

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGO
CORAM: G. M. OKELLO, JSC
CIVIL APPLICATION NO. 12 OF 2008 (EXPARTE)

B E T W E E N

G. AFARO: : : : : : : : : : : : : : : : APPLICANT

A N D

UGANDA BREWERIES LTD: : : : : : : : : : : : : : : : RESPONDENT

(Arising from SCC Application No. 11 of 2008; ASCCA No. 04/2008)

RULING OF G. M. OKELLO - JSC:

This is an *exparte* application for an interim order for stay of execution of an order for costs and decree made by the Court of Appeal against the applicant in Civil Appeal No. 45 of 2005, pending the disposal of an *interpartes* application for stay of execution filed and pending in this court under Civil Application No. 11 of 2008.

The applicant requests that costs of this application abide the result of the pending substantive application.

This application is based on 8 grounds and supported by affidavit evidence sworn by the applicant on 4th July, 2008.

This court has inherent power to make such orders as may be necessary for achieving the end of justice or to prevent abuse of the process of court (rule 2(2) of the Rules of this court).

The brief background facts leading to this application are that the applicant was employed by the respondent. While in the course of his employment, the applicant was crushed against a wall by the respondent's fork lift. As a result, the applicant suffered serious injuries to his genitals.

After what appeared to be amicable settlement, the applicant successfully sued the respondent in the High Court which awarded him the sum of 22 million shillings as compensation and legal fees.

Dissatisfied with that decision, the respondent successfully appealed to the Court of Appeal. The court allowed the appeal with costs.

Feeling undone, the applicant also appealed against that decision to this court vide SCCA No. 04 of 2008. Upon serving the respondent with the papers of that appeal, the latter threatened execution of the decree ordered by the Court of Appeal. An application for execution with a warrant of arrest in execution attached (Annexure AG5) was filed in the Court of Appeal on 02-06-08.

Applicant applied in this court vide Civil Application No. 11 of 2008 for a stay of execution pending the disposal of the pending appeal. While that application was pending, the applicant sought an interim order of stay in the lower court pending the disposal of the substantive application. The lower court rejected that request hence this application.

Arguing the applicant's case, Mr. Magemi submitted in substance that failure grant this application would render the applicant's pending appeal nugatory. He stated that this court has concurrent jurisdiction to grant the interim order. He stated that this application was filed without undue delay and prayed that it be granted to preserve the status quo until the substantive application is disposed of.

I accept the argument that this court has inherent powers to grant the interim order. Rule 2(2) of the Rules of this court saves the inherent powers of this court to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of this court.

It is important that when a party pursues his/her right of appeal, the appeal if successful, should not be rendered nugatory. I am satisfied that the respondent's threat to execute the lower court's order is real. A notice to show cause why the execution should not be carried out has been served on the applicant. He is to appear in the lower court for that purpose on 24-

07-08. This interim order is therefore necessarily to preserve the status until the substantive application for stay of execution is heard and disposed of.

In the result, I allow the application. It is ordered that the execution of the order of the Court of Appeal in Civil Appeal No. 45 of 2005, be stayed pending the disposal of the substantive application for stay of execution now pending before this court. This interim order shall remain in force until 22-09-08, or until the substantive application No. 11 of 2008, now pending in this court, is heard and disposed of, whichever comes first. If by the 22nd September 2008, the said substantive application is not yet disposed of, this matter should be returned to this court for review.

Costs of this application shall abide the outcome of the substantive application No. 11 of 2008.

Dated at Mengo this 22nd day of July 2008.

G. M. OKELLO

JUSTICE OF THE SUPREME COURT