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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 2291 OF 2023
[ARISING FROM MISCELLANEOUS APPLICATION NO. 755 OF 2023]
[ARISING FROM CIVIL SUIT NO. 221 OF 2023]

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1. KK FRESH PRODUCE EXPORTERS LIMITED]	
2. JAMES KANYIJE]	APPLICANTS
3. DR. DATTATREY NAGIREDDY]	

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VERSUS

TURKISH AIRLINES INC]	RESPONDENT
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Before: Hon. Justice Thomas Ocaya O.R

RULING

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Background

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The Respondent commenced Civil Suit 221 of 2023 in this court against the Applicants and the same is pending determination [hereinafter “the main suit”]. In that suit, the Respondent contends that it extended freight services to the 1st Applicant during the year 2021 until 2022. The 1st Applicant did not pay for those services, but had issued a bank guarantee which operated as a security in the event of non-payment. When the 1st Applicant failed to pay for the services rendered, the Applicant took steps to liquidate the bank guarantee, only to find that the same was not unconditional as had been represented, but was instead conditional on the consent of the 3rd Applicant which was not given.

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5 The Respondent thus commenced the main suit seeking to recover USD 604,879 being sums outstanding under the contract between the Respondent and the 1st Applicant, contractual interest and special damages.

The Applicants filed a defence, which the Respondent contended was a sham, consists
10 of general denials, is evasive, frivolous, vexatious and an abuse of court process.

Consequently, the Respondent filed HCMA 755 of 2023 (“the head application”) seeking the following reliefs;

(a) The Written Statement of Defence filed by the Respondent on 30th March 2023
15 in Civil Suit 0221 of 2023 be struck out for offending the provisions of the Civil Procedure Rules.

(b) The Respondents’ Written Statement of Defence filed in Civil Suit 0221 of 2023 is a sham, frivolous, vexatious and an abuse of court process.

(c) Judgment be entered against the plaintiffs on such terms as prayed in the plaint.

20 (d) Costs of this application be granted to the Applicant.

Having heard both parties, on 1st August 2022, this court entered a ruling on the head application. In summary, this court ruled that Applicants’ defence consisted of general and evasive denials, that the defence was deemed an admission of the plaint save for
25 paragraphs 5(b), 5(d) and 5(e) and trial should proceed only on those grounds of defence and that the defence was not a sham, frivolous, vexatious or an abuse of court process.

Following from this, the Applicant contend that they have commenced an appeal
30 against the same decision vide Civil Appeal 1146 of 2023 and seek orders staying proceedings in the main suit until the determination of the said appeal.

For the Respondent, this application was objected to this application contended that the Applicants’ appeal is frivolous, vexatious and has no likelihood of success, that
35 there is no valid appeal warranting staying of proceedings, that this application is



5 deliberately aimed at hearing and final determination of the main suit and accordingly
that the same should be dismissed.

Representation

The Applicants were represented by M/s JOSKA Advocates while the Respondent was
10 represented by M/s Katende & Ssempebwa Advocates.

Evidence and Submissions

The Applicants led evidence by way of an affidavit in support and an affidavit in
rejoinder deposed by the 2nd Applicant while the Respondent led evidence by way of
15 an affidavit in reply deposed by Sevket Battal, the Respondent's Regional Cargo
Manager in Uganda.

Both sides made written submissions in support of their respective cases which I have
considered before arriving at the decision below, but have not felt the need to reiterate
20 herein.

Decision

The Applicant's application is premised on Section 33 of the Judicature Act and
Section 98 of the Civil Procedure Act. These provisions empower this court with
25 authority to issue any remedies, known or new (innovative) in the interests of justice.
See **Kagumaho Musana v Rama and 3 Others HCMA 933 of 2019 and Tullow
Uganda Limited & Anor v Jackson Wabyona & Ors HCMA 443/2017 and Green
Meadow Limited v Patrice Namisono HCMA 1368/2022.**

30 This is an application to stay proceedings pending the determination of the
Applicant's appeal. The starting point is whether there is an appeal.

Competency of the appeal

The Respondent contended that the Applicant's appeal has no chance of success
35 because (a) the appeal was made without leave to appeal, (b) the Applicants did not

5 write a letter seeking certified copies of the proceedings and neither did they serve the same on the Respondent, (c) the Applicants have not paid security for costs. Once a notice of appeal is filed, it can be said that there is an appeal. See **Rule 76, 82 of the Court Of Appeal Rules, Malinga Noah & Ors v Akol Henry CACA 203/2015, Elizabeth Batabaire v Ngobi Siraj & Ors CACA 36/2017.**

10 It was contended that there is no valid appeal as the Applicant's appeal is fatally defective.

Section 10 of the Judicature Act provides thus:

15 "An appeal shall lie to the Court of Appeal from decisions of the High Court prescribed by the Constitution, this Act or any other law."

The jurisdiction granted to the Court of Appeal above is both exhaustive and exclusive. This means that, save for where the law allows for other courts to make decisions on matters relating to the appeal (usually small peripheral matters), no other court is entitled to determine any question relating to the appeal. Only the Court of Appeal is so empowered to make such decisions, including the power to determine if that appeal is lawfully before it. This is more important because the Court of Appeal may, in exercise of its powers or discretion, nevertheless admit an appeal filed out of time. See **Donati Kananura v Tribet Rujugiro HCMA 1782/2022, Ssalongo Kakumba Bonny v Nyombi Eric HCMA 761/2022, Uganda Debt Network v Edward Sekyewa HCMA 1657/2023, Hajji Mohammed Katoto v Justus Kyabahwa HCMA 875/2023**

25 Accordingly, if an adverse party contends that the appeal is fatally defective as having been filed out of time, it is best that the appellate court considers the same and determine whether to strike out the notice of appeal (and resultantly the appeal) or not. See **Beeline Travel Care Limited & Anor v Finance Trust Bank HCMA 296/2023.**

35 Accordingly, the Applicants having demonstrated that a notice of appeal was filed and is on record, I find that there is a pending appeal and that the first consideration has been demonstrated by the Applicants.

5 Justice of Stay of Proceedings

A stay of proceedings is a temporary suspension of the regular conduct/order of proceedings in a matter until the completion of a certain action or the end of certain existing circumstances. Stay of proceedings puts a stop on the conduct of proceedings at the stage where those proceedings have reached. See **Godfrey Sentongo v David Balya CACA 274/2017, Lugya Andrew v Kikonyogo Richard & Anor HCMA 248/2021**

15 Article 28(1) of the Constitution of Uganda, 1995 entitles every person to a fair, speedy and public trial. Whereas this provision is often interpreted in the context of criminal trials, in my view, it applies also to civil trials and to both natural and unnatural persons. See **Isadru Vicky v Perina Aroma & Ors HCMA 33/2014**

In **Isadru Vicky v Perina Aroma & Ors HCMA 33/2014** Justice Mubiru held thus

20 “The overriding objective under article 28 (1) of *The Constitution of the Republic of Uganda, 1995* and *The Civil Procedure rules* in general is that courts should deal with cases justly, in a way which is proportionate to the amount of money involved, the interests and rights involved, the importance of the case, the complexity of the issues and the financial position of each party.

25 Public interest emphasizes efficiency and economy in the conduct of litigation, in that the courts’ resources should be used in such a manner that any given case is allocated its fair share of resources, the most important of which in civil litigation is time. Each case whose trial in unduly prolonged deprives other worthy litigants of timely access to the courts. Courts must ensure that each suit is dealt with expeditiously and fairly, allotting to it an appropriate share of the court’s resources, while taking into account
30 the need to allot resources to other cases”

Therefore, the decision whether or not to grant a stay of proceedings will depend on the justice of the case, considering all factors relevant in the specific circumstances of the proceedings. See **Regina v. Horseferry Road Magistrates’ Court, ex Parte Bennett (No 1), [1993] 3 WLR 90, [1994] 1 AC 42, (1993) 3 All ER 138, (1994) 98 Cr App R 114), Isadru Vicky v Perina Aroma & Ors HCMA 33/2014**

5 Granting a stay of proceedings is a judicial discretion to be exercised carefully, balancing the considerations of justice, the rights of the parties, public policy concerns and the circumstances of the case.

10 The right to fair trial is protected, and observed, by ensuring that proceedings, once commenced, are concluded as quickly as possible. Once proceedings drag, parties are likely to be disadvantaged as witnesses may become unavailable, die or loss memory. Moreover, in some cases, the length of proceedings may have a lasting irreversible impact on the litigants. For instance, money owing to a party being tied down for long periods in litigation may occasion business collapse, for which the determination of
15 the dispute after a long delay may not atone for. The Right to a fair hearing requires that the court, and all relevant stakeholders, should attempt to handle the dispute while the evidence is still fresh. **See R v Morin [1992] 1 SCR 771, Kasande Sylvia & Anor v Uganda CCCR 52/2010**

20 In my considered view, it is important to note only parts of the Applicants' defence were struck off. A considerable amount of grounds of its defence were left on recorded and referred for trial. Waiting for the determination of the Applicants' interlocutory appeal would prejudice the Respondent who would be kept waiting for a long period of time without a conclusion of their dispute. Moreover, even if this trial were to
25 proceed and a decision was entered against the Applicants', they would likely obtain a stay of execution in light of their appeal against the decision of this court in the head application, meaning that it is unlikely that they will be subjected to a decision arising out of the expunging of parts of their defence from the record before a decision on their appeal is rendered.

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In my view, it is better that the main suit is heard and concluded in order to avoid the loss of evidence, since, if the Appellants turn out to have been correct, they decision arising from the hearing will likely be set aside and will not affect them. In my view, if this court's decision is found to have been correct on appeal, a stay would be damaging
35 as the Respondent would have to return to this court and prosecute their case after a long delay.



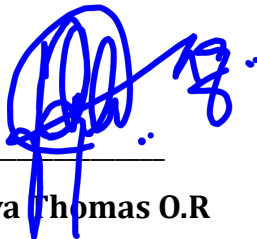
5 In my view therefore, the Applicants' prayer to stay proceedings in this case is not in the interests of justice and of expeditious trial of the dispute between the parties.

Conclusion

10 In the premises, I would dismiss the Applicants' application. Costs of this application shall abide the result of the main suit.

I so order.

15 **DELIVERED** electronically this 15th day of January 2024 and uploaded on ECCMIS.

A handwritten signature in blue ink, appearing to read 'Ocaya Thomas O.R.', is written over a horizontal line.

20 **Judge**
15th January, 2024

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