

**THE REPUBLIC OF UGANDA**

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

**MISCELLANEOUS APPLICATION NO.73 OF 2003**

**(ARISING FROM H.C.C.S. NO. 452 OF 2001)**

**THE COOPERATIVE BANK LTD)**

**(IN RECEIVERSHIP )..... APPLICANT/DEFENDANT**

**STATUTORY LIQUIDATION)**

**VERSUS**

**KABACO (U) LTD..... RESPONDENT/PLAINTIFF**

**RULING**

This ruling is in respect of an application for the following Court orders,

- (a) that execution of the Decree and order for the return of the securities held by the Applicant/Defendant in High Court Civil Suit No. 452 of 2001 be stayed pending the disposal of the intended appeal and cross appeal;
- (b) that costs of the application be provided for.

The applicant made the application by way of Notice of Motion under Order 48 rules 1 and 3 of the CPR and section 101 of the Civil Procedure Act. The application was accompanied by an affidavit that Mr. Polly

Ndyarugahi (a Bank of Uganda co-ordinator in charge of liquidating the applicant) swore on 10th February 2003.

In reply to the above matter, Mr. Evas Tumwebaze who is a director in the respondent swore an affidavit dated 4<sup>th</sup> March 2003.

The background to the application is very briefly as follows. The respondent was a customer of the applicant. Sometime in year 2001 the respondent filed High Court civil Suit No. 452 of 2001 against the applicant and claimed a sum of shs270, 160,475 as money it had deposited with the applicant but the applicant had lost under dubious circumstances. The applicant who held various securities, that the respondent had given it on borrowing money, denied the above claim. Instead, it averred that the respondent owed it shs. 301,416,281/=. Subsequently, Court tried the matter and determined it in favour of the respondent. It awarded the respondent shs. 187,820,475/=, with interest at 20% with effect from June 2001, as money the applicant owed it. Court further ordered the applicant to release the respondent's securities forthwith. Although the respondent won the above suit, it was not quite satisfied with the part of Court's judgment which related to the award of money. Therefore, on 12th June 2002 it lodged a notice of appeal to the Court of Appeal. The respondent also sought to enforce the part of the judgment relating to the release of its securities, but this was without success because the applicant refused to release the said securities. For that reason, the respondent decided to seek to enforce the above order by applying to arrest Mr. Polly Ndyarugahi who seems to have custody of the said securities. It is because of the respondent's move in that respect that the applicant made the application that is the subject of this ruling.

At the time of hearing the application Mr. Adriko represented the applicant while Mr. Tusasira represented the respondent. In essence, Mr. Adriko submitted that the applicant which diligently filed the application needed the order because it intended to cross appeal against the learned Judge's decision in High Court Civil Suit No. 452 of 2001. He further pointed out that if the applicant released the securities to the respondent, the applicant would suffer substantial loss. He, therefore, prayed Court to grant the application.

Mr. Tusasira opposed the application and submitted that the applicant did not show good cause why the application should be granted. The applicant did not prove that it intended to cross appeal. There is even no evidence on record of what it intends to cross appeal about; and the chances of success of the intended cross appeal are unknown. It is in liquidation and has provided no security for costs. Mr. Tusasira therefore prayed that Court should dismiss the application.

It was clear at the time of arguing the application that counsel for both parties were not agreed as to the law applicable to the situation at hand. It seemed Mr. Adriko was of the view

that Order 39 rule 3 of the CPR was the relevant law. However, Court thinks otherwise for it is plain from the heading of the above Order and the contents thereof that the whole Order is about matters which are the subject of **“*appeal to the High Court*”**. Needless to say, the matter at hand is connected with an appeal to the Court of Appeal. It follows, therefore, that Order 39 rule 3 of the **CPR** does not apply to it.

Be that as it may, in the case of Somali Democratic Republic v A.S. Treon Civil Application No. 11 of 1988 the Supreme Court held that a stay of execution should be granted if a court is satisfied that there is good cause to do so and that there are special circumstances to justify such course. The vital question to answer now is whether the applicant has shown that there is good cause to grant the stay of execution and that there are special circumstances to justify that course? Quite frankly, Court thinks that the applicant has not proved any of the vital things it is required prove under the above law. Indeed, Court agrees with Mr. Tusasira that even the assertion that the applicant intends to cross-appeal is a mere assertion. It is not backed up by any evidence on record. The applicant also provided no evidence in its affidavit to the Notice of Motion to show that its alleged cross-appeal is likely to succeed; and it showed no special circumstances to justify the grant of the stay. In the result the application must fail; and it is hereby dismissed with costs.

Read before: At 9.25 a.m.

Mr. Adriko for Applicant

Mr. Tusasira for Respondent

Mr. Sewanyana - Court Clerk

E.S.Lugayizi

**(Judge)**

14/3/2003