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**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE: MISCELLANOUS APPLICATION No.95 OF 2021**

**ARISING FROM LABOUR DISPUTE NO. 100 OF 2014**

**UNITED BANK FOR AFRICA ..... APPLICANT**

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**VERSUS**

**DIANA CAREY NAMUBIRU ..... RESPONDENT**

**BEFORE:**

**THE HON. HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

15 **PANELISTS**

**1. MS. ROSE GIDONGO**

**2. MS. BEATRICE ACIRO OKENY**

**3. MR. RWOMUSHANA REUBEN JACK**

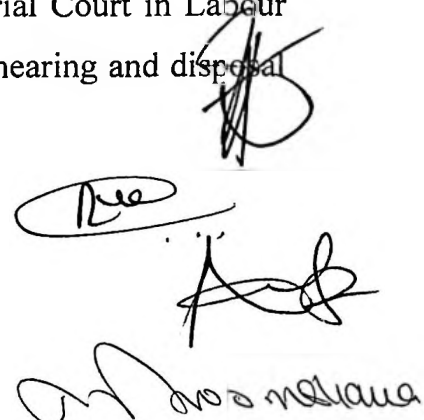
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**RULING**

This application was brought by Notice of Motion under Section 98 of the Civil Procedure Act, Order 43 Rule 4(3), Order 52 Rule 1 & 2 of the Civil Procedure Rules S.1 71 – 1) For orders that: -

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- a) The Execution of the Award and decree of the Industrial Court in Labour Dispute Reference No. 100 of 2014 be stayed until the hearing and disposal



of the Applicants application for enlargement of time within which to file the Notice of Appeal and or until the hearing and determination of the Applicants intended appeal to the Court of Appeal.

30        b) Provision be made for Costs of this Application.

The grounds of this Application are stated in the affidavit of Judy Wambaire the Company Secretary and Head legal and are summarised as follows;

1. The Applicant is dissatisfied by the Award in Labour Dispute Reference No. 100 of 2014 and is in the process of filing an appeal to the Court of Appeal.
- 35        2. The Applicant has since applied for extension of time within which to file a Notice of appeal and a letter requesting for record of proceedings, having not been served with the judgement notice.
3. The said Appeal has high chances of success.
4. There is a real threat of execution. The applicant has been served with a  
40        letter of demand by the Respondents lawyers.
5. The applicants intended appeal will be rendered nugatory if the application is not granted.
6. The applicant is ready to comply with the conditions this court may set for granting this application and the application is brought without undue delay,  
45        therefore, it is in the interest of justice that the Orders sought are granted.

### **The Respondent's case**

The Respondent's case as set out in the Affidavit in reply deposed by Diana  
50        Carey Namubiru, the Respondent, is summarized as follows:

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1. That she sued the Applicant vide **Labour Dispute Claim No. 100/2014** in this court and on 26/02/2021, Judgement was entered in her favour and the Award is attached.
  2. That the Award sums remain unpaid despite the several demands made to the Respondent.
  3. That, she has been advised by her Lawyers that the Applicant has no substantial ground of bringing the alleged intended appeal beyond the provided statutory period within which to file an appeal and that the application for enlargement of time is deceptive.
  4. That she has been advised by her lawyers that the applicant has not shown that if execution is carried out, their intended appeal will suffer or be negated since an appeal does not automatically warrant a stay of execution.
  5. That there is no competent appeal to preserve and that the application is misconceived and brought in bad faith.

### **In Rejoinder**

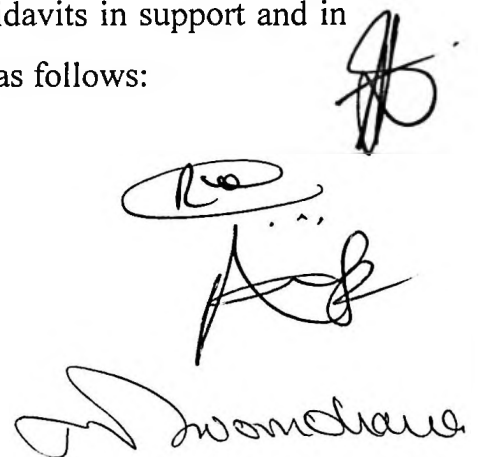
The Applicant reiterated her earlier prayers in the Affidavit in Support of the Application.

### **REPRESENTATION**

The Applicant was represented by Kenan Ariho of M/s H & G Advocates, Kampala and the Respondent by Mr. Haguma of M/s Haguma Law Chambers, Kampala.

### **SUBMISSIONS**

We have carefully perused the Notice of Motion, the Affidavits in support and in opposition and the submissions of both Counsel and find as follows:



## DECISION OF COURT

It is trite that, an application for stay of execution is intended to prevent the Judgment Creditor from putting into operation the legal process for execution, but not to deprive the successful decree holder from enjoying the fruits of his or her judgment. This Court has jurisdiction to stay execution of its own awards on if it is satisfied that the applicant has sufficient cause to warrant it doing so. It could be moved on grounds that, there is an appeal pending and the appeal has high prospects of success or that the Applicant/Appellant has no reasonable prospects of recovering the decretal award, if stay of execution is not granted and the award /decree is executed.

In resolving such applications, this court is not barred from applying the Civil Procedure Rules where there is a lacuna in its own rules of procedure. In the circumstances, we shall apply Order 43 rules (4) and (3) of the Civil Procedure Rules, which provide for the conditions to be satisfied before an order for stay of execution may be granted by a Court as follows:

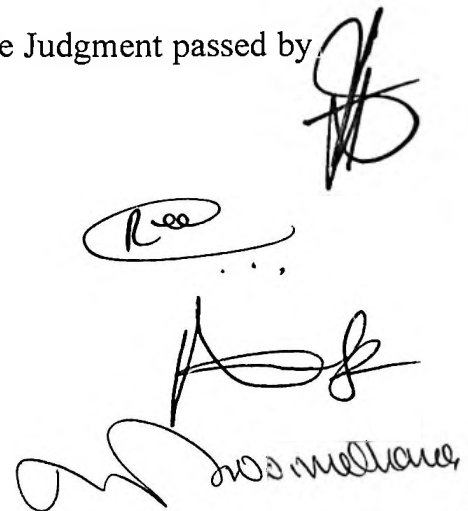
That: ...

- a) *Substantial loss may result to the party applying for stay of execution unless the order is made*
- b) *The application has been made without unreasonable delay.*
- 95 c) *Security has been given by the applicant for due performance of the decree or order as may ultimately be binding upon him or her, as long the execution is made before the expiry of the time within which an appeal from the decree should be filed.*

100 In determining a grant for an order of stay of execution of its award on grounds that, the Applicant has a pending appeal against the award, that has high chances of success, Court places emphasis on ensuring that, the Appeal is not rendered nugatory by the execution of the award. However as already discussed, the onus is on the Applicant to convince Court that, the Appeal exists and is pending and by not granting a stay the appeal would be rendered nugatory.

105 As to whether the appeal has a likelihood of success or not, even when decisions in **Lawrence Musitwa Kyazze Vs Eunice Busingye, Civil application No. 19/1990 (Supreme Court) and Red pepper Publication Limited Vs Rtd. Chief Justice Wako Wambuzi, Misc. Appln. 1556/2018 (High Court Execution Division)**, are to the effect that, an application for stay need not wait for an  
110 application for execution in order to be filed, this court takes the position stated in the recent Supreme decision in **Zebeda Mohammed and another Vs Laila Kaka Wallia & Another (Supreme Court Appln. No. 04/2016**, which is of the Legal proposition that, an application of this nature must be filed when there is eminent danger of execution which is demonstrated by an application for execution from  
115 which a warrant of execution or notice to show cause why execution should not issue emanates.

Even if it were true that, execution in the instant case is eminent, we take are not satisfied that, filing an application for extension of time within which to lodge a notice of appeal is sufficient reason for Court to grant an order for stay of  
120 execution. In our considered opinion, even if the Judgment Debtor has a right of appeal against a decree of any court, such a right should not be used to stifle the right of the Judgment Creditor to benefit from the fruits of the Judgment passed by the Court.



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125 Although the applicant in the instant case has averred that she is in the process of  
filing an Appeal in the Court of Appeal , there is no evidence on the record to  
prove to this court that an appeal has actually been filed because the evidence of  
the said appeal attached to the affidavit in support of this is application marked  
"JW4", does not indicate that it was received by the Court of Appeal because it  
does not bear the received stamp of the Court of appeal nor is the evidence of filing  
130 fees attached. In the absence of evidence to indicate that an appeal against the  
award of this court exists in the court of appeal in the first place, there is no basis  
to state that there will be any loss suffered by the Respondent if a stay of execution  
is not granted.

To allow such an Application to succeed would not only be condoning a blatant  
135 abuse of court process, which amounts to dilatory conduct on the part of the  
Applicant, but would also be a great injustice to the judgement Creditor, which  
this court cannot allow.

We therefore find no merit in the Application, it is dismissed with costs to the  
Respondent.

140 Delivered and signed by:

**THE HON. HEAD JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**



**PANELISTS**

**1. MS. ROSE GIDONGO**

145 **2. MS. BEATRICE ACIRO OKENY**

**3. MR. RWOMUSHANA REUBEN JACK**

**DATE: 27/02/2023**

