

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

5 **MISCELLEANOUS APPLICATION NO. 762 OF 2016**

(ARISING FROM MISCELLEANOUS APPLICATION NO. 210 OF 2016)

(ARISING FROM EXECUTION MIS. APPLICATION NO. 161 OF 2016)

(ARISING FROM CIVIL SUIT NO. 052 OF 2012)

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NDAWULA RONALD APPLICANT

VERSUS

HIRAA TRADERS (U) LTD..... RESPONDENT

15

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

20 This application was made under 0.44 r 2, 3 and 4 and 0.52 r 1 C.P.R.

The Applicant is seeking leave of this court to appeal against the ruling in Miscellenous Application 210/2016.

25 Costs of the application were also applied.

There is a supporting affidavit of the Applicant setting out the grounds of the application to wit:-

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- 1) Applicant was required to furnish security of Shs. 143,000,000/- within two weeks from the date of the ruling, as security.
 - 2) The Applicant is dissatisfied with the condition of payment of the said money and wishes to appeal against the ruling.

3) The trial judge erred in law and fact to order deposit of the shs. 140,000,000/- to the court.

4) Costs were awarded to the Respondent without allowing the Applicant a right to be heard.

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5) Applicant shall suffer substantial loss if the orders in the ruling are not set aside and will also suffer injustice.

6) The Appeal has high chances of success and it is in the interests of justice that, Applicant be allowed to appeal.

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There is an affidavit in reply deponed by the Managing Director of the Respondent Company, where it is contended among other things that the intended appeal is frivolous and has no merit as there are no grounds that merit serious judicial consideration.

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The Shs. 143,000,000/- court directed to be deposited as security for due performance was never contested at the hearing.

At the hearing of the application on 17.05.16, Counsel for the Applicant went through the grounds of the application and the supporting affidavit.

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He urged court to note that ***“equity does not act in vain and follows the law”***, adding that, if the application is not granted the court would have acted in vain since the Court of Appeal has a substantive application pending before it and that there is a notice of appeal already filed before the Court of Appeal.

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And that since appeal has a likelihood of success and the Applicant is likely to suffer irreparable injury, Counsel prayed that application be allowed.

Counsel for the Respondent opposed the application on the grounds set in the affidavit in reply.

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He went through the affidavit, contending that it was ridiculous for the Applicant to appeal against the decision.

5 The case of **Sango Bay Estates Ltd and Others vs. Dresdener Bank [1971] EA 17** was relied upon to show the circumstances under which leave to appeal will be granted that is “.....*where prima facie it appears that there are grounds of appeal that merit serious judicial consideration.*”

10 It was then pointed out that, there are no grounds of appeal in the present case that merit serious judicial consideration. Counsel prayed for dismissal of the application with costs.

In rejoinder, Counsel, for the Applicant cited the case of **Jasper Amayeku and 198 Others vs. Attorney General Miscellenous Application 618/14** where Justice Musota granted leave of appeal on the ground that “*the Applicant wished to test the findings of the court at a higher level and that would not be unreasonably fettered*”.

20 Counsel also urged the court to apply the provisions of S.98 C.P.A which empowers court to use its inherent powers to make orders necessary for the ends of justice and insisted that the application be granted as it would not prejudice the Respondent in any way.

25 As stated by Counsel for the Respondent and rightly so “*leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal that merit serious judicial consideration but where as in the present case, the order from which it is sought to appeal was made in exercise of a judicial discretion, a rather strong case will have to be made out*”. – **Sango Bay Ltd (Supra)**.

30 After carefully considering the application and supporting affidavit in the present case, court finds that the Applicant has not established any prima facie grounds of appeal that merit serious judicial consideration.

The Shs. 143,000,000/- the Applicant was directed to deposit as security for due performance of the decree was never contested at the hearing of the suit. Such condition for stay of execution is

normally necessary so that whichever party wins in the end does not suffer any undue extra hardships.

0.22 r 23 (3) C.P.R also gives the court discretion to require security from or impose such
5 conditions on the Judgment Debtor as it deems fit before staying execution.

As to the claim that court granted costs without hearing the Applicant, I wish to state that “**costs follow the event unless for good cause court directs otherwise.**” There was no good cause for the Applicant not to be condemned in costs.

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I am inclined to agree with Counsel for the Respondent that the intended appeal is truly frivolous and vexatious and is only intended to further delay the Respondent from realizing the fruits of his judgment. It is a clear abuse of court process.

15 The application is accordingly dismissed for all those reasons, with costs to the Respondent.

Flavia Senoga Anglin

20 **Judge**

19.05.16