

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISCELLANOUES APPLICATION NO. 196 OF 2021
(ARISING FROM TAXATION APPEAL NO. 19 & 20 OF 2019)

- 1. PARESH SHUKA**
- 2. SHREE GOPAL LIMITED:..... APPLICANTS**

VERSUS

- 1. ALNASIR GULAM HUSSEIN VIRANI**
- 2. AISHA ALNASIR VIRANI:.....RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application is brought under section 98 Civil Procedure Act, Order 43 rules 1,2,3,4,5 CPR seeking for

1. An order for stay of execution of the ruling and orders made in taxation appeal no. 19 and 20 of 2017.
2. Costs of this application be provided for.

The grounds upon which this application is based are contained in the affidavit of the applicant's lawyer Bekunda Pearl Maria and are as follows;

- a) The applicants filed civil suit no. 284 of 2017 which was dismissed for want of prosecution.
- b) The respondent filled their bill of costs which was to a tune of **ugx 391,475,120/=**.

- c) The taxing master taxed the respondent bill and awarded **ugx 101,471,000/=** which the applicants were dissatisfied with and appealed vide taxation appeal no. 19 of 2019.
- d) The respondent also being dissatisfied with the said award appealed against the said award vide taxation appeal no. 20 of 2019.
- e) Both appeals were dismissed and the applicants being dissatisfied filled a Notice of appeal.
- f) That it is fair, just and urgent that an order be issued staying the execution of the ruling.

The respondent opposed the application through the affidavit in reply deponed by Hamu Mugenyi

The respondent vehemently in opposition stated that on the 3rd August 2020, the Registrar of this Honorable court wrote to the applicants informing them that the record of the proceedings was ready for collection and the said letter was delivered to the said law firm on the 7th day of August 2020. That to date, the sixty days in which to lodge and appeal have expired and therefore there is no valid notice of appeal on which execution can be stayed or the applicants have never lodged in a record of appeal and therefore there is no appeal pending however the respondent did not furnish any evidence to that effect

The Applicants were represented by Kevin Charles Nsubuga of M/s Muwema & Co. Advocates whereas the respondents are represented by Yesse Mugenyi of M/s Mugenyi & Co. Advocates.

Issues.

- 1. Whether the order sought for stay of execution should be granted?*
- 2. What remedies are available to the parties?*

Analysis.

An application of this nature is governed by **Order 43 rule 4 of the CPR** where it is settled rule of practice as stated in the case of **Mugenyi & Co. Advocates v NIC [SCCA No. 13 of 1984]** and **Lawrence Musitwa Kyazze v Eunice Busingye [SCCA No. 18 of 1990]** that an applicant seeking for an order of stay of execution by the High Court pending an appeal must plead and prove that;

- a. Substantial loss may result to the applicant unless an order for stay of execution is granted.
- b. The application has been made without an undue delay.
- c. Security has been given by the applicant for the due performance of the decree/order as may ultimately be binding upon him or her.

In this application, the applicant has proved that there is a pending appeal and a notice of appeal has been adduced in evidence. The applicant has also proved that, the application has been made without undue delay since it was filed 9 days after being served with the notice to show cause.

The applicant must prove that substantial loss may result to the applicant unless the order is made.

In the case in *Tropical Commodities Suppliers Ltd and Ors Vs International Credit Bank Ltd (in Liquidation) (2004) EA 331*,
“.....substantial loss does not represent any particular amount or size for it cannot be quantified by any mathematical formulae. It refers to any loss, great or small that is of real worth or value as distinguished from loss without a value or that which is merely nominal.....”

Similarly, in **Kisawuzi vs Dan Oundo Malingu HCMA 467/2013**

“.....Substantial loss cannot mean ordinary loss or the decretal sum or costs which must be settled by the losing party but something more vague and general assertion of substantial loss in the event a stay order is granted.....”

In the present case, the applicants made an assertion of the same but have no evidence to back the assertion. What they will suffer is merely payment of the decretal sum which can be atoned to in damaged once the appeal is successful. Both the application and the affidavit supporting the application a full of arguments meant to address the dissatisfaction of the applicant which this court is not concerned with in this application, unless the applicants expect it to sit in an appeal of its own decision.

On the likelihood of substantial loss, resulting to the applicant, in case the order is not granted, this court finds that this ground has not been proved to its satisfaction since the loss if any, can be atoned by the respondents in monetary terms.

The applicants mere alleging of substantial loss may result if the application is not granted without demonstration of the loss cannot warrant intervention of this court to stop the Respondent from realization of its fruits of judgments through execution. In the final result, the application fails and the same stands dismissed with costs to the respondents.

I so order.

Ssekaana Musa.

Judge.

24th October 2022