

**THE REPUBLIC OF UGANDA**  
**THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA**  
**LABOUR APPEAL NO. 017/2017**  
**(ARISING FROM LABOUR DISPUTE REFERENCE NO. 084/2016)**

**BETWEEN**

AFRICAN FIELD EPIDEMIOLOGY NETWORK (AFENET).....**CLAIMANT**

**VERSUS**

DR. PETER WASWA KITYABA.....**RESPONDENT**

**BEFORE**

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

**PANELISTS**

1. Mr. Ebyau Fidel
2. Mr. Habiyalemye Dominic
3. Ms. Nganzi Harriet Mugambwa

**RULING**

This is an application for stay of execution by notice of motion filed by the applicant. The notice of motion is supported by affidavit. The respondent filed an affidavit in reply to which the applicant filed an affidavit in rejoinder.

**Background**

The respondent filed labour reference No. 84/2016 claiming unlawful dismissal and this court granted the applicant an award for certain sums of money payable by the applicant.

The applicant filed an appeal against the award of this court and the appeal is still pending determination in the Court of Appeal. The applicant therefore sought the court to grant a stay of execution pending the determination of the said appeal. We have perused both the affidavit supporting the application and the affidavit in reply. We have also carefully perused the written submissions of both counsel.

Both counsel are agreed on the fact that this court has power to grant stay of execution of its orders pending determination of the appeal.

Both counsel are agreed that in granting a stay of application this court has a right to impose or not to impose certain conditions including security for costs. Both are agreed that this application was brought without any undue delay.

However counsel for the respondent strongly argued that the applicant merely stated that they were likely to suffer substantial loss without indicating the actual loss or the kind of loss or the details of the same. He relied on the authority of **ANDREW KISAUZI VS DAN OUDO MALINGA, (CMA 467/2013); PAN AFRICAN INSURANCE COMPANY (U) LTD. VS INTERNATIONAL AIR TRANSPORT ASSOCIATION (MA 86/2006), GAAGA**

**ENTERPRISES LTD AND TEBAJJANGA SEEMU VS MPINDI MOHAMADI BOSS (MA 2/2014) and other cases.**

On security, counsel for the respondent strongly argued that if this court granted the application, then the whole decree amount ought to be deposited in court as security. The applicant objected arguing that they were willing to deposit a bank guarantee of a reputable bank institution, although a percentage of the decretal amount would be sufficient. Both counsel relied on various precedents well articulated in their submissions.

After considering all the submissions of both counsel and after perusing all the authorities relied on by both counsel, we are of the considered opinion that the whole purpose of stay of execution is to allow the process of appeal be conducted and in the event of the appeal either succeeding or failing, neither the applicant nor the respondent is unfairly disadvantaged. In other words, in the event that the appeal succeeds, the appellant is easily returned in his original position before the judgement/award was appealed. And in the event that the appeal fails, the respondent may easily have benefit of the fruits of his/her judgement as pronounced by court before the appeal process.

In the instant application, this court pronounced an award of the equivalent of 460,000,000/= which is a subject of the appeal process. This court after hearing both parties, in its wisdom, declared that the applicant deserved this amount.

In staying the execution of this award, this court must be satisfied that in the event of the applicant losing the appeal, the applicant will have full benefit of this award.

A bank guarantee as we understand it, is a guarantee from a lending institution ensuring that the liabilities of a debtor will be met in the event that the debtor fails to settle the same. The applicant has offered to deposit a bank guarantee of a reputable bank institution. In our considered opinion, the deposit of a bank guarantee will ensure that the appeal against the decision of this court is heard and is not rendered nugatory, and at the same time will ensure that in the event the appeal is not successful, the respondent will have full benefit of the award of this court. Consequently we hereby allow the application on condition that the applicant will deposit with this court within 10 days of this award, a bank guarantee in the sum of 460,000,000/= and the bank guarantee shall be of either BARCLAYS BANK OF UGANDA, STANBIC BANK, OR DFCU BANK.

No order as to costs is made.

**Signed by:**

1. Hon. Chief Judge Ruhinda Asaph Ntengye .....
2. Hon. Lady Justice Linda Tumusiime Mugisha .....

**Panelists**

4. Mr. Ebyau Fidel .....
5. Mr. Habiyaemye Dominic .....
6. Ms. Nganzi Harriet Mugambwa .....

Dated: 10/MARCH/2017