THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(EXECUTION AND BAILIFFS DIVISION)

MISCELLANEOUS APPLICATION NO. 3192 OF 2014

(ARISING FROM EMA NO. 2973 OF 2014)

(ARISING FROM HCCS NO. 81 OF 2013)

YOB YOBE OKELLO ---------- APPLICANT

VS

SANJAY DATTA ---------- RESPONDENT

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

This application seeking orders of this court to stay execution in C.S 81/13 pending disposal of the Appeal at the Court of Appeal was made under 0.43 rr 1 and 4 C.P.R, 0.52 rr1 and 2 C.P.R and S.98 CPA.

Costs of the application were also applied for.

The grounds for the application as set out in the motion are that:-

I. The Applicant filed a notice of appeal and Miscellenous Application 419/2013 in the Court of Appeal and the suit has high chances of success.

II. The notice of appeal arises out of C.S 81/2013.

III. There is a serious threat of execution as the Respondent has already taxed the Bill of Costs and initiated execution process in EMA – 2973/2014.

IV. The Applicant shall suffer substantial loss and damage if the order for stay of execution is not granted.

V. There is need to stay execution in C.S 81/2013 pending the disposal of Miscellenous Application 419/2013 and Civil Appeal at the Court of Appeal.

VI. The Appeal shall be rendered nugatory if the Respondent goes ahead with the execution.

VII. The Appeal has a high likelihood of success.

VIII. It is in the interests of justice that, the application be allowed.

There is an affidavit in support deponed by the Applicant where a copy of the notice to appeal, and a letter applying for proceedings, among other things are attached.

There is no affidavit in reply on record.

The application was filed on 05.12.14 and was first called on 20.01.15 when it was adjourned to 18.02.15.

There is no indication of what transpired on 18.02.15 for it appears that since 20.01.15 the Applicant had never followed up the matter.

Parties were summoned by court to appear on 12.04.16 and on that date both Counsel appeared. Noting that the application had been filed on 05.12.14, court directed that Counsel should appear on 19.04.16 at 2:30 pm, for Counsel for the Applicant to show cause why the application should not be dismissed.

On that date, Counsel for the Applicant prayed court to dismiss the notice to show cause on the ground that since the application was filed on 15.12.14 and served on the Respondent on 08.12.14 and fixed for hearing on 20.01.15, hearing did not take off as the trial judge was busy with a criminal case trial. The matter was adjourned to 18.02.15 but still the matter was not heard.

That a letter was written requesting for a hearing date but the matter could not be fixed as the judge was in the criminal session. And all efforts to set a date proved futile.

Further that when Counsel for the Respondent appeared on 12.04.16, the Applicant and the Counsel had not been informed of the date. And while Counsel for the Respondent stated that the Appeal had been dismissed, on 09.07.14, it was actually the application that was dismissed.

That as can be seen from the notice and the letter, the Applicant has been diligent in pursuing the matter but the circumstances of court would not allow them to dispose of the application.

From 2013, when proceedings were requested from the Commercial Court, the matter went to the Court of Appeal where several applications were filed by both parties.

The dates for hearing of the Applicants kept on being shifted and as the application were being pursued; the process of pursuing the Appeal was disrupted.

Going through several copies of hearing notices, Counsel asserted that in the circumstances, the delays were occasioned by court, coupled with the fact that the Commercial Court has not availed the certified proceedings.

He prayed that the Applicant should not be punished for circumstances beyond his control and for the fault of Counsel as he deserves to pursue the Appeal to its conclusion.

He prayed court to allow the Applicant sixty days to get the proceedings and file the Appeal and the application for stay to be given a hearing date.

In reply, it was the submission of Counsel for the Respondent that the submissions of Counsel for the Applicant appear to be delaying tactics meant to deny the Respondent the fruits of this judgment and therefore justice.

That since the judgment was given Shs. 108,000,000/- has been recovered from the Applicant. She then prayed that the application be dismissed so that Respondent can go ahead with execution under 0.9 r 22 C.P.R.

Court was also referred to S.98 CPA to exercise its inherent powers, adding that justice delayed is justice denied. And that for the application to be heard after almost two years will be an injustice to the Respondent.

In rejoinder, Counsel for the Applicant denied any intention to deny the Respondent the fruits of this judgment insisting that the Applicant was prevented from pursuing application due to circumstances explained and it would therefore be unjust for the application to be dismissed without being given a chance to be heard.

As to the Shs. 108,000,000/-, it was money recovered from a third party – Bank of Uganda, where the Respondent had deposited the money for the transaction in which the parties had entered. The money was given back to the Respondent which is an indication of good will of

the Applicant. He stated that S.98 and 0.9 r 22 C.P.R do not apply to the circumstances and reiterated his earlier prayers.

S.98 CPA saves the inherent powers of court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.

While 0.9 r 22 C.P.R sets outs the procedure for when Defendant only appears and the Plaintiff does not appear when a suit is called for hearing.

The proceedings before court are for the Applicant to show cause why application for stay should not be dismissed for lack of prosecution. I therefore agree with Counsel for the Applicant that 0.9r22 C.P.R does not apply to the circumstances.

However, S.98 applies as it gives court powers to make any orders to prevent abuse of the process of court.

It is not disputed that the application was filed in court on 05.12.14 and had only been called once on 20.01.15 when it was adjourned to 18.02.15.

From then until court summoned the parties to appear on 12.04.16, there is nothing on the file to indicate that the Applicant had ever taken any further step to have the application disposed of.

Granted the trial judge may have been busy with a criminal trial, but there is no justifiable excuse for failure of Counsel to obtain proceedings from the Commercial Court, to enable him file the intended appeal.

Contrary to the submissions of Counsel for the Applicant, there has been no due diligence in following up the matter. The proceedings in Commercial Court are recorded and transcribed and it would not take almost two years as in this case, to obtain them and file the necessary appeal.

I am constrained to believe Counsel for the Respondent that the apparent laxity exhibited in the handling of this matter is intended to deny the Respondent the enjoyment of the fruits of his judgment.

The application is accordingly dismissed for lack of prosecution with costs to the Respondent.

FLAVIA SENOGA ANGLIN

JUDGE

25.04.16