

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISC. APPLN. NO. 196 OF 2019  
[ARISING FROM LDR NO. 131 OF 2016]**

**BETWEEN**

**AFRICAN FIELD EPIDEMIOLOGY NETWORK.....APPLICANT**

**VERSUS**

**BALANCHE BYARUGABA KAIRA.....RESPONDENT**

**BEFORE**

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

**PANELISTS**

1. Mr. Ebyau Fidel
2. Ms. Harriet Nganzi Mugambwa
3. Mr. F. X. Mubuuke

**RULING**

This is an application for stay of execution of a decree arising from Labour Dispute Claim No. 131/2016.

By way of affidavit, and in support of the application, one Dr. Simon Nyovuura Antala deponed that there was an impending execution of the decree, yet the applicant had filed an appeal against the said decree in the court of Appeal. The said Simon deponed also that the appeal would be rendered nugatory and the applicant would suffer irreparable damage if the court did not allow the application. He deponed that the applicant was ready and willing to deposit security for the due performance of the decree.

In an affidavit in reply, sworn by one Dathan Katebire Ariho, an advocate, it was deponed that there was no pending appeal by the applicant to warrant a stay of execution and that there was no pending threat of execution.

### **Submission**

Relying on the authority of **Sewankambo Dickson Vs Ziwa Abby HCMA 178/2005**, Counsel for the applicant argued that the applicant had satisfied requirements enumerated in this decision which include: the fact that the applicant had taken steps to appeal the decision which will be rendered nugatory if the order of stay is not granted; the fact that the applicant intended to provide security for due performance of the decree and the fact that the application had been made timeously.

The respondent on the other hand, relying on the authorities of **Lawrence Musitwa Kyazze Vs Eunice Busingye, Supreme Court application 18/1990 and Kamurungi Patrick Vs Buwambizo Charles, Court of Appeal application 96/2017** argued that the applicant having lodged only a notice of appeal and not a memorandum of appeal there was no appeal to warrant a stay of stay.

Relying on **Lively Minds Uganda Vs Kanyonga Sarah, Labour Dispute Appeal 89/2018**, counsel argued that without exemplification of how substantial loss would occur if stay was refused, the application did not satisfy the test of occurrence of substantial loss.

### **Decision of court:**

Jurisprudence on stay of execution of decrees is to the effect that before court makes a decision on an application of this nature, there must be an appeal pending in the court system and there must be also a threat of execution which may lead to irreparable loss. The burden lies on the applicant to prove on a balance of probabilities that the requisite conditions have been satisfied for the order to issue (**see, Hwang sung Industries Ltd Vs Tajdin Hussein and 2 others, Court Civil Application No. 19/2008**).

In the instant application a notice of Appeal was properly lodged in court within the required time. Whereas it was contended by the applicant that filing of the memorandum of appeal would await a typed copy of proceedings from this court, counsel for the respondent argued that **Rule 83 of the judicature (court of Appeal)**

**Rules, Statutory Instrument 13-10** provided for filing of both the memorandum of Appeal and the record of Appeal within 60 days after filing the notice of appeal.

Rule 23 of the **Labour Disputes (Arbitration and Settlement)(Industrial Court Procedure) Rules 2012** provides:

**“23 Appeals from decision of the court**

1. ....
2. ....
3. **Appeals under this rule shall be made under the judicature (court of Appeal) Rules S.1. No. 13-10.**

The question for this court is whether the non-availability of the lower court record, would be sufficient reason for the applicant not to file a memorandum of appeal and a record of proceedings as spelt out in Rule 23 of the court of Appeal Rules above mentioned.

In *Sewankambo Dickson Vs Ziwa* (supra) the court addressed its mind on the issue whether the applicant having lodged only the notice of Appeal would be entitled to an order of stay and stated that **“Authorities appear inconsistent in this area of law, some stating that the lodgment of a notice of Appeal is an intention to appeal and cannot amount to appeal that must be lodged by filing a memo of appeal, record of appeal, payment of fees and Security for costs: G.M combined (U) Ltd Vs A.K. Detergents (U) Ltd HCCS No. 384/94 reproduced (1995)IV KARL 92 and others stating that the word appeal denotes the procedure stated by filing a notice of appeal: see Ujagar Singh Vs Runda Coffee Estates Ltd (1966) EA 263.”** After considering both views the Hon. Justice Yorakamu Bamwine held in the Sewankambo case above that a notice of Appeal was sufficient following the supreme court decision of Lawrence Kyazze (supra) that;

**“the practice that this court should adopt, is that in general application for stay should be made informally to the judge who decided the case when judgment is delivered. The judge may direct that a formal motion be presented on notice (under 04r1) after a notice of appeal has been filed. He may in the meantime grant a temporary stay for this to be done.”**

Consequently, we are not swayed by the submission of counsel for the applicant that failure to file a memorandum of Appeal in the court of Appeal would amount to non-existence of the appeal which would in return not warrant an order of stay of execution.

It was argued that there was threat of execution which would amount to substantial loss rendering the appeal nugatory.

According to the affidavit in support of the application, a letter demanding payment by 15/08/2019 constituted a threat of execution since failure to comply with the letter would inevitably lead to execution.

We consider substantial loss as loss that would be incurred by the applicant if the appeal was allowed and the respondent had no means to pay back what she/he received under the judgment/Award after execution. Although we believe the respondent after losing her job may not be with capacity to pay back after the appeal is allowed, there is a very reason to believe that the appeal will not be successful.

This is because on perusal of the case of **AFRICAN FIELD EPIDEMIOLOGY NETWORK VS PETER WASSWA KITYABA Civil Appeal No. 124/2017** which decided **Labour Reference 084/2016**, we are strongly of the view that all the potential legal points intended to be appealed were ably considered.

In our considered opinion the **Peter Wasswa Kityaba case** is on all fours with the instant case. Whereas in the Kityaba case the appellants raised points of law regarding the jurisdiction of this court to entertain the claim as well as grant general damages and issues relating to how this court arrived at a severance package, the court of appeal held that this court had jurisdiction and the court was not limited in awarding general damages. The court also upheld the calculation of severance.

All the points that the appellant was successful about in the Wasswa Kityaba case were taken care of by this court in the instant case. For example, the court in the instant case did not award salary arrears or exemplary damages. The court awarded 150,000,000/= general damages, the same as in Kityaba case which was left intact by the court of appeal, and severance allowance calculated on the same principle as


in the Kityaba case and which was also left intact. The only issue would be interest which the court of appeal reduced to 14% per year.

Given the decision in the Kityaba case and the decree to be executed in the instant case, it is clear that if the interest was calculated at 14% as decreed in the Kityaba case, the purpose of stay of execution of the instant decree would only have the result of delaying execution and realization of the fruits of the Award of this court.


We form the opinion that a party seeking for a stay of execution must satisfy the court that there is sufficient cause why the party with a judgment should postpone the enjoyment of its benefits and should demonstrate special circumstances and irreparable loss. Since the decree in the instant case is in the terms as approved by the court of Appeal in the Kityaba case, we find that the applicant has not satisfied this court that there is a likelihood of success of the Appeal which may lead to irreparable loss. Except for the amount of interest (which can be re-adjusted to conform to the Kityaba case) at 14%, and unless the respondent intends to proceed with the cross appeal, we consider this application as intended to delay the respondent's enjoyment of the fruits of the Award. It is therefore rejected and dismissed with no orders as to costs.

**Delivered & Signed by:**

1. Hon. Chief Judge Ruhinda Ntengye

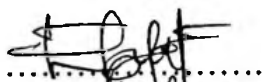
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Dated: 04/05/2020