution of the Judgement , Decree and Orders of the High Court made in Consolidate Civil Suits Numbers 464 of 2018 and 036 of 2019; and



or restraining the Respondent from taking any steps or carrying out any actions of any nature capable of interfering with or affecting Civil Appeal No. 01 of 2023, until the hearing and determination and costs of the application be in the cause.

The Court of Appeal in deciding Civil Application No. 0113 of 2023 granted the Applicant a temporary injunction restraining the Respondent from carrying out any steps or interference with the suit property comprised in Block 12 Plots 250, 251 and 825 until the hearing and determination of Civil Appeal No. 01 of 2023. The Court however declined to grant the Applicant an order staying the execution of the Judgement, Decree and Orders of the High Court made in the consolidated civil suits.

Given the above background, this then begs the question whether court should exercise its discretion to stay the proceedings in the taxation application pending the hearing and final determination of Civil Appeal No. 01 of 2023.

The **Black's Law Dictionary 11<sup>th</sup> Edition at page 585** defines discretion as:

*“Wise conduct and management exercised without constraint; the ability coupled with the tendency to act with prudence and propriety”.*

The court would be inclined to exercise its discretionary powers if the Applicant had complied with its orders in Miscellaneous Application No. 0009 of 2023. It should be borne in mind that the Miscellaneous Application No. 0271 of 2023 filed by the Applicant seeking leave to appeal the decision of this court in Miscellaneous Application No. 0009 of 2023 was withdrawn. The Applicant therefore is in contempt of Court. In the case of **Housing Finance Bank Limited & Speedway Auctioneers versus Edward Musisi- Miscellaneous Application No. 158 of 2010** the Court of Appeal made a decision on a matter with similar facts. In the said case, the Applicants through Miscellaneous Application No. 0159 of 2010 did on the 15<sup>th</sup> November 2010 obtain from the Registrar of the Court of Appeal an Interim Order of Stay of the Orders of the Court of Appeal made in Civil Appeal No. 25 of 2004 on condition that the Applicants deposit in Court the Certificate of Title to Block 28 Plot 256 Makerere Kavule within 21 days from the date of the Order. Learned Counsel for the Respondent opposed the application on the grounds that the Applicants were fully aware of the Court Order. They neither gave any explanation nor justification to the Registrar as to why they did not comply with the Order. The Applicants also did not take any steps to appeal



against the Order but chose to or neglected to comply with the Order. The Court in **Housing Finance Bank Ltd. & Speedway Auctioneers (Supra)** held that:

*“In our considered judgment, this particular matter is of crucial importance. The principle of law is that the whole purpose of litigation as a process of judicial administration is lost if orders issued by Court through the set judicial process, in the normal functioning of the Courts are not complied with in full by those targeted and /or called upon to give due compliance. A party who knows of an order, regardless of whether, in the view of that party, the order is null or valid, regular or irregular, cannot be permitted to disobey it, by reason of what that party regards the order to be. It is not for that party to choose whether or not to comply with such an order. The Order must be complied with in totality, in all circumstances by the party concerned, subject to that party’s right to challenge the order in issue, in such a lawful way as the law permits. This may be by review, revision or by appeal”.*

The Court of Appeal went on further to hold that:

*“Otherwise to disobey an order of court or offer no explanation for non-compliance to the issuing court, at any party’s choice or whims, on the basis that such order is null or irregular, or is not acceptable or is not pleasant to the party concerned, is to commit contempt of court. A court of law never acts in vain and, as such, issues touching on contempt of court take precedence over any other case of invocation of the jurisdiction of court. A party in contempt of court by disobeying existing court order cannot be heard in a different but related cause or motion, unless and until such a person has purged himself /herself of the contempt. See **Hadkinson vs Hadkinson [1952] 2 ALL ER 575 and Mawani vs Mawani [1977] KLR 159. See also Court of Appeal Constitutional Court of Uganda Application No. 0019 of 2011: Musisi and Another vs Namugenyi Margaret, unreported**”.*

The last excerpt of the ruling sums up my decision. This court cannot entertain the Applicant in this matter because he is in contempt of the court order issued in Miscellaneous Application No. 0009 of 2023. The Applicant therefore came to court with unclean hands. For that reason, the court cannot exercise its judicial discretion in the Applicant’s favor unless he has purged himself of the contempt.

*MuDiagana*

In the result, this Application is dismissed with costs to the Respondent.

Delivered electronically this 12 day of September 2023 and  
uploaded on ECCMIS.



**Harriet Grace MAGALA**

**Judge**

**12<sup>th</sup> September 2023**