

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
MISC. APPLN. 195/2017
LABOUR DISPUTE CLAIM NO. 261/2015

BETWEEN

REIME (U)**CLAIMANT**

VERSUS

PAUL BALABA LTD.....
.....**RESPONDENT**

BEFORE

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

PANELISTS

1. Mr. Rwomushana Jack Reuben
2. Mr. Anthony Wanyama
3. Ms. Rose Gidongo

RULING

This application seeks an order of stay of execution of a decree arising from LDC 261/2015.

Briefly the facts are that the respondent filed a claim against the applicant for wrongful termination and when time came for hearing the applicant did not show up and the court proceeded to hear the claim exparte. Eventually a decree for a total of Ugx. 62,600,000/= was passed against the applicant with interest on 15/09/2017. The applicant filed a notice of appeal on 28/11/2017 against the decree of this court and at the same time filed this application.

The application is supported by an affidavit to the effect that the respondent already applied for execution yet the applicant is desirous of appealing against the decision of court and that the applicant having filed a notice of appeal, if the application is not granted the appeal will

be rendered nugatory. The affidavit also states that the application having been filed without any delay will not cause any injustice.

An affidavit in reply is to the effect that, the applicant has failed to follow up the appeal so as to fix it for hearing which is a delaying tactic. The affidavit in reply further states that the notice of appeal is invalid having been filed out of time.

Both parties opted not to address the court and only filed written submissions, which we now consider in light of the affidavits on record.

In his submission, counsel for the applicant reiterated what was contained in the affidavit of the applicant and just attached a number of authorities without discussing their effect on the application although he stated that this court has inherent powers to allow this application such that the applicant is not denied its right to be heard.

In reply, relying on the authority of **Kalule Vs Nassozi, Misc. Appl. No. 25/2015** (High court) and **Lawrence Musiitwa Kyazze Vs Unice Busingye Civil Application 18/1990** (Supreme Court) Counsel for the applicant submitted that the applicant had to prove that:

- a) Substantial loss may result to the party applying for stay of execution unless the order is made.
- b) The application has been made without any reasonable delay.
- c) Security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

Counsel for the respondent strongly argued that there was no arguable appeal lodged since according to him, contrary to **Rule 23(2) and (3) of the labour dispute (Arbitration and Settlement) (Industrial Court Procedure Rules, 2012) and the judicature (court of Appeal) Rules, S.I No. 13-10**, the appeal was lodged more than 2 months from the date of the Award. This being the case it was his view that this application was serving as a delaying tactic to frustrate the judgement debtors efforts to realize the fruits of judgment. He submitted that in the event that this court was inclined to grant the application, the applicant should be ordered to deposit the decretal sum in court as security for performance of the decree.

We have perused carefully the Notice of motion together with the supporting affidavit. We have also perused carefully the affidavit in reply as well as the affidavit in rejoinder.

It is trite that once a court of law pronounces judgement, the beneficiary of the judgement is expected to enjoy the fruits of the judgement and this is ordinarily done through the process of execution.

However, the process of stay of execution is necessary once the appeal is pending so as to protect the subject matter in dispute and so that the rights of the appellant are guarded and the appeal if successful is not rendered nugatory.

The gist of the submissions of counsel for the applicant in this application, as we understand it, is that once a notice of appeal is filed and the applicant has applied for the lower court proceedings execution should be stayed until the disposal of the appeal.

This position contradicts the position stated by the supreme court in the case of **LAWRENCE KYAZZE Vs EUNICE BUSINGYE civil application No. 18/1990** whose holding is to the effect that the applicant in an application for stay of execution pending appeal must be prepared to meet conditions set out in **order 43 rule 4(3) of the civil procedure rules** which include payment for security for costs.

On checking the court record we find that this application was filed on 28/11/2017 while the Award to be stayed was delivered on 15/09/2017.

The **Labour Dispute (Arbitration & Settlement) (Industrial court Procedure Rules, 2012) rule 23** provides that appeals from this Court are made under the **Judicature Act(Court of Appeal Rules) S1 No. 13-10** under which **rule 76(2) thereof** provides for a notice of appeal to be lodged within 14 days of the decision against which the appeal is sought.

In the instant case, the notice of appeal was lodged long after the 14 days. We agree with the submission of counsel for the respondent that in the absence of an order of this court or any other competent court granting extension of time within which to file the notice of appeal, such notice of appeal cannot be said to exist. The non-existence of the notice of appeal itself in our view collapses this application since it remains without any base, this having been the gist of the submissions of the applicant.

We agree with the submission of counsel for the respondent that in applications of this nature the applicant has to establish that substantial loss may result to him/her if the application was not granted.

There was nothing close to showing this court any loss that might occur to the applicant in the event of this court's refusal to grant the application.

Consequently, in the absence of a valid notice of appeal, in the absence of evidence of security for costs and in the absence of evidence of substantial loss, this court is reluctant to allow the application. The circumstances tend to show that the applicant is using the appeal process only to frustrate the execution of the orders of this court. However, if the applicant is really interested in the appeal in the sincere belief that the appeal will succeed without any intentions of frustrating the respondent in the pursuit of the benefits of his judgement, we hereby grant that if the decretal amount or a bank guarantee of either **Barclays, DFCU, Stanbic or Standard Chartered Banks** be deposited into Court as security then execution will be stayed. Otherwise the application fails.

No order as to costs is made.

SIGNED BY:

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

PANELISTS

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2. Mr. Anthony Wanyama
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Dated: 13/APRIL/2018