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**THE REPUBLIC OF UGANDA**

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

**CIVIL APPLICATION NO 27 OF 2022**

1. SWT TANNERS LTD:..... **APPLICANTS**

10 2. GENERAL AGENCIES UGANDA LTD

3. SSUNAD LIMITED

4. WILLIEX COMMODITIES LTD

5. AKHCOM LIMITED

6. JASSANI GENERAL TRADING LIMITED

15 7. SONERI LIMITED

8. SINGA RICE LIMITED

9. ARMOUR TRADING COMPANY LIMITED

10. JAM MOHAMMED INVESTMENTS LIMITED

11. GLORRE INTERNATIONAL LIMITED

20 12. IMBA FOODS UGANDA LIMITED

13. ZEN TRADING LIMITED

14. MABU COMMODITIES LIMITED

**VERSUS**

**COMMISSIONER GENERAL**

25 **UGANDA REVENUE AUTHORITY:..... RESPONDENT**

(Arising out Civil Appeal No. 28 of 2022; Civil Appeal No.172 of 2019 and Civil Suit No. 880 of 2014)

30 **RULING**

**BEFORE. HON. JUSTICE OPIO AWERI**

**Introduction**

The Applicants filed this Application seeking an interim order to issue staying the execution or enforcement of of the judgment and

5 decree of Hon. Justice Christopher Madrama, Hon. Justice  
Cheborion Barishaki and Hon. Justice Irene Mulwagonga delivered  
on 16<sup>th</sup> September 2022, in **Civil Appeal No. 172 of 2019** at the  
Court of Appeal in Kampala.

The Application has been brought by Notice of Motion and  
10 supported by an affidavit in accordance with Rules 2(2),6(2)(b),  
42(1) and 42(1) of the Judicature (Supreme Court Rules) Directions  
SI 13-11: Section 33 of the Judicature Act, Cap 13.

### **Background**

The background to the above Application is that the Applicants  
15 were unsuccessful parties in **Civil Appeal No. 172 of 2019** and  
being dissatisfied with the judgment and decree of the Court of  
Appeal, they have lodged a Notice of Appeal before the Court of  
Appeal and before this Court against the whole judgment of the  
court of appeal.

### **The grounds are:-**

That there is serious threat of execution of the decree in **Civil  
Appeal No. 172 of 2091**, by the Respondent. That the substantive  
Application for stay of execution lodged in this honourable Court  
is likely to be rendered nugatory unless an interim stay is granted  
25 hence prompting them to file this application.

The Application seeks the following orders;

1. **That an interim order to issue staying the execution or  
enforcement of the judgment and decree of Hon. Justice  
Christopher Madrama, Hon. Justice Cheborion Barishaki  
30 and Hon. Justice Irene Mulwagonga delivered on 16<sup>th</sup>  
September 2022, in Civil Appeal No. 172 of 2019 at the  
Court of Appeal in Kampala.**

2. **That the Respondent pays costs of the Application.**

5 The Application is supported by an Affidavit deponed by Mike Bagenda Muzito and the grounds are briefly as follows:

1. That the Court of Appeal delivered a judgment vide Civil Appeal No. 172 of 2019 against the Applicants in favour of the Respondent.
- 10 2. That the Court of Appeal further held that the injunction orders pending the Appeal lapsed.
3. That being dissatisfied with the judgment and orders of the Court of Appeal, the Applicants promptly lodged a notice of Appeal before the Court of Appeal.
- 15 4. That the Respondent has initiated the execution process pursuant to the decision and orders made by the Court of Appeal.
5. That there is serious threat of execution against the Applicants.
- 20 6. That it is in the interest of justice that the Application be allowed.

The Application was opposed through an affidavit filed by the Respondent and deponed by Tayahwe Sheba and the grounds are briefly as follows;

- 25 1. That the Respondent was a successful litigant in a suit filed against it by the Applicants
2. That there is a similar Application filed in the Court of Appeal by the Applicants vide Misc. App. No. 701 of 2022 which was heard and is pending ruling.
- 30 3. That the Applicants have not established that they will suffer irreparable damage.
4. That the balance of convenience is in favour of not granting the Application

5 The Applicants filed an affidavit in rejoinder and the grounds are briefly as follows;

1. **That the similar Application filed in the Court of Appeal vide Misc. Application No. 701 of 20222 was withdrawn by the Applicants. They attached a correspondence to confirm the withdrawal.**

2. **That there is need to allow the Application since the respondent has embarked on the execution process.**

The following issues have been identified;

1. **Whether the Application is properly before this Court?**

2. **Whether there are grounds supporting the Application.**

3. **What are the remedies available to the parties?**

Counsel William Were and Brenda appeared for the Applicant while Counsel Ronald Baluku Maganda, Mr. Kwerit Sam and Mr. Donald Bakasaba appeared for the Respondent.

## **Consideration by Court**

### **ISSUE 1**

**Whether the Application is a properly before this Court?**

The Respondent argued that there is an existing similar Application in the Court of Appeal vide **Misc. Application No. 701 of 2022** and hence this court should not hear and determine the Application at hand.

The Applicants on their part have argued that the said Application before the Court of Appeal was withdrawn by way of filing a Notice of withdrawal and that the only Application pending is the current Application.

They attached a Notice of withdrawal on their affidavit in support of their argument.

- 5 It is the finding of this Court that there is no existing Application of a similar nature in the court of appeal since the one filed therein was withdrawn.

I find that this application is properly before this Court.

## **ISSUE 2**

- 10 An Applicant seeking an interim Stay of Execution.

In the case of **Hwang Sung Industries Ltd vs Tajfin Hussein and 2 Others Civil Application No.19 of 2008**, this court held that for an Application for an interim order of stay, it suffices to show that a substantive Application is pending and that there is a  
15 serious threat of execution before the hearing of the pending substantive application. It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive Application for stay.

The Applicant's Affidavit makes mention of having filed a Notice of  
20 Appeal. He attached a copy of the Notice of Appeal as annexure "B". The Respondent did not rebut this piece of evidence.

In **Singh v Runda Coffee Estates Ltd [1966] EA 263**

**Sir Clement De Lestang, Ag. V.P** stated;

25 '*. . . It is only fair that an intended Appellant who has filed a Notice of Appeal should be able to apply for a Stay of Execution . . . as soon as possible and not have to wait until he has lodged his appeal to do so.*'

I find that there is a pending Appeal filed by Applicants before this Court.

5 From the record, it is clear that this Application arises from **Civil Application No. 28 of 2022** being the substitutive Application in this matter.

I am satisfied that there is pending in this Court a substantive Application for stay of execution of the decree in **Civil Appeal No. 10 172 of 2019**, which is the subject of Appeal in this Court.

The Applicants have adduced evidence to prove that there is an eminent threat of execution. In paragraph 5 of the affidavit in support of the Application, it is clearly pointed that a demand note which copy is attached as annexure "C" has already be issued to 15 the Applicants. A demand note commences execution proceedings, which implies that the execution process is due.

I am also satisfied that there is a real threat to execute before the disposal of the substantive Aapplication which is likely to render the substantive Application nugatory unless this Application is 20 allowed.

In the result, I allow the Aapplication.

Costs of this Aapplication to abide the result of the substantive Application.

Dated at Kampala this .....14<sup>th</sup>.....day of .....Nov.....2022.

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**HON. JUSTICE RUBBY OPIO-AWERI,  
JUSTICE OF THE SUPREME COURT**