

other hand vehemently opposed the appeal. She urged that were statement that the appeal has high chances of success was speculation particularly in the absence of memorandum of Appeal. She submitted that stay of execution should be granted for good reasons and the appeal should appear to be bonafide. She quoted the case of **New Vision Newspaper Vs J.H. Ntabgoba, HCMA 243 of 2004**, where Justice Tinyinondi held that there should be no speculation on success of Appeal.

Counsel for the Respondent further submitted that there was no mention of substantial loss to be occasion in the application as provided and **O.43 r 3** of the Civil Procedure rules. She added that there was again no mention of security for due performance, which is mandatory. She concluded that the Respondent should be allowed to enjoy the fruits of his Judgment.

I have carefully considered the submissions of both Counsel on either side and read the cases cited. In the **Supreme Court Civil Application No. 4 of 1991, J.W.R. Kazoora vs Rukuba**, it was held that a stay of execution should be granted for good reasons, and that the reasons can only be found in the Judgment sought to be appealed against. It was held further that the application was incompetent for lack of Judgment sought to be appealed against.

In his written reply, Mr. Arinaitwe for the present Applicant urged that in this case, the Judgment is on record for the court to see. With respect, I find such submissions very naive and untenable. It is not enough for a Judgment to be said to be on record. The Judgment must be attached to the application and the Applicant must highlight the salient points of law in the said judgment upon which he is appealing to the Court of Appeal. I am obliged to agree with Counsel for the Respondent that mere allegation that the appeal has high chances of success is speculation which this Court cannot allow.

And to make matters worse, not even the Memorandum of Appeal is attached. How will the weight of the appeal and note the points of law involved in the absence of a Memorandum of Appeal indicating the grounds? In my view, that is an appeal in vacuum which should not deprive a successful party, both in the Chief Magistrate's Court and High Court the benefits of his/her success. The case started in 2008 and 5 years down the road, the successful party in two courts is to be

denied the fruits of his judgments on mere speculation and conjecture would not only be unfair, but would result in injustice to the Respondent.

In the premises and in view of what I have outlined, including failure to make any submissions on substantial loss by Applicant, I do hereby dismiss the application with costs.

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W. M. MUSENE

JUDGE

6/09/2013

M/S Sanyu Robina, holding brief for Arinaitwe for the Applicant.

M/S Wakabala Suzan Sylvia for Respondent.

Parties in Court.

Aida Mayobo, Court Clerk present.

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W. M. MUSENE

JUDGE

Court: Ruling read out in Court.

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W. M. MUSENE

JUDGE

