

5 **THE REPUBLIC OF UGANDA**

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL APPEAL NO. 0015 OF 2022

(Arising From Civil Miscellaneous Application No. 0039 of 2021)

10 **(Arising From Miscellaneous Application No. 00064 of 2020)**

(Arising From Arbitration Cause No. 0001 of 2019)

15 **NTAMBARA JOHN :::APPELLANT**

VERSUS

RUKIGA SACCO:::RESPONDENT

20 **BEFORE: HON. JUSTICE SAMUEL EMOKOR**

RULING

This Appeal arises from the ruling delivered by Her Worship Tabaruka Racheal
25 Magistrate Grade one sitting at Kabale Chief Magistrates Court in Civil
Miscellaneous Application No. 0039 of 2021.

The brief background to this Appeal is that the Appellant filed Civil Miscellaneous
Application No. 0039 of 2021 before the Chief Magistrates Court at Kabale seeking
orders that the execution process of Arbitration cause No. 0001 of 2019 be stayed
30 pending determination of the Appeal and that provision be made for costs.

The trial magistrate on the 13/07/2022 delivered her ruling dismissing the
application on grounds that the same was premature and improperly before the
Court. The Appellant thereafter filed the instant appeal on the following grounds:

35 **1. The trial Magistrate erred in law and fact when she held that the
application vide CMA No. 0039 of 2021 for stay of execution was premature.**

5 **2. The trial Magistrate failed to properly evaluate evidence on record thus arriving at an erroneous decision.**

3. The trial Magistrate erred in law when she entertained the matter without giving the Applicant opportunity to file submissions in rejoinder.

10 **Representation.**

At the hearing of this Appeal Mr. Muhangi Justus appeared for the Appellant while Ms. Ayesiga Rebecca represented the Respondent. Counsel in this matter proceeded by way of written submissions:

15 **Preliminary point of law.**

Counsel for the Respondent in her written submissions raised a preliminary point of law submitting that the order of the Magistrate Grade 1 delivered on the 13/07/2022 in which the trial Magistrate denied an application for stay of execution and from which the Memorandum of Appeal was filed on the 20 25/07/2022 was done without leave of Court as provided for by **Order 42 Rule 2** of the **Civil Procedure Rules**. It is the contention of Counsel that an Appeal of this nature cannot be competently filed without leave of Court and that appeals that are as of right are succinctly provided for under **Order 44 Rule 1** of **Civil Procedure Rules**. It is the argument of Counsel that an appeal from an order 25 refusing stay of execution is not one of them.

According to Counsel an appeal is a creature of statute and where there is no inherent right of appeal provided to an aggrieved party she or he must seek leave. To this effect Counsel relied on the decision in **Tumuhaise Mary Arinaitwe versus Emily Turyasingura HCCA No. 0011 of 2021.**

5 Counsel for the Appellant in his written submissions in rejoinder submits that the preliminary point of law is misconceived and made out of total regard of the entire **Order 44 of Civil Procedure Rules**.

According to Counsel the application that is appealed against (vide No. CMA No. 0039 of 2021) sought to stay the execution of an Arbitral award pending the
10 determination of an Appeal filed at the cooperative society board and that the same was meant to preserve the status quo until the determination of the said appeal.

It is the contention of Counsel that the application appealed against was interlocutory in nature and to this effect Counsel relies on the definition of the
15 same from **Webster New Word Dictionary** which defines it as:

“Interlocutory” means an order or proceeding other than a final decision. Once an action has been commenced all subsequent applications are referred to as interlocutory applications”.

It is the contention of Counsel that **Order 44 Rule 1(1) (u)** allows for appeals that
20 shall be as of right and that appeals from interlocutory applications need no leave of Court.

It is therefore Counsel’s argument that the instant appeal is competent and properly before this Court.

Determination.

25 The Court in **Alinyo versus R [1974] EA 544** held that the right to appeal is a creature of statute, for one to appeal he or she must have a right to appeal granted by law.

5 While Chief Justice Odoki (as he then was) in **Baku Raphael Obura & Another**
versus **Attorney General Constitutional Appeal No. 0001 of 2005** observed
thus:

*“It is trite law that there is no such thing as inherent appellate Jurisdiction.
Appellate jurisdiction must be specifically created by law, it cannot be inferred or
10 implied”*

Section 76(1) of the **Civil Procedure Act** provides for statutory right of appeal in
matters relating to arbitration where the award has not been completed within
time, compensation for arrest, attachment or injunction on insufficient grounds
and orders imposing a fine or directing the arrest or detention of any person
15 except where the arrest or detention is in execution of a decree.

The Order in Civil Miscellaneous Application No. 0039 of 2021 does not fall under
Section 76(1) of the **Civil Procedure Act** as it relates to an application for stay of
execution of an arbitral award.

Order 44 of the **Civil Procedure Rules** operationalizes the provisions of **Section**
20 **76(1)** of the **Civil Procedure Act** by detailing the orders from which there is a
direct right of appeal not necessitating an application for leave to appeal.

It is the contention of Counsel that **Order 44 Rule 1(1) (u)** allows for leave as of
right from interlocutory applications and that there is no need for leave of Court
to file the same.

25 **Order 44 Rule 1 (1) (u)** provides as follows:

*“(i) An appeal shall lie as of right from the following orders under **Section 76** of
the **Act**.*

(ii) An order made in interlocutory matter by a registrar”

5 The above provision is clear and unambiguous. It specifically relates to the interlocutory orders from decision of registrars. It cannot be conferred or implied to cover interlocutory orders made before other courts. The interlocutory decision on appeal was that made before a Magistrate Grade one and as such is not one appealable as of right under the law.

10 The Appellant it is my considered opinion ought to have proceeded under **Order 44 Rule 1 (2) of Civil Procedure Rules** that provides.

2. *“An appeal under these Rules shall not lie from any other order except with leave of the Court to which an appeal would lie from any other order except with leave of the Court to which an appeal would lie if leave were given*

15 *(3). “An application for leave to appeal shall in the first instance be made to the Court making the order sought to be appealed from”*

It therefore follows that the instant Appeal was filed without obtaining leave of the Court making the order nor of the Court to which the appeal lies.

The preliminary point of law raised in objection to the instant appeal is upheld
20 and the same is hereby struck out for being incompetent with costs to the Respondent.

Before me,

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SAMUEL EMOKOR

JUDGE

28/02/2024