

**THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
MISC. APPLN. NO. 165/2021  
ARISING FROM LABOUR DISPUTE REFERENCE NO. 024/2015**

**BETWEEN**

**TORRES ADVANCED  
ENTERPRISES SOLUTIONS, LLC..... APPLICANT**

**VERSUS**

**GEORGE JOHNSON OJOK & 87 OTHERS ..... RESPONDENT**

**Before**

1. The Hon. Head Judge, Ruhinda Asaph Ntengye

**Panelists**

1. Mr. Musimbi Jimmy
2. Ms. Robinah Kagoye
3. Mr. Can Amos Lapenga

**RULING**

This is an application for stay of execution of the award of this court in Labour Dispute Reference No. 024/2015 delivered on 14/05/2021. The application is brought under **Section 33 of the Judicature Act, Section 76 and 98 of the Civil Procedure Act, Orders 22 Rule 23 and 26 and order 52 rules 1, 2 and rule 3 of the Civil Procedure Rules.**

The application is supported by an affidavit sworn by one Randy Baham the Country Manager of the applicant while an affidavit in reply was sworn by one George Johnson Ojok, one of the respondents. The applicant in return swore, an affidavit in rejoinder which is on record.

**Representations**

The applicant was represented by Mr. Anthony Wabwire from Kashillingi, Rubaga & Associates while the respondents were represented by Professor Barya of Barya, Byamugisha & Co. Advocates together with Mr. Amany Joseph of M/s. Moriah Advocates & Solicitors.

**SUBMISSIONS**

Counsel for the applicant raised a preliminary objection to the effect that the affidavit in reply was filed out of time and asked the court to make a finding that this was so. On perusal of the record we find that only the affidavit of one of the respondents was filed out of time and the affidavit of the other respondent deposes to the same facts.

Relying on the case of **Hon Theodore Ssekikubo & 3 Others Vs Attorney general and four others, Constitution Application 06/2013 and Namyalo Kevina & Another, HCMA 12/2017** counsel argued that in the instant application an appeal was filed against the decision, the appeal raises serious questions of law and the respondents will not be prejudiced by issuance of a stay of execution.

Counsel continued to argue that the applicant will suffer irreparable damage if the application is not granted since in the affidavits of both deponents they affirm to different figures. In counsel's view the order of stay of execution is intended to protect and safe guard the applicant's right of appeal which should not be rendered nugatory by failure to grant the same. He argued it was not true that the applicant was intending to change the name as one of the deponents to one of the affidavits suggested since the evidence of email's attached to the affidavits were not authenticated.

On the main principles governing stay of execution, counsel for the respondent contended that, the authorities relied upon by the applicant were based on different facts and circumstances from the instant application. Relying on the authority of **Lawrence Musitwa Kyazze Vs Eunice Busingye, Supreme Court Civil Appeal 18/1990**, counsel argued that the applicant must satisfy the following conditions;

- 1) Substantial loss may result to the party applying for stay of execution unless the order is made
- 2) The application has been made without a reasonable delay.
- 3) Security has been paid by the applicant for the due performance of Decree or order as may ultimately be binding upon him or her.

According to counsel, the application having failed to satisfy the above conditions it should fail. Counsel argued that the fact that the respondents have computed different sums arising from the judgment as a cause of irreparable damages to the applicant does not arise since this court can order a proper computation. Counsel prayed that the court dismisses the application

but in the alternative that an order be made for the applicant to deposit in court a bank guarantee or decretal sum as it did in Misc. Appln.73/2018.

### **Decision of Court.**

We agree with the applicant that this court's interpretation of "***continuous service***" in relation to the evidence adduced merits further Judicial consideration and that there is a chance that as a ground of Appeal it may succeed. In our opinion, given the time the appeal process takes, given that it is the appellant who ought to process and prosecute the appeal as expeditious as possible which the applicant may not do putting the award of this court almost in vain and causing lots of anxiety to the respondents, and above all considering the provision of **043 rule 4 (3) of the Civil Procedure Rules as interpreted by Lawrence Musitwa Kyazze Vs Eunice Busingye (supra)** we find it just and equitable to order deposit of security for due performance. The application is therefore allowed on condition that the applicant deposits in court either 400,000,000 cash or a bank guarantee in the same sum which will be valid up and until the disposal of the Appeal. No order as to costs is made.

### **Delivered & signed by:**

1. Hon. Head Judge Ruhinda Asaph Ntengye .....

### **PANELISTS**

1. Mr. Musimbi Jimmy .....
2. Ms. Robinah Kagoye .....
3. Mr. Can Amos Lapenga .....

**Dated: 21/03/2022**