

THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
MISCELLANEOUS APPLICATION No. 005 of 2020
(Arising from LDC No. 234/2014)

BETWEEN

**ABSA BANK (formerly Barclays
Bank of Uganda)..... CLAIMANT**

VERSUS

Aijukye Stanley.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Rose Gidongo
3. Ms. Harriet Nganzi Mugambwa

RULING

This is a ruling arising from the above application which sought a stay of execution of a decree in Labour Dispute Claim No. 234/2014. It is supported by an affidavit sworn by one Emuron Gerald, legal counsel of the applicant while an affidavit in reply was sworn by the respondent himself.

The applicant was represented by Mr. Alex Ntale from M/s. MMAKS Advocates while the respondent was represented by someone not reflected on the court record but from the submission, a signature reflects the firm of M/s. Tumwebaze, Kasirye & Co. Advocates.

The background of the application is that this court on 5/4/2019 issued a decree against the applicant. Later on the applicant filed application No. 141/2019 for

stay of execution which this court dismissed on 04/11/2019, prompting the applicant to file this application on 22/1/2020. The grounds of the application are clearly set out in the notice of motion. Both counsel filed written submissions. Counsel for the respondent argued that this application is barred by the doctrine of collateral estoppel as defined in Black's law Dictionary, Eight Edition which states: -

"Collateral estoppel

- 1. The binding effect of a judgment as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based.**
- 2. A doctrine banning a party from re-litigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one".**

According to counsel, the same issues in the present application were in No. 141/2019 and therefore barred by the doctrine. In the response to this assertion, counsel for the applicant contended that this application was based on different facts since in application 141/2019 no notice of execution had been served and there's was no actual threat of execution unlike in the instant application. We consider the doctrine of collateral estoppel being the same as the doctrine of res-judicata i.e. being barred from litigating on matters based on same facts between same parties or parties litigating under the same title on which a final decision has been taken by a competent court.

It is our considered opinion that for as long as execution of a judgment is not yet done, the matter is not yet finally determined. Consequently, every time the execution process is halted by whatever means, a subsequent application for execution cannot be said to be bound by the doctrine of collateral estoppel or resjudicata and it must be heard on its merits. A judgment not executed is a **"living"** thing upon which application for execution cannot be halted merely because there was a previous attempt at executing it. Put in another way, an application for execution is only an attempt to **"awaken"** the Judgement from its **"sleep"** and an application for stay is only to let it keep in its **"sleep"**. The preliminary objection is therefore overruled.

On the merits of the application, it was the applicant's counsel's view that there was a threat of execution and that since the applicant had filed a notice of appeal

and was willing to deposit security for the decretal amount, the application should be allowed. He went on to argue that since the applicants had no means of income, once the application fails and the judgment debt is paid, in the event of success of the appeal, the applicant will not be able to recover the money.

In reply to the above submission counsel for the respondent contended that the intention of the applicant was to delay and deny the respondent benefits of the Award which according to counsel was seen from the fact that the applicant having filed a notice of appeal did not take any step to process the same. Whereas it is true that an appeal is not necessarily by itself a bar to execution of a competent court order, it is also true that an appeal should never be rendered nugatory because a right to appeal is a constitutional right.

We are persuaded by the applicant that by virtue of the statement of the applicant in the original claim, he may not sufficiently reimburse the respondent in the event of the success of the Appeal. We are convinced that there is a real danger of execution, yet the applicant has already filed a notice of Appeal and requested for a record of proceedings for the purpose of perusing the appeal.

Just like in **Stanbic Bank (U) limited Vs Okou R. Richard M.A. No. 170/2019**, since the court awarded interest on top of the Award, as long as the applicant provides a Bank guarantee expressly providing for the Award together with interest for as long as the matter is in the court of appeal, we are satisfied that in the event of failure of the appeal, the respondent will access the full Award of the court. Accordingly, the application is allowed. The applicant shall provide a bank guarantee of a reputable bank acceptable to the claimant within 21 days of Award. No order as to costs is made.

Delivered & Signed by:

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

PANELISTS

1. Mr. Ebyau Fidel
2. Ms. Rose Gidongo
3. Ms. Harriet Nganzi Mugambwa

Dated: 21/08/2020

