THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KOLOLO

(CORAM: MUGAMBA, JSC (SINGLE JUSTICE)

CIVIL APPLICATION NO. 33 OF 2020

(ARISING FROM CIVIL APPLICATION NO. 32 OF 2020)

(ARISING FROM CIVIL APPEAL NO.7 OF 2020)

BETWEEN

CRANE BANK LIMITED (IN RECEIVERSHIP)::::::::::::::::::::::APPLICANT

AND

1. **SUDHIR RUPARELIA**
2. **UGANDA REGISTRATION SERVICES BUREAU:::::RESPONDENTS**

RULING OF JUSTICE MUGAMBA, JSC

The applicant, Crane Bank Limited (in Receivership) filed this application against the respondents, Sudhir Ruparelia and Uganda Registration Services Bureau. This application was brought under Rules 2(2), 6(1) (b), 42 and 43 of the Judicature (Supreme Court) Rules and is based on 6 grounds which are set out in the Notice of Motion.

The applicant is seeking for the following orders that:

a. **An interim order do issue against the 1st respondent preventing him from claiming, taking control, repossessing or in any way interfering with the management of the applicant or of its receiver until the**

hearing and determination of Supreme Court Civil Application No. 32 of 2020.

b. **An interim order do issue against the 1st respondent, his agents, associates or any person acting with him or on his behalf preventing him from registering any resolutions in respect of the applicant until the hearing and determination of Supreme Court Civil Application No. 32 of 2020.**

c. **An interim order do issue against the 2nd respondent preventing it from registering any resolutions in respect of the applicant until the hearing and determination of Supreme Court Civil Application No. 32 of 2020.**

And that provision be made for the costs of this application.

The application is supported by an affidavit sworn on behalf of the applicant by **Margaret K. Kasule**, Legal Counsel of Bank of Uganda, dated 12th October,2020. It is opposed by an affidavit in reply sworn by **Sudhir Ruparelia,** the first respondent in this application, dated 23rd October, 2020. The second respondent (Uganda Registration Services Bureau) filed an affidavit in reply sworn on 21st October, 2020 by **Ntale Mustapher**, its Director for Insolvency and Receivership.

Background

The facts giving rise to this application as found and summarized by the Court of Appeal in Civil Appeal No.252 of 2019 are that the

applicant was licensed by the Bank of Uganda to carry on the business of a financial institution. On 20th October 2016, the applicant was placed under statutory management by the Bank of Uganda pursuant to sections 87 (3) and 88 (1) as well as section 15 (a), (b) of the Financial Institutions Act, 2004. Consequently, the Bank of Uganda pursuant to section 94 of the Financial Institutions Act placed the applicant under receivership.

On 30th June 2017, the applicant (then plaintiff) filed High Court Civil Suit 493 of 2017 against two defendants (Sudhir Reparelia and Meera Investment Limited) seeking recovery of money allegedly misappropriated by the 1st defendant (Sudhir Reparelia) as a director and shareholder of the applicant.

The applicant also sought delivery of freehold certificates of titles to 48 properties, together with duly executed transfer deeds in favour of the applicant and a refund of money from the 2nd defendant (Meera Investment Limited) for payment made for "void leases".

On 3rd August 2017, both defendants (Sudhir Reparelia and Meera Investment Limited) filed their defence. In the written statement of defence, they denied the allegations made against them and stated that they would raise preliminary objections against the applicant to the effect that the applicant had no *locus standi,* no cause of action and that the suit was bad in law.

On 29th August 2017, the applicant filed a rejoinder and maintained its allegations against the defendants (Sudhir Reparelia and Meera Investment Limited). The applicant also maintained that it had a

cause of action and *locus standi* against the respondents and that the suit was not bad in law.

On the 30th April 2019, the defendants (Sudhir Reparelia and Meera Investment Limited) filed Miscellaneous Application 320 of 2019 in the High Court in which they raised several preliminary objections. The first was that the applicant /plaintiff had no *locus standi* to commence actions under HCCS No 493 of 2017 against the defendants. The second was that the Plaint in H.C.C.S 493 of 2017 did not disclose a cause of action against the defendants. The third was that the orders sought against the 2nd defendant in H.C.C.S 493 of 2017 were barred in law. They prayed that H.C.C.S 493 of 2017 be dismissed with costs and that the costs of that application be provided for.

The applicant opposed the application and filed an affidavit in reply to the application. It was deponed by Ms. Margaret Kasule, the Legal Counsel of Bank of Uganda. The applicant maintained that it had a cause of action and *locus standi* against the respondents and that its suit was not bad by law.

On 29th August 2019, Justice David Wangutusi delivered his ruling in which he upheld the grounds of the application raised by the defendants. He went on to dismiss H.C.C.S 493 of 2017 for want of a cause of action, *locus standi* and for being bad in law. He ordered Bank of Uganda to pay the costs of the application.

The applicant was dissatisfied with the decision and orders of the trial Court. It appealed to the Court of Appeal vide Civil Appeal No. 252 of 2019.

On 23rd June 2020, the Court of Appeal dismissed the said appeal with costs to the respondents. Thereupon the applicant appealed to this court.

This application is based on the following grounds:

I. **The applicant filed a notice of appeal against the whole decision in Court of Appeal Civil Appeal No.252 of 2019.**

II. **The applicant filed Supreme Court Civil Appeal No.7 of 2020**

III. **The applicant has filed Supreme Court Civil Application No.32 of 2020 seeking injunctive relief pending the hearing and disposal of Supreme Court Civil Appeal No.2020.**

IV. **If the orders prayed for are not granted, the applicant will suffer irreparable loss since the intention of the 1st respondent is to take over the applicant from the receiver and withdraw the appeal now pending in the supreme court and the respondents will interfere with the receivership process of the applicant.**

V. **The application has been made without delay.**

VI. **The appeal has high chances of success.**

Representation

At the hearing of this application, the applicant was represented by Dr. Joseph Byamugisha and Mr. Albert Byamugisha while Mr. Elison Karuhanga and Mr. Bruce Musinguzi appeared for the first respondent. Mr. Ntale Mustafa represented the second respondent.

Submissions

Counsel for applicant submitted that the 2nd respondent was a proper party in this application and called to his aid the case of **Alcon International Ltd Vs The New Vision Printing & Publishing Co. Ltd & Anor, Supreme Court Civil Application No.4 of 2010.**

Counsel based his submissions on the affidavit of Ms. Margaret Kasule which he summarized. The summary by counsel for the applicant of the said affidavit does not differ with the grounds which I have already reproduced above.

Counsel contended that the applicant was still under the receivership of Bank of Uganda which still has its property as well as the appeal under its control.

Counsel submitted that there is a substantive application. He contended that the 1st respondent had embarked on the process of retaking Crane Bank Ltd and withdrawing the appeal. He argued that this would render the main application nugatory.

The 2nd respondent in its brief submissions in reply, averred that it had no particular interest in the matter before this court and that it would abide by the outcome of the application.

Counsel for the 1st respondent in his submissions at large contended that the application and the applicant's submissions were to the effect that it was not for stay of execution of the orders of the High Court and the Court of Appeal but rather an application for interim orders pending the determination of an application for injunction.

Counsel submitted that under Rule 6 of the Rules of this court, this application can only be heard by a panel of justices. He submitted that the application was improperly before a single judge and prayed it should be dismissed

Counsel cited the cases of **Mathew Rukikaire v Incafex Ltd, Supreme Court Civil Application No.11 OF 2015**, **Hon. Theodore Ssekikubo and 3 Others vs The Attorney General and Others, Supreme Court Constitutional Application No.3 of 2014** and **Zubeda Mohamed And Anor V Laila Kaka Wallia, Supreme Court Civil Reference No.07 of 2016** as authorities which lay down the principles for grant of an interim order.

Counsel submitted that the applicant did not demonstrate that there was a serious and imminent threat of execution of the decree or order. Counsel contended that the applicant relied on a letter written by the 1st respondent's lawyers to the 2nd respondent. He submitted that the purpose of the letter was stated in paragraph 9 of the 1st respondent's affidavit in reply which was meant to bring to the attention of the 2nd respondent the judgment and decree of the

Court of Appeal. He further averred that under annexure "C" of the affidavit in reply, the decree was consented to by both parties.

Counsel added that the 1st respondent intended to inform the 2nd respondent that due to the Court of Appeal Decree, by operation of the law the receivership ended control of the company by Bank of Uganda and control of the company automatically reverted to the company's Board of Directors.

Counsel submitted that under the Companies (Power of Registrar) Regulations, 2016 the registration or non-registration of a document has no effect on its validity. He added that it does not create a presumption as to correctness of the information contained in the document. He contended that the orders sought by the applicant have no effect on the 2nd respondent since neither registration or non-registration have a bearing on the validity of the documents.

Counsel contended that the applicant instead of applying for stay of the orders of the Court of Appeal, filed the incompetent application wrongly seeking injunctive orders against the respondent.

According to counsel, the application is misconceived and incompetent since it seeks to restrain the respondent from obeying Court orders which have not been stayed. Counsel added that the receivership ended following the orders of the Court of Appeal, and that the application cannot stand because the applicant has no locus given that the orders of court have not been stayed.

On the applicant's submissions that the 1st respondent intends to take control of the applicant and withdraw Civil Appeal No 07 of 2020, counsel submitted that that was hearsay, speculative and false as the applicant had not adduced evidence to that effect. He added that the 1st respondent had no intentions of withdrawing the said appeal. Counsel submitted that the speculation regarding withdrawal of the appeal did not constitute an imminent threat since the law allows the applicant to contest such a move.

Counsel submitted that the orders of both the High Court and the Court of Appeal are to the effect that Receivership of the applicant came to an end after the expiry of the statutory 12 months. He added that the Court of Appeal order was the status quo and that the instant application is an attempt by the applicant to alter the status quo. Counsel further contended that in the absence of an application for stay of execution, the status quo should be maintained.

Counsel further argued that the applicant was seeking to alter the status quo by seeking an injunction to enable it to continue with the receivership notwithstanding that Court had since held that receivership had ceased to exist.

In rejoinder counsel for the applicant contended that the purpose of Rule 2(2) of the Rules of this court is to serve the interests of justice and to prevent abuse of the court process. He reiterated the stance that the 1st respondent wanted to withdrawal the appeal in this court.

Counsel submitted that the applicant was seeking for an order to restrain the 1st respondents actions relating to Crane Bank Ltd which was under receivership by Bank of Uganda. He reiterated his submissions that the Bank of Uganda is still in possession of the property and assets of the applicant.

Counsel submitted that the status quo was that there was an appeal pending before this court, which ought to be preserved. He contended that the applicant has embarked on the process of fully reclaiming the appellant in order to remove it from de facto receivership by Bank of Uganda with the purpose of withdrawing the appeal.

Consideration of the application

Before I go to the merits of the application, I find it fitting to determine if the second respondent as added by the applicant is a proper party to this application.

The applicant in its submissions contended that the 2nd respondent was a proper party to this application, citing the case of **Alcon International Ltd Vs The New Vision Printing and Publishing Co. Ltd & Anor** (supra). That contention was opposed by both the 1st respondent and the 2nd respondent. The latter has clearly averred that it has no particular interest in the application. I have read the case of Alcon, where the Hon. Justice G.M Okello JSC, as he then was, issued an interim order against a newspaper which was not a party to the appeal in order to restrain it from publishing

prejudicial opinions on a party or in respect of the proceedings pending the hearing of the appeal.

In the instant application, the applicant seeks an interim order against the 2nd respondent to prevent it from registering any resolutions in respect of the applicant until the hearing and determination of the main application.

The applicant in its affidavit sworn by Ms. Margaret K. Kasule in support of the application states in paragraphs 5, 6 and 7 as follows:

5. **By letter dated 28 September 2020, a copy of which is annexed hereto and marked *'E'*, Kampala Associated Advocates acting for the shareholders and directors of the applicant wrote to the 2nd respondent seeking to take back full control of the affairs of the applicant.**
6. **In its letter dated 06th October, 2020, the 2nd respondent informed the Receiver that Kampala Associated Advocates had informed them that the receivership ended on 20th January 2018 and that representatives attempted to file a company resolution. The 2nd respondent requested the Receiver to advise whether the decision of the Court of Appeal had been set aside or its execution stayed. A copy of the letter is annexed hereto and marked *'F'*.**
7. **The conduct of the respondents aforesaid is an attempt to interfere in the exercise of statutory powers granted to**

the Receiver, their intention, *inter alia,* being to assume the control of the applicant and withdraw the appeal pending in the Supreme Court.

Although the order sought by the applicant against the 2nd respondent is to restrain it from registering the resolutions, there was no evidence of any resolution which is intended to be registered by the 2nd respondent attached to the affidavit.

The 2nd respondent in the brief affidavit in reply is emphatic that it has no particular interest in the matter. The 2nd respondent promises to abide by the outcome of the application.

In **Alcon International Limited v The New Vision Publishing Co.Ltd & Anor** (supra) this court stated that:

"The instant case, is a case of a Newspaper which is not a party to the appeal pending before this court but engages in writing comments or opinions that are allegedly prejudicial to a party relating to the pending proceedings. The imposing question is whether the court before which the appeal is pending does not have power to restrain such an act?

As I have stated earlier in this ruling, every court has inherent power to make any order as may be necessary for achieving the ends of justice or to prevent abuse of its process. In my considered opinion, the application of inherent power is not limited to only parties. It is wide enough to cover even non-party News Paper that engages in publishing prejudicial opinion on a party to or in respect of proceedings that are subjudice. In

such a situation the court exercises that power to achieve the ends of justice." (underlining for my emphasis)

The court in the above case was satisfied on the evidence from the supporting affidavit of Mr. Enos Tumusiime that there was a serious threat that the respondents were going to publish matters that were prejudicial to the applicant in respect of the matters which were pending before court.

The court if it is satisfied by evidence on record that a non- party to an appeal or application is doing any act that is prejudicial to any party to the appeal or does any act that would render the substantive application nugatory the court then can issue an interim order restraining the act of that non-party in order to prevent the abuse of the court process.

In the instant application, the applicant is required to show to the court by satisfactory evidence that the 2nd respondent, although it is not party to the main application and the appeal, has engaged or is about to engage in acts that are prejudicial to its interest or that its acts are aimed at rendering the main application and appeal nugatory.

In paragraphs 5, 6 and 7 of the applicant's affidavit in support, it is stated that the 2nd respondent received a letter from M/s Kampala Associated Advocates seeking to take back full control of the affairs of the applicant and in turn the 2nd respondent sought advice from the receiver (Governor Bank of Uganda). Respectfully, I do not see any act or acts that have been done or are about to be done by the

2nd respondent that are prejudicial to the interests of the applicant. In fact, I find that what was done by the 2nd respondent when he wrote to the Governor of the Bank of Uganda seeking clarity on the letter by the above law firm was in the interests of the applicant. More on this later in the ruling.

I do not find the case of Alcon relevant to this application since the applicant has not shown evidence to show that the 2nd respondent is engaged in acts prejudicial to the main application or to the appeal itself.

The application for an interim order pending hearing and determination of the substantive stay of execution derives from Rule 2(2) of the Rules of this court. Rule 2(2) states:

"Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of this Court and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such Court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent an abuse of the process of any Court caused by delay."

In **Hon. Theodore Ssekikubo and 3 Others vs The Attorney General and Others** (supra) this court drove the point home as follows:

"Rule 2(2) of the Judicature Supreme Court Rules gives this Court very wide discretion to make such orders as may be

necessary to achieve the ends of justice. One of the ends of justice is to preserve the right of appeal"

The purpose of an application of this nature, was further explained by my sister Arach-Amoko JSC in **Mohammed Mohamed Hamid Vs Roko Construction Ltd, Supreme Court Miscellaneous Application No. 23 of 2017,** where she stated that;

"The granting of interim orders is meant to help the parties to preserve the status quo and then have the main issues between them determined by the full court as per the Rules. They are granted by a single Judge of the Court exercising the Court's inherent powers under Rule 2(2) of the Rules of this Court. This principle has been by this Court stated in Giuliano Gariggio V Claudio Casadio, Civil Application No. 03 of 2013, followed in Hon. Theodore Ssekikubo & Ors V Attorney General, SCCA No.6/13, Mathew Rukikaire V Incafex, SCCA No. 11/15 and Francis Drake Lubega V Attorney General & 2 Ors, SCCA No.13/15, among others."

This Court in several cases has set criteria that must be met before an interim order can be granted. The applicant must satisfy court by evidence that there is:

1. **A competent Notice of Appeal**
2. **A substantive application; and**
3. **A serious threat of execution.** (see **Zubeda Mohamed & Anor v Wallia & Anor, Supreme Court Civil Reference No.07 OF 2016**)

There is no doubt that the applicant filed a Notice of Appeal in this court. This is evidenced by annexure "B" attached to the affidavit in support of the Notice of Motion.

On the second criteria of having a substantive application filed in the court, I have perused the affidavit in support of the Notice of Motion. In all the 10 paragraphs, there is not a single paragraph to the effect that the applicant has filed a substantive application, let alone annextures attached as evidence of the same. Needless to say, the affidavit in support is the evidence which must be relied on by the applicant to support the application. The applicant states in the grounds in the Notice of Motion that it has filed a substantive application in this court. Fortuitously, on checking with the Court's registry, I found a copy of the substantive application No.32 of 2020. It was filed there by the applicant. It would have been prudent of the applicant to plead it in its affidavit and attach a copy of it.

I turn to the third yardstick which is that the applicant must demonstrate that there is a serious threat of execution.

In paragraph 5 of the affidavit in support of the application the applicant avers that by a letter dated 28th September, 2020 written by M/s Kampala Associated Advocates to the 2nd respondent, the 1st respondent seeks to take full control of the affairs of the applicant. The same averment is contained in the submissions of the applicant. The 1st respondent in his submissions as well as in paragraphs 8 and 9 of the affidavit in reply, denies the averment of

applicant of an attempt to take control of the company. He further states that the said letter was meant to inform the 2nd respondent of the decision of the Court of Appeal, the decree that was consented to by both the applicant and himself.

I have perused the said letter. I find it gainful to reproduce it in this ruling in relation to the alleged threat of execution.

28 September 2020

The Registrar

Office of the Registrar of Companies,

Uganda Registration Services Bureau,

Georgian House,

Plot 5 Georgian Street,

P.O. Box 6848,

Kampala

RE: END OF RECEIVERSHIP OF CRANE BANK LIMITED

We refer you to the case of Crane Bank (U) Limited in Receivership Vs Dr. Sudhir Ruparelia and Meera Investments Limited (Civil Appeal 252 of 2019), wherein we represented the Respondents, The High and the Court of Appeal of Uganda have determined that the Receivership of Crane Bank (U) Limited ended on the 20th day of January 2018. We attach a copy of the Decree from the Court of Appeal for your records and reference. We are therefore writing to notify your office and any other person to whom it may concern at the Companies Registry that by Order of the Court in the above appeal, it follows that:

1. Crane Bank Limited is no longer in Receivership.

2.The Bank of Uganda no longer has any legal authority over the affairs of Crane Bank Limited.

3.The Board of Directors and Shareholders of Crane Bank Limited are back in full control over the Company and its affairs and are the only organs of the Company with legal authority over its affairs.

Kindly adjust your official records accordingly.

The decree from the Court of Appeal was attached to the letter. It was signed by counsel for both parties and it expressed that the applicant's receivership ended on 20th January, 2018, that the appeal was dismissed and finally that the Bank of Uganda was to pay costs therein and in the court below.

In **Hwang Sung Industries Ltd vs Tajdin Hussein and others, Supreme Court Civil Application No. 19 of 2008**, G.M. Okello JSC related to an application such as this one as follows:

"For an application for interim order it suffices that a substantive application is pending and <u>that there is some threat of execution before the hearing of the pending substantive application.</u> It is not necessary to pre-empt consideration of the matters necessary in deciding whether or not to grant the substantive application for stay" (underlining for emphasis)

In **Akright Project vs Executive Property Holding and 12 others** (Supra), Justice Kitumba, JSC had this to say:

"The Court in addition to considering that a notice of appeal has been filed and that there is a substantive application has to consider whether there are special circumstances to warrant such an interim order. An example of that would be the immediate destruction of the suit property" (underlining for emphasis)

In **Zubeda Mohamed & Anor v Wallia & Anor (supra)** this court held:

"Consideration for the grant of an interim order of stay of execution or interim injunction is whether there is a substantive application pending and whether there is a serious threat of execution before the hearing of the substantive application. Needless to say, there must be a Notice of Appeal." (underlining for emphasis)

In the above cases and in that of **Hon. Theodore Ssekikubo and 3 Others vs The Attorney and Others (supra),** this court has been emphatic that the grant of an interim order should depend on the evidence availed to the court through the applicants' affidavits indicating that there was indeed a serious threat of execution before the hearing of the pending substantive application.

The applicant has on the basis of the above letter contended that there is a threat by the 1st respondent to take full control of the applicant. I agree with counsel for the 1st respondent that the letter was simply informing the 2nd respondent of what was decreed. The applicant in its submissions contended that the applicant is still

under receivership of the Bank of Uganda which had its property as well as the appeal.

I find no cause to doubt that the applicant and its property are in the hands of the statutory receiver (Bank of Uganda) as clearly stated above. Had the 1st respondent entertained intentions of taking its full control he would have written to the receiver and not to the 2nd respondent, since the management, control and power of the applicant is the hands of the receiver.

In **Florah Ramarungu Vs Dfcu Leasing Co. Ltd, Supreme Court Civil Application No.11/2009,** Justice Tsekooko, JSC, stated:

"With respect I am not persuaded by the arguments of the applicant. There is no evidence to justify my interference with the opinions of the trial judge which was upheld by the Court of Appeal to the effect that the applicant has not proved that she will suffer irreparable loss if the status quo is not maintained. There are no compelling circumstances to justify the issuing of an interim order of stay of execution even if it is possible to execute. The mere statement from the bar by counsel for the applicant that she is in occupation of the house is not sufficient in as much as the same house was sold to a third party long before she filed her suit and the purchaser of the house is not a party to the suit."

In **Mohammed Mohamed Hamid Vs Roko Construction Ltd(supra),** Justice Arach-Amoko, JSC, stated;

"Regarding the third condition, it is clear from the authorities cited above, that the law is that the applicant must adduce cogent evidence of a serious imminent threat of execution. The applicant deponed in paragraphs 4 and 5 that the respondent has taken steps towards execution of this court's judgment No.14 of 2015. That the steps include but are not limited to filing for taxation of bills of costs in this court arising from the impugned judgment and that this application is made to stay the imminent probability of execution so that Miscellaneous Application No.22/17 and Miscellaneous Cause No.18/17 are not rendered nugatory.

Other than this averment, the applicant has not adduced any evidence of execution of the judgment. I also note that the applicant mainly pointed out the issue of taxation of bills of costs as a threat to execution. Taxation of bills of costs is provided under Rule 105 and the third schedule of these Rules. It is the duty of the Registrar to tax the bill of costs of a successful party in accordance with the Rules. If a party is dissatisfied with the decision of the registrar in his capacity as the taxing officer, he or she may make a reference to a single judge and finally to a full bench as provided under Rule 106.

In the instant application, there is no conclusive evidence adduced or attached by both parties to prove that the bill has been taxed by the taxing officer and therefore in my opinion there is nothing to stay. Further, there is no evidence adduced

to show that there is an application for execution of the taxed bill. In my judgment, therefore, I find no evidence of any imminent threat of execution upon which this court can base the exercise of its discretion to grant this application."
(underlining for emphasis)

In the premises, I do not see the above letter written by the 1st respondent to the 2nd respondent concerning the substance of the decree to be a serious threat of execution before the hearing of the pending substantive application. In this matter there is no evidence upon which to base the exercise of the court's discretion to grant the orders sought by the applicant. Consequently, I dismiss this application with costs to the respondents.

Dated at Kampala this .....9th.....day of...November.....2020

.....

Paul Mugamba
JUSTICE OF THE SUPREME COURT