

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISC. APPLICATION NO. 013 OF 2014  
(ARISING OUT OF CIVIL SUIT NO. 97 OF 2013)**

**CHINA NEW FUTURE (UGANDA) LTD. ....APPLICANT**

**VERSUS**

**HEWLETT-PACKARD  
DEVELOPMENT COMPANY LTD. ....RESPONDENT**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

**RULING**

20 This is a Ruling on an Application for stay of execution pending appeal within the provisions of order 43 r. 4 (3).

From the submissions by both counsel, they have agreed in principle that this court should give an order staying execution on condition that the requirements of the above provisions of the law are complied with.

What is at issue however is Order 43 (4) (3) (c) which provides:

- (c) That security has been given by the Applicant for the due performance of the Decree or Order as may ultimately be binding upon him or her.

The Applicant through counsel has submitted that the bill of costs is not yet drawn or taxed, the cost of destruction of the condemned goods is not yet ascertained so the security should be based on the shs.20,000,000/- court awarded as general damages.

He has gone further to argue that if a figure the Applicant cannot afford is awarded, the appeal will be rendered nugatory. He argues that Court should consider security for costs as opposed to security for due performance of the Decree. He cited various authorities including **Misc. Application 48/2012 Global Capital Save Ltd. & Ben Kamiya Vrs. Ben Okiror & Alice Okiror and Tropical Commodities Suppliers Ltd & others Vrs. International Credit Bank.**

The above authorities based their decisions on the Supreme Court authority of **Lawrence Musitwa Kyazze Vrs. Eunice Busingye** where in it was held that the provisions of Order 43 (4) (3) CPR must be complied with as regards security for due performance of the Decree.

However unlike the above authority, in the case of **Global Capital Save Ltd. Vrs. Okiror & Okiror**, the Court seemed to take a more practical and liberal approach and agreed with the reasoning of Justice Ogoola in **Tropical Commodities Suppliers Ltd. Vrs. International Credit Bank (supra)** that the requirement and insistence on a practice that mandates security for the entire decretal amount is likely to stifle appeals.

The Judge reasoned further that it is the duty of the Court in ordinary cases to make such order for staying proceedings in the Judgment appealed from as will prevent the appeal if successful from being rendered nugatory.

This Judge, like Justice Ogoola in the cited case above instead considered security for costs as opposed to security for due performance of the Decree.

Counsel for the Respondent has argued that the provisions of order 43 (4) (3) (c) are very clear and that it is not open for Court to depart from them.

That in the instant case, costs were awarded as well as general damages and that the cost of destroying the condemned goods has been estimated as Shs.30,000,000/-.

That a sum of Shs.80,000,000/- should be deposited by the Applicants to take into account the costs, the cost of destruction and the general damages. That it will make the process of execution much easier should the appeal fail.

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In the instant case the Bill of costs has not been filed or taxed and the estimated cost of destruction of Shs.30,000,000/- is evidence from the bar, unsupported by evidence.

10 What is on record is the Shs. 20 million awarded as General damages. The other figures proposed by counsel are speculative.

With or without the liberal interpretations referred to in the cited authorities, the fact is that Order 43 (4) (3) (c) must be complied with as a precondition for stay of execution.

15 I will in view of the authorities cited above take a practical approach which will not stifle the appeal but go a long way in ensuring that should it fail, the successful party will be able to recover what is reasonable in the circumstances.

20 It is ordered that the Applicants will deposit Shs.20,000,000/- in court as a precondition for the appeal as security for recovery of the General damages which have been quantified within 30 days of this order before proceeding with the appeal.

25 **Godfrey Namundi**

**Judge**

**24/03/2014**

24/03/2014:

FunsoTinuoye for Respondent

5 Applicants and Counsel absent

Court: Ruling read in open Court.

10 **Godfrey Namundi**

**Judge**

**24/03/2014**