

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISC APPLICATION NO. 544 OF 2012
(ARISING FROM TAXATION APPEAL NO. 543 OF 2012)
(ARISING FROM MISC CAUSE NO. 116 OF 2011)

LUKWAGO ERIAS, LORD MAYOR

KAMPALA CAPITAL CITY AUTHORITY :::::::::::::::::::: APPLICANT

VERSUS

JENNIFER MUSISI THE EXECUTIVE

DIRECTOR KAMPALA CAPITAL CITY

AUTHORITY :::::::::::::::::::: RESPONDENT

BEFORE: HON JUSTICE ELDDAD MWANGUSYA

RULING

This is an application brought under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, Order 22 Rule 26 and Order 5 Rules 1, 2 and 3 of the Civil Procedure Rules in which it is prayed that an order of stay of execution doth issue restraining the Respondent, her agents, servants, employees and any one rightfully claiming under her from executing the orders of this Honourable Court in Misc Cause No. 116 of 2012: **Lukwago Erias Lord Mayor KCCA Vs Jennifer Musisi Ssemakula** pending the determination of Misc Application No. 362 of 2012 and Taxation Appeal No. 543 of 2012 all pending before court and the costs of this application be provided for.

The application is supported by the affirmation of the applicant and grounded as follows:-

1. The award of a sum of UGX shs 47.569.000= as costs by the Taxing Master is manifestly excessive, exorbitant as the taxation of the whole of the Respondents bill of costs was conducted in error of Law and fact and in contravention of the Advocates (Remuneration and Taxation of Costs) Rules and the principles applicable to taxation of costs.
2. The applicant has appealed against the taxation award vide Misc Application No. 543 of 2012 which appeal is pending hearing before court with high chances of success.
3. That the Respondent's counsel have written to the Applicant demanding for payment of a sum of Ug. Shs 47.569.000= award as costs and have given an ultimatum within which to pay or else action shall be taken to recover the taxed amount.
4. If the Respondent is not restrained from proceeding with execution of the order the Applicant is likely to suffer irreparably by being compelled to pay the taxed costs thereby rendering the Taxation Appeal No. 543 of 2012 and Application No. 362 of 2012 nugatory.
5. It is just and equitable and in the interest of justice that an interim order of stay of execution be granted pending the final determination of the taxation appeal.

According to the affirmation in support of the Notice of Motion the genesis of the application was a dismissal by this court of an application by ERIAS LUKWAGO, Lord Mayor Kampala City Authority against JENNIFER MUSISI SEMAKULA for judicial orders of certiorari and mandamus among others. Following the dismissal of the application the applicant set in motion an appeal process against the dismissal of the application. Apart from filing a Notice of Appeal in the Court of Appeal the process includes an application for Leave to appeal now pending hearing in this court.

During the pendency of the application for Leave to appeal, the Respondent filed her bill of costs which were taxed and approved at a sum of shs 47.569.000=. The applicant appealed against this award and the appeal is pending hearing on 06.05.2013. The application before this court is for stay of Execution pending hearing of the appeal against the award.

The Respondent did not contest the application. She neither filed an affidavit in reply nor attended the hearing of the application. At the hearing of the application counsel for the applicant was allowed to file written submissions in which he clearly articulated the criteria for grant of Stay of Execution. He cited the case of **Lawrence Musitwa Kyazze Vs Eunice Busingye Civil Application No. 18 of 1990** where the following criteria was followed:-

1. The applicant filed a Notice of Appeal in accordance with the Civil Procedure Rules which has been done on this case.
2. The applicant's intended appeal has a likelihood of success. It should be noted that this court is not hearing the Appeal so it was not necessary for counsel to delve into the

details of the appeal itself. Apart from that this court is satisfied that likelihood of success cannot be discounted.

3. That substantial loss may result to the applicant unless the order is made. The applicant is already being asked to pay a sum of shs 47.569.000= when the appeal process is still a long way. On the other hand the Respondent does not stand to lose anything if execution is stayed and she eventually wins the award after the appeal. She only has to wait.
4. That the application has been made without unreasonable delay which has been the case in the instant application.

Having been satisfied that this application meets the above criteria and in the interest of justice an interim order of stay of execution is granted to the Applicant pending the final determination of the taxation appeal.

I make no orders as to costs

Eldad Mwangusya

J U D G E

04.03.2013

- [High Court](#)
- [Add to Significant Recent Additions](#)