

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(EXECUTION AND BAILIFFS DIVISION)**

MISCELLANEOUS APPLICATION NO. 1725 OF 2016

**(ARISING OUT OF EMA NO. 340 OF 2016)
(ARISING OUT OF MISCELLANEOUS APPLICATION 235 OF 2016)
(ARISING OUT OF CIVIL SUIT NO. 079 OF 2016)**

**1. NANCY TWASHABA
2. MATAMA ALEX..... APPLICANTS**

VS

VIRUNGA FINANCE LTD RESPONDENT

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

The Applicants brought this application under the provisions of S.98 CPA, 0.36 rr 11 and 0.52 rr 1 and 3 C.P.R seeking orders of this court:-

- 1) Staying the arrest warrant.
- 2) Staying execution and setting aside of the exparte judgment and decree in civil suit 079 /16.
- 3) Costs of the application were also applied for.

The grounds of the application were supported by the affidavit of the First Applicant Nancy Twashaba.

The background to the application is that an exparte judgment was entered against the Applicants in the sum of Shs. 139,500,000/- together with interest at the rate of 25% from the date of judgment until payment in full.

The Applicants were also directed to pay the costs of the suit to the Respondent. The decree is dated 26.02.16.

The file was forwarded to the Execution Division on 03.03.16 to commence execution proceedings.

Notice to show cause why execution should not issue was issued by court on 15.03.16.

On 11.04.16 when the matter was called, neither of the parties or their Counsel was in court. The matter was accordingly adjourned sine die.

Another notice to show cause was issued on 20.04.16. On 20.05.16, Counsel for the Applicants prayed for stay of execution, contending the proceedings, challenging the exparte decree had been filed in the Commercial Court.

5 The matter was stayed and adjourned to 20.06.16.

On 20.06.16, the judgment creditor (Respondent) was in court and the Applicants were absent although the affidavit of service indicated that they had been served to appear and show cause.

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The warrant of arrest was accordingly issued and it is dated 07.07.16. The file shows that the warrant expired before it was effected and Counsel for the Respondent applied for renewal. Another warrant dated 19.08.16 was issued.

15 In the meantime, an application for interim stay of arrest had been filed on 16.08.16. It was signed by the Registrar on 31.08.16.

When the application was called on 05.09.16, Counsel for the Respondent indicated that he was willing to concede to the application provided the Applicants undertook to pay the agreed sum of Shs. 30,000,000/- right away. – See written statement of defence attached to application.

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Counsel for the Applicants then prayed to be given time to propose a payment schedule. Court directed the parties to sit with their lawyers and agree on a payment schedule within two weeks and report back to court on 19.09.16 at 10am.

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On 19.09.16, the Applicants and their Counsel were not in court. Counsel for the Respondent informed court that no payment schedule had been agreed upon. He prayed for the application to be dismissed for lack of prosecution. It was dismissed under 0.9r22 C.P.R.

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An application for renewal of the warrant of arrest was made by Counsel for the Respondent but the warrant was never signed by the Registrar.

The main application which was also filed on 16.08.16 was fixed for hearing on 10.10.16.

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Both Counsel appeared without the parties.

Counsel for the Applicants then submitted that the Applicants were proposing to pay Shs. 1,000,000/- for ten months to cover the agreed sum of 30,000,000/-.

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Counsel for the Respondents was agreeable to having the matter settled provided interest was agreed upon.

The parties were advised to draw up a consent, file it and return to court on 17.10.16.

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By 17.10.16, the parties and their Counsel had not agreed on the actual amounts to be paid by installments. Matter was adjourned to 19.10.16 at the request of Counsel for the Applicants.

On 19.10.16 both Counsel were present but parties were absent.

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Counsel for the Applicants then submitted that the total agreed sum now due was Shs. 87,000,000/- (as a result of the interest) and that her clients were proposing to pay Shs. 4,000,000/- per month together with the taxed costs of the suit until the sum was cleared. That means that payment would be made in approximately twenty two (22) months that is almost two (2) years!

However, Counsel for the Respondent was only willing to accept the proposal if the money were paid within six (6) months. He pointed out that the decretal sum had risen to Shs. 176,000,000/- out of which Shs. 87,000,000/- was the admitted sum. Further that the Respondent was willing to forego the balance of Shs. 89,000,000/- if the agreed sum was paid.

He also prayed that a substantial deposit of the admitted amount be paid within fifteen (15) days and the balance in reasonable installments.

It was also pointed out by Counsel for the Applicants that the Bailiffs costs were also pending.

It is apparent from the background the talks between the parties have taken a considerable period of time. The Respondents have shown all willingness to accept payment in installments so that the warrant of arrest can be vacated and have also agreed to give the Applicants a big discount.

However, the Applicants' proposed installments would mean that the admitted sum would be paid within about twenty two (22) months that is almost two (2) years from now and no proposal for immediate deposit was made.

The Applicants were urged by court to make reasonable proposals of installments but remain adamant on the proposed monthly installment of Shs. 4,000,000/-.

Court has also noted that the Applicants were given the chance to pay in installments when the agreed sum was still Shs. 30,000,000/- that is before the interest accrued but they failed to seize that chance.

Considering all the circumstances surrounding this case as indicated in the lengthy background, court finds that justice demands that the money admitted to be due and owing be paid by the Applicants within six (6) months as prayed by Counsel for the Respondents.

That means that the Applicants will pay in equal installments of Shs. 14,500,000/- per month until the whole sum of Shs. 87,000,000/- is paid.

The first installment to be paid by 04.11.16 and the balance of Shs. 73,000,000/- to be paid in the same installments of Shs. 14,000,000/- at the end of every month beginning with 30.11.16 till 31.03.17.

Half the costs of this application are granted to the Respondent.

The taxed costs of the main suit and those of the Bailiff to be taxed before payment. On failure to pay any of the installments as directed by court, execution will have to go ahead.

**FLAVIA SENOGA ANGLIN
JUDGE**

5 20.10.16