

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(EXECUTION AND BAILIFFS DIVISION)
MISCELLANEOUS APPLICATION NO. 2179 OF 2015
(ARISING FROM CIVIL SUIT NO. 723 OF 2014)

KENGANZI ANGELLA ----- APPLICANT

VS

METL UGANDA LIMITED ----- RESPONDENT

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

This was an application for stay of execution of the decree in C.S. 723/2014. Costs of the application were also applied for.

15 The application was made under 0.22 r 23 C.P.R, S.98 CPA and S.33 of the Judicature Act.

It is supported by the affidavit of the Applicant.

There is also an affidavit in reply deponed by the Manager of the Respondent Company.

20 The application was first called on 19.04.16, when Counsel for the Applicant sought adjournment to enable him check on the application for leave to appeal, that had been filed in the Court of Appeal.

There being no objection from Counsel for the Respondent, the matter was adjourned to 26.04.16.

25 On that date, Counsel for the Applicant informed court that the Registrar of the Court of Appeal had informed him that the earliest date for hearing the application for leave to appeal was in June, 2016.

Counsel then applied for stay of execution to be granted pending the disposal of the application before the Court of Appeal.

While Counsel for the Respondent did not oppose the application he applied that it be granted on condition that the Applicant deposits security in court for due performance of the decree
5 under 0.4r 4 (3) (c) C.P.R. The amount of the decree is Shs. 177,132,200/-.

In support of this argument, he cited the case of **Lawrence Musiitwa Kyazze vs. Eunice Busingye SCCA 18/90** - where court held that *“the parties asking for stay should be prepared to meet the conditions set out in 0.43. r (3) (c) C.P.R.”*

However, Counsel for the Applicant argued that there are cases that have decided that
10 *“security for due performance of the decree should not be interpreted to stifle someone’s right of appeal”*. That court has wide discretion under S.32 Judicature Act to allow the application without any security being deposited in court. – **Tropical Commodities Suppliers vs. International Credit Bank.**

Court has gone through the above authority and it is clear that court held that **“the
15 requirement and insistence on a practice that mandates security for the entire decretal amount is likely to stifle appeals.”**

Otherwise, court has discretion to impose or not to impose terms and conditions as set under 0.43 r 3 (c) C.P.R. taking into account certain principles that have been established by decided cases.

20 Since the application is not opposed by Counsel for the Respondent, it is allowed on condition that the Applicant deposits SHS. 50,000,000/- as security for due performance of the decree within two weeks from the date of this order.

Stay of execution pending the disposal of the application for leave to appeal is granted on those terms.

25 Each party to bear its own costs. See S.33 Judicature Act – **“Court may grant remedies absolutely or in such terms and conditions as it thinks just”**.

FLAVIA SENOGA ANGLIN

JUDGE

29.04.16