THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 464 OF 2005

JAMES RWANYARARE AND 5 OTHERS :::::::::::::::: PLAINTIFFS

VERSUS

MR. PETER MUKIDI WALUBIRI AND 2 OTHERS ::::: DEFENDANTS

BEFORE: AG. JUDGE REMMY KASULE

RULING

This is yet another Ruling in this case.

On 14th December 2005 this court held that the Consent Order entered into by the parties and recorded by court on 23rd November 2005 was not a final judgment and Decree in the suit and that since each side to the suit was giving a different version as to how the said order had been carried out, the court was to proceed with the hearing of the suit to determine whether or not the consent order had been complied with.

The Defendants, dissatisfied with that order of the court now seek leave to appeal that Ruling and also pray court to stay proceedings pending the disposal of the appeal in the appellate court(s).

The plaintiffs oppose the application.

It is to be appreciated that the Ruling of this court of 14th December, 2005 is interlocutory in nature in that it does not give finality to the issues in the case. Such finality can only be reached when this court determines the compliance by the parties to the suit with the consent order of 23rd November, 2005.

The law with regard to an appeal against a ruling made in the course of the trial has been stated by the Supreme Court of Uganda in SCCA 48/95: **Sanyu Lwanga Musoke V. Sam Galiwango**: **[1997] V KALR 47** as follows:

"It must be pointed out that the issue of appealing against every ruling that is made in the course of the trial has come up before this court on several occasions and decisions on it have been made to the effect that it is not necessary to file separate appeals, one against the interlocutory order made in course of hearing and another one, against the final decision. To hold otherwise might lead to a multiplicity of appeals upon incidental orders made in the course of the hearing when such matters can more conveniently be considered in an appeal from the final decision."

Their Lordships then referred to the cases of **Hannington Wasswa & Others V. Maria Ochola & Othres: C.A. No.5/95 (S.C),** unreported, **See: Supreme Court Civil Application No. 31 of 1995**: **Noble Builders (U) Ltd V. SIETCO** – unreported, **Gurdial Singh and Dahilous V. Shaun Kaur: [1960] EA 795.**

The rationale for the above state of the law is to let the trial court deal with all interlocutory matters as well as the issues of the case to finality; and then whoever is dissatisfied, to appeal against the decision of the court to the Appeal Court on all matters and issues, both interlocutory and final. This way dealing with a multiplicity of appeals and spending unnecessary time and other resources of both court and that of the parties is reduced; if not avoided all together.

Finality on issues under litigation is also reached quickly and systematically at both the trial and appellate courts.

This is not to say that in all cases an appeal against an interlocutory matter may not be pursued.

There may be legitimate instances when it may be appropriate to pursue an appeal against an order on an interlocutory matter.

Courts have overtime, set themselves, what has to be considered in order to determine whether an appeal should be allowed on an interlocutory matter.

An Appeal will not be allowed where an intended appeal against an interlocutory matter is to result in an abuse of court process by causing in ordinate delay in the finalization of the whole case: See **Court of Appeal of Uganda Civil Application No. 40 of 2005 Charles Harry Twagira Vs. Director of Public Prosecutions** – unreported.

A party may appeal an interlocutory order, if the court is satisfied that the order from which the appeal is taken involves a controlling question of law, which on being resolved, the whole case is determined; or where an immediate appeal on the interlocutory matter will materially advance the ultimate determination of the Litigation: **See the American case of In re Bertoli, 812 F. 2d 136, 139 (3rd Civ. 1987)** whose treatment of this subject is similar to that of English Courts, and is relevant and instructive in this application.

The court cannot conclude in this Application that an appeal will materially advance the ultimate determination of the whole case. On the contrary, an appeal will only delay such determination. Yet a final determination of the issues in the case is urgent and necessary so that the UPC as one of the major political parties in the country can play its role in the new era of multi party politics in Uganda particularly in the now pending national elections in the country that involve electing a president, members of parliament as well as District leaders and representatives.

Again, the order sought to be appealed against is explicitly conditional in that it is only after getting evidence from both sides that the court will be in a position to decide whether the consent order of 23rd November, 2005, was complied with or not. Both the said consent order and the order to receive evidence and decide as to whether or not the consent order was complied with are classic interlocutory orders: they are conditioned upon a future occurrence. None determines any of the issues in the case to finality.

Therefore to grant leave to appeal in this Application create delay and result in further expense and unnecessarily postpone the final resolution of the issues in the case. Leave to appeal is

accordingly refused. The proceedings shall also not be stayed. Instead, it is ordered that the hearing of the case eon the stated issue proceeds.

Remmy Kasule
Ag. Judge
21st December 2005