

Applicant then filed Nakawa H.C. Misc. Applica. No. 09 of 2015; which, at the hearing of this application, was pending hearing by a judge.

In his affidavit in support of this application for stay order, the 1st Applicant maintains that he was not given the opportunity to be heard before the Registrar proceeded to tax the bills complained of herein. He claims that he was not able to file his response to the taxation application owing to the delay by the Uganda Revenue Authority over whom he has no control. Counsel for the Respondent has submitted quite vigorously that this application is an abuse of due process, and is frivolous without any merit. I however do not think so. Where a person cries foul at proceedings on the ground that he or she was denied an opportunity to be heard, it cannot be flimsy ground or an abuse of the due process. The Court before which, such complaint is raised is under duty to hear it and determine its merit.

I should also point out that it appears strange that the Registrar would make a decision as to the competence of a reference application not filed before him. It seems to me that this was the preserve of the judge who was seized with the conduct of the application. In this regard then, the Registrar acted ultra vires in purporting to determine that the reference application by mere letter was incompetent. Be it as it may, on the evidence, there is already a subsequent appeal before a judge for determination; and I hold the view that this fact cannot be ignored. Indeed this is where any Court properly directing its mind to the subject matter at hand, would invoke the provisions of Article 126 (2) of the Constitution and apply substantive justice at the expense of procedural rules of technicalities.

The grant of stay of execution is a discretionary matter; which however has to be done with judicious consideration. There are bills of costs taxed and awaiting execution. The Applicants' complaint touches on one of the most protected fundamental rights; that of the right to be heard on the merit of the case. Where a party was merely late in filing its evidence, but was on record, the proper course of action in the pursuit of justice was for the Registrar to enlarge the time for the filing of the document to accommodate this late filing. Without appearing to be determining the merit of the matter pending determination by the Nakawa High Court, I should point out that in the case of *Henry Kawalya vs J. Kinyakwanzi* [1975] HCB 372, Ssekandi Ag. J. (as he then was) reiterated the rationale behind the Courts being given unfettered discretion to upset default judgments or orders as follows: –

"An ex parte judgment obtained by default of defence is by its nature not a judgment on merit; and is only entered because the party concerned failed to comply with certain requirement of the law. The Court has power to dissolve such judgment which is not pronounced on the merits or by consent, but entered specifically on failure to follow procedural requirement of the law."

It is not in dispute that there is an appeal pending in the Nakawa High Court for the determination of the Applicants' complaint herein. In the circumstances of the case before me, I think it would be unfair to deny the Applicants the remedy of stay of execution sought; and similarly, it would be inconsiderate to order the Applicants to first deposit some security in Court before the grant of the stay order sought. In the event, I allow the application; and grant the order of stay of execution sought by the Applicants, pending the determination of the Nakawa H.C. Misc. Applica. No. 09 of 2015. Costs hereof shall abide the outcome of the said Nakawa High Court application.



Alfonse Chigamoy Owiny – Dollo
JUDGE

04 – 03 – 2016