

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. NO. 248 OF 2019
[ARISING FROM MISC. APPLN. NO. 152/2019 & LDR 206/2014]

BETWEEN

SANYU FM (2000) LIMITED.....APPLICANT

VERSUS

BEN KIMULI.....RESPONDENT

BEFORE

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

PANELISTS

1. Mr. Bwire John Abraham
2. Mr. Katende Patrick
3. Ms. Julian Nyachwo

RULING

This application is brought to court under **Section 33 of the judicature Act, rule 23 of the Labour Dispute (Arbitration & Settlement) (Industrial court Procedure) rules 2012, Order 43 rule 4(3), order 52 rule (1) of the Civil Procedure Rules and section 98 of the Civil Procedure Act**. It mainly seeks that an order issues staying execution of the Award of this court in Labour dispute Reference No. 125/2015 until the disposal of an Appeal against the Award.

The application is supported by an affidavit sworn by one Betsy Mugamba which is to the effect that the applicant will suffer substantial loss if the application is not granted and that the applicant is ready and willing to furnish security. The affidavit also states that the appeal shall be rendered nugatory if the application is not granted.

An affidavit in reply sworn by one Ben Kimuli, the respondent, is to the effect that apart from filing letters requesting for record of proceedings, nothing

shows any effort by the applicant to obtain the record and that the application did not disclose any grounds for staying execution. The affidavit states also that in the event that this court grants the application, the applicant ought to be ordered to deposit the monitory award into this court.

Before we derive into discussion and eventual decision of the application, we would like to comment on the presentation of the application. Bothe counsel in submission referred to this court as **"your Worship"** which we think was not proper. Whereas the notice of Appeal was filed in this court on 19/03/2019, it was not only inconceivable but improper for the applicant in submission to state that **the applicant aggrieved by the said judgment accordingly filed a notice of Appeal on the 19th of March 2019 in the High court Commercial Division** This court is not a commercial division of the High Court.

We take a lot of exception to the above and hope that both counsel will be more careful next time.

It was the submission of the applicant that court has unfettered wide discretion on well-established principles to stay any proceedings if such would render a party's right of appeal nugatory. Counsel relied on it **HCMA 424/2011, Souna Cosmetics Limited Vs the Commissioner Customs URA and the Commissioner General URA**. According to counsel since there are no known assets of the respondent as per the affidavit in support of the application, the applicant will suffer unrepairable damages if the application is not granted.

According to counsel for the applicant, the application was filed without any delay since it was aware of the threat of execution on 30/1/2019 and filed the application on 10/1/2019 only about a week after.

In reply to the above submissions, counsel for the respondent argued that the application was only intended to delay and frustrate the respondent from realizing the fruits of his Award. According to counsel, a notice of appeal having been filed on 19th of March 2019 no effort was done to get the record of proceedings.

We have carefully perused the notice of motion, the affidavit in support of the motion, the affidavit in reply and the submissions of both counsel. The biggest worry of the applicant is that once execution issues and the judgment amount

is paid by the applicant, the respondent has no capacity to pay back once the Appeal succeeds in the court of Appeal.

We take cognizance of the right of the applicant to appeal to the court of appeal and we appreciate the fear that the respondent may not be able to make good the loss in the event of the success of the Appeal. We at the same time take cognizance of the fact that the Award of this court is not delivered in vain; the successful litigant must be able to enjoy the fruits of his/her judgment or Award.

Considering that the applicant believes that the appeal will be successful and yet it does not believe that the respondent will make good the loss, and considering that the duty is solely upon the applicant to pursue the appeal failure of which disadvantages the respondent, the application will be allowed on condition that the applicant furnishes security in a form of a reputable bank guarantee in the sum of 44,700,000/=(Uganda Shillings Forty four million seven hundred thousand only) within ten days of the delivery of this ruling.

No order as to costs is made.

Delivered & signed by:

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

PANELISTS

1. Mr. Bwire John Abraham
2. Mr. Katende Patrick
3. Ms. Julian Nyachwo

Dated: 02/07/2021