

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO. 174 OF 2019
(ARISING FROM M.A. NO. 164/2018)**

OGAS SERVICES (U) LIMITED:.....APPLICANT

VERSUS

BAKASHABA JOET:.....RESPONDENT

BEFORE:

1. HON. CHIEF JUDGE RUHINDA ASAPH NTENGYE
2. HON. LADY JUSTICE LILLIAN LINDA TUMUSIIME MUGISHA

PANELISTS

1. MR. BWIRE JOHN ABRAHAM
2. MR. MAVUNWA EDISON HAN
3. MS. JULIAN NYACHWO

RULING

This is a ruling arising from the above application seeking orders that:

- 1) The ruling of the registrar of this court Her Worship Sylvia Nabaggala in Misc. Appl. 164/2018 be set aside.
- 2) Execution of the Award in KCCA claim 194 be stayed till disposal of Civil Appeal No. 37/2019.
- 3) Costs be provided for.

The application is supported by an affidavit which was sworn by one Naome Nantabo , Administrative Officer of the applicant. It is to the effect that the

registrar having found that the applicant would suffer loss if execution was not stayed and that there was willingness to furnish security for costs in due performance of the decree should have allowed the application for stay of execution. The affidavit is also to the effect that the registrar digressed from evaluation of the grounds for grant of execution by instead relying on the proceedings in the labour officer, and that it was in the interest of justice to stay execution of the decree of the labour officer.

An affidavit in reply was sworn by one Bakashaba Joet, the applicant. He swore (among others) that the applicant having filed a notice of appeal out of time without seeking leave to do so, there was no appeal in court and therefore the registrar did not make any error in law when she dismissed the application as it had no legal basis.

SUBMISSIONS

The issues (which were not opposed by the respondent) were stipulated by the applicant as:

- 1) Whether the learned registrar having found that the applicant would suffer substantial loss if the execution was stayed erred by dismissing the application.
- 2) Whether the learned Registrar having found that the applicant was willing and ready to furnish security for due performance of the decree erred by dismissing the application.
- 3) Whether the learned Registrar erred when she held that the application was brought with unreasonable delay.

- 4) Whether the learned Registrar erred when she di graced from evaluation of the grounds of stay of execution and relied on the proceedings in the labour office.
- 5) Whether it is just and equitable that the dismissal be set aside and execution of the award of the labour officer be stayed until the disposal of Civil Appeal No. 37/2018.

DECISION OF COURT IN LIGHT OF SUBMISSIONS OF BOTH COUNSEL:

We have internalized both submissions of both counsel regarding the above issues. We have also internalized both the application together with the affidavit in support and the affidavit in reply. **Order 43 rule (4(3) of the Civil Procedure Rules** provides

“No order for stay of execution shall be made under sub rule (1) or (2) of this rule unless the court making it satisfied:

- (a) That substantial loss may result to the party applying for stay of execution unless the order is made.**
- (b) That the application has been made without unreasonable delay and**
- (c) That security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him.**

Rule (4) of order 43 of the Civil Procedure Rules provides:

“Notwithstanding anything in sub rule (3) of this rule, the court may make an exparte order for stay of execution pending hearing of the application.

The complaint of counsel for the applicant as we understand it, is that the Registrar indeed agreed that the applicant had satisfied the court on (a) and (c) above but went ahead to dismiss the application on a ground that is not stipulated under Order 43 rule 3 as above mentioned.

Relying on **Mukasa Frederick & Mulindwa Alice Vs Jade Petroleum Ltd. H.C.M.A No. 2374/2016** before Hon. Lady Justice Anglire Senoga, counsel for the respondent argued that since the application was filed at a time when there was no appeal, it could not be allowed as noted by the registrar in her ruling. According to counsel, the finding that it took the appellant a full 57 days to file the application constituted unreasonable delay.

In deciding to dismiss the application the learned Acting Registrar of this court stated:

“Courts have set down guiding principles to consider when deciding whether to grant a stay of execution. These include the following:

- **Likelihood of success of the appeal/application.**
- **Danger of suffering substantial loss or irreparable damage.**
- **Application for stay was made without unreasonable delay.**
- **Security for costs has been given by the applicant.**
- **Balance of convenience.**

In this case the applicant was duly served with notices from the labour officer but chose not to attend proceedings. They were served with a demand notice for payment of the decretal sum in time but waited for almost two months to challenge the labour officer’s decision.

I have taken into consideration all the above guiding principles and on a balance of convenience, i find that the respondent should not be unjustifiably denied the fruits of his litigation.....”.


There is no doubt that the applicant filed an application in this court for leave to file a notice of appeal out of time. This application is pending before this court and it has not yet been fixed for hearing. Whether or not the application for leave is granted by this court will eventually determine whether or not an appeal would be properly filed before this court. We agree with the submission of counsel for the applicant that it was an error for the learned Acting Registrar to rely on the proceedings of the labour officer in order to determine the application before her, after finding that substantively the conditions under Order 43 rule 3 for stay of execution were complied with, although we entirely agree with her that no judgment creditor should be unjustifiably denied the fruits of his litigation. The applicant having filed an application for leave to appeal out of time, the merits or demerits of such application could only be determined by a full panel of this court. In the circumstance therefore the application for stay of execution should have been allowed pending disposal of the application for leave to appeal out of time. The situation would have definitely been different once there was no such application filed in this court at the time the learned Acting Registrar heard the application. The application will therefore be allowed. The orders of the Acting Registrar are set aside and substituted with the following:

- (1) An order of stay of execution of the labour officer’s orders in KCCA, labour complaint No. 194/2018 shall issue, pending the determination of an application for leave to appeal out of time.**

- (2) The applicant will deposit in court as security the decretal amount in the above KCCA complaint within 07 days of the ruling of this court.
- (3) The application for leave shall be fixed for hearing on or before 20/12/2019 and the applicant will follow up.
- (4) No order as to costs is made.

DELIVERED AND SIGNED BY:

1. HON. CHIEF JUDGE RUHINDA ASAPH NTENGYE
2. HON. LADY JUSTICE LILLIAN LINDA TUMUSIIME MUGISHA


.....

.....

PANELISTS

1. MR. BWIRE JOHN ABRAHAM
2. MR. MAVUNWA EDISON HAN
3. MS. JULIAN NYACHWO


.....

.....

Dated: 13/11/2019