

THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 110 OF 2022

(Arising from Labour Dispute Reference No. 274 of 2016)

CROWN BEVERAGES LTD::APPLICANT

VERSUS

OKOT OMOYA BRAIN AND OTHERS::RESPONDENT

BEFORE

THE HON. JUSTICE ANTHONY WABWIRE MUSANA,

PANELISTS:

Ms. ADRINE NAMARA,

Ms. SUSAN NABIRYE &

Mr. MICHAEL MATOVU.

RULING.

- 1.0 This ruling is in respect of an application brought under Section 98 of the Civil Procedure Act Cap.71 and Order 22 rules 26 and 89 of the Civil Procedure Rules S.I 71-1, seeking an order for stay of execution of the decree Labour Dispute Reference No. 274 of 2016 which awarded the Respondents some **UGX 105,000,000(One Hundred Five Million Shillings)** *inter alia*, pending determination of the Applicants' appeal at the Court of Appeal of Uganda and costs of the application.
- 2.0 The grounds in support were set out in the chamber summons and elaborated in the affidavit of Mr. Melvin Mpambara. It was his deposition that the applicant had preferred an appeal against the award of the industrial court by filing a notice of appeal and requesting for typed proceedings. He also deposed that if execution proceedings were not stayed, the applicant would suffer substantial loss.

- 3.0** Mr. Aruho, appearing for the Applicant submitted that the application was uncontested. A copy of the chamber summons bearing the stamp of M/S Matovu and Matovu Advocates acknowledging receipt on the 1st of August 2022 was attached to the return of service. This Court is satisfied that the Respondent was duly served and by their absence from these proceedings, have left the matter uncontested. The application might therefore succeed on that ground, alone.
- 4.0** However, even in uncontested cases, the Applicant has a duty to make out a case.
- 5.0** Mr. Aruho submitted that there was a pending suit by way of the appeal. It was his position that the legal basis for a grant of the orders sought was to preserve the right of appeal and avoid rendering a successful appeal nugatory. He cited several cases in support of this proposition.¹
- 6.0** The principles governing a grant of stay of execution have been very well settled and for exactitude, are that the Applicant must establish that:
- (a) his appeal has a likelihood of success; or a prima facie case of his right of appeal.
 - (b) he will suffer irreparable damage and that the appeal will be rendered nugatory if a stay is not granted.
 - (c) If (a) and (b) have not been established, Court must consider where the balance of convenience lies.
 - (d) the Application was instituted without undue delay.²
 - (e) there is serious or eminent threat of execution of the decree or order and if the application is not granted, the appeal would be rendered nugatory.
 - (f) the application is not frivolous and has a high likelihood of success and
 - (g) the refusal to grant the stay would inflict more hardship than it would avoid.³

¹ LAWRENCE MUSIITWA KYAZZE VS EUNICE BUSINGYE S.C.C.A 18/1990 AND SOUNA COSMETCIS LTD VS COMMISSIONER OF CUSTOMS & ANOTHER H.C.M.A 424 OF 2011.

² HON. THEODORE SSEKIKUBO AND 3 OTHERS VS AG AND 4 OTHERS SUPREME COURT CONSTITUTIONAL APPLICATION NO. 06 OF 2013

³ JOHN BAPTIST KAWANGA VS NAMYALO KEVINA & ANOR H.C.M.A NO. 12 of 2017

- 7.0** It was submitted for the Applicant that there was a status quo to preserve. Mr. Aruho also posited that the Industrial Court had granted a remedy that was not pleaded and which required a computation after judgment. He suggested that the intended appeal was not frivolous and had a high chance of success. He added that in the event that execution issued, the applicant would face considerable difficulty in recovery of the **UGX 105,000,000/=**(One Hundred Five Million Shillings Only) thus facing a substantial loss. In his view, the balance of convenience was weighted in favour of the applicant and the appeal could be rendered nugatory if execution ensued.
- 8.0** A review of the pleadings and submissions in the present case, establishes prima facie questions viz (i) relating to an award of a remedy not pleaded for and (ii) an ex post facto assessment of overtime, which may, in our very humble view, merit further judicial consideration. The Respondents commenced execution of the said award by taking out an application for execution in Miscellaneous Application No. 093 of 2022. This application was filed on the 8th day of July 2022, about 2 months after the award. The Notice of Appeal was dated 20th May 2022 and it appears from the record that the Applicant is taking steps to progress its appeal. In this regard, we are satisfied that the Applicant has met the threshold for a grant of the orders sought.
- 9.0** However it is our considered opinion that such a grant is not to be unconditional. This Court has adopted a rationale for conditional grants of stay of execution. In **LDMA. NO. 248 OF 2019 SANYU FM (2000) LIMITED VS BEN KIMULI** the Court sought to balance the fear of substantial loss if it is impossible to recover money after execution, with the delay in enjoying the fruits of litigation if the appeal were to delay. This rationale has also been expressed by this Court in the cases of **LDMA. NO. 005 of 2020 ABSA BANK (formerly Barclays Bank of Uganda) VS AIJUKYE STANLEY**, **LDMA NO 008 of 2021 BUSOGA FORETRY COMPANY VS BATABANE ANATOLE** and **LDMA No. 170 of 2019 STANBIC BANK (U) LTD VS OKOU R. CONSTANT**.
- 10.0** It appears to us that a party seeking remedial action before an appellate court would be interested in a speedy disposal of the appeal in order to access the monies deposited as a security. Similarly, a respondent would be assured of a safety net in the form of security for the award, the imponderables notwithstanding.

11.0 The unique nature of employment disputes requires for speedy determination. To this end, the Framers of the Labour Disputes (Arbitration and Settlement) Act, 2006, (LADASA) enacted for speedy disposal of labour disputes.⁴ We are of the considered view that a deposit of the decretal sum or part thereof as security is helpful in expediting the prosecution of an appeal in the Appellate Courts as well providing some form of guarantee to a decree holder.

12.0 In assessing the quantum of the security deposit, we note that the Applicant also made the point that the Respondent had also filed a Notice of Appeal against part of this Court's award. Mr. Aruho argued that the Respondents could not be permitted to approbate and reprobate. He cited **H.C.M.A No. 901 of 2018 MOSES LUBEGA VS MTB COMPANY LTD** in support of this proposition. While we are not absolutely certain that the Respondent's affidavits in reply and submissions on this point would have been helpful, an appeal against part of a decision of a Court concurrently with an application for execution might amount to approbation and reprobation. The Application for Execution under Appendix D of the Civil Procedure Rules, requires a disclosure whether any appeal has been preferred. It is surmised that the requirement for disclosure might be intended to guard against abuse of court process by electing to appeal concurrently with executing the decree. In the Busoga Forestry Case (Supra), the Hon. Justice Dr. Flavian Zeija's (as he then was) holding in **John Baptist Kawanga v Namyalo Kevina and Ssemakula Laurence (spura)** was cited to the effect that,

“...The objective of the legal provision on security was never intended to fetter the right of appeal. It was intended to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. Therefore, the decision whether to order for security for due performance must be made in consonance with the probability of the success of the appeal and on the facts of each case as the situations vary from case to case.

⁴ Section 8(2) of Ladasa requires the Court to dispose labour disputes without undue delay. Section 4 and 5 of Ladasa provide timelines within which Labour Officers must deal with disputes.

The circumstances of the present case are that the Respondent also seeks to appeal against part of the award of this Court. For this reason, we think it would be unfair to subject the Applicant to a deposit of the full decretal sum because the Respondent would also be pursuing a cross-appeal. The grant, under Order 22 Rule 26 of the CPR is discretionary. The court may grant the order if it sees fit and on such terms as to security as the Court thinks fit.

- 13.0 In the result, the Application is granted on the terms that the Applicant shall deposit in Court one half of the decretal amount being the sum of **UGX 50,250,000/=(Fifty Million Two Hundred Fifty Thousand Shillings Only)** by way of a bank guarantee from a reputable bank. The same shall be deposited in Court within 14 days of this order. As the application was uncontested, there shall be no order as to costs.

Dated at Kampala this 4th day of October, 2022

ANTHONY WABWIRE MUSANA, Judge

PANELISTS

1. Ms. ADRINE NAMARA,

2. Mrs. SUZAN KAGOYE &

3. Mr. MICHAEL MATOVU.

Ruling delivered in open Court in the presence of:

Mr. Emmanuel Kakenga for the Respondents,

The 1st Respondent and,

Mr. Amos Karugaba, Court Clerk.