THE REPUBLIC OF UGANDA

IN THE SUPREME OF UGANDA AT KAMPALA

CORAM: ODOKI.CJ, KATUREEBE, KITUMBA, TUMWESIGYE AND KISAAKYE, JJ.SC.

CIVIL APPEAL NO. 03 OF 2012

BETWEEN

STANBIC BANK UGANDA LIMITED **APPELLANT**

AND

ATABYA AGENCIES LIMITED **RESPONDENT**

[Appeal from a decision of the Court of Appeal at Kampala: (Engwau, Twinomujuni, and Kavuma, JJA) dated the 7th February 2012, in Civil Appeal No. 20 of 2007]

1UDGMENT OF KITUMBA ISC

This is a second appeal from the judgment and orders of the Court of Appeal, in which the Court allowed the Respondent's appeal with costs.

The following is the background leading to this appeal. Atyaba Agencies Ltd, hereinafter referred to as the respondent, filed HCCS No 1197 of 1999 and obtained a decree for payment of money against Uganda **25** Commercial Bank Ltd. The decree provided for payment of interest on the decretal sum till payment in full. Stanbic Bank Uganda Ltd, which shall hereinafter to be referred to as the appellant, provided a Bank guarantee for the due payment of the decretal sum as a condition for stay of execution pending the appeal to the Court

of Appeal. The appellant later became liable as surety for the performance of the decree in HCCS No. 1197 of 1999 by virtue of Miscellaneous Application No. 109 of 2007, which the respondent filed to substitute the appellant for Uganda Commercial Bank Ltd.

The appellant unsuccessfully appealed to the Court of Appeal vide Civil Appeal No. 59 of 2004 and the appeal was dismissed. The appellant appealed to this court vide Civil Appeal No 3 of 2005 against the Court of Appeal decision.

By Civil Application No.32 of 2004 the appellant applied to the Supreme Court for a stay of execution of the award, pending the determination of Civil Appeal No.3 of 2005.

The application for stay of execution was granted

"On condition that the applicant deposits the sum of Ug. Shs. 1,110,595,410/= with the Registrar of this Court (i.e. Supreme Court) within thirty days."

The sum of Ug.Shs. 1,110,595,410/= consisted of the decretal sum plus interest which had accrued from the date of judgement in the High Court as at 22/12/2004.

The appellant's appeal was also unsuccessful in the Supreme Court. The respondent then collected the money deposited with the Registrar of the Supreme Court. The respondent's lawyers wrote a letter to the Appellant dated 23/03/2006, demanding a further sum of Ug. Shs. 148,031,294/= being additional interest for the period from 22nd December, 2004, when the money was deposited in court up to 22/03/2006 when the judgment

was delivered. The appellant Bank refused to pay. The appellant filed Miscellaneous Application No. 235 of 2006 in the High Court for stay of execution and that the court determines whether interest accrues on money deposited in court. The Appellant argued that during that period the decretal sum plus interest had been deposited into court, and should not attract interest.

The High Court (Kiryabwire J) granted the application. He held that no interest was due. The respondent appealed to the Court of Appeal in Civil Appeal No.20 of 2007.

The issues framed at the Court of Appeal for determination were as follows:

/. Whether the Trial Judge erred in law and fact when he decided that no further interest was due on the sums deposited in court pending appeal.

ii. Whether the trial judge decision in No. 1 above had the effect of illegally reviewing or setting aside the Order of interest in H.C.C.S No. 1197 of 1999.

Hi. Whether the trial judge erred in law and fact and misdirected himself by relying on principles in authorities that were not applicable to the case, iv. Whether the trial Judge erred in stating that since the odds were always in favour of the Respondent payment in Court was as good as payment to the Respondent.

v. Whether the trial Judge erred in law and fact when he ignored and/or rejected the fact that the money deposited into Court was

banked by the Registrar of the Supreme Court into the same bank which continued to have use of the same for itself.

vi. ***Whether the judge by stating that the case had stayed for a fairly long time in the court system and that, parties should really be looking at bringing the matter to finality he thereby ignored to decide the case on its merits and without fear or favour.***

vii. ***Whether the trial Judge generally failed to properly evaluate all the evidence and reached wrong conclusion and decisions resulting in a miscarriage of justice.***

viii. ***Whether the appellant waived further interest when it consented to payment of ug.shs. 1,110,595,410/= into the Supreme Court.***

The Court of Appeal decided all the issues in favour of the respondent and allowed the appeal with costs.

Dissatisfied with the above decision, the appellant filed this appeal to this court on the following grounds:

1. The learned Justices of Appeal erred in law in holding that the learned trial Judge did not evaluate properly all the evidence and materials that were before him and reached a wrong conclusion when he held that the appellant was not entitled to any further interest after the decretal amount and interest thereon at the time was deposited into the Supreme Court in accordance with a consent order pending appeal.

2. The learned Justices of the Court of Appeal erred in law in holding that the appellant did not waive further interest when it consented

to payment of Ugx. 1,110,595,410/= into the Supreme Court pending appeal.

At the hearing, Dr. Joseph Byamugisha appeared for the appellant and Mr. Bernard Bamwine appeared for the respondent.

Submitting on ground 1 Dr. Byamugisha faulted the learned Justices of Appeal when they stated in their judgment thus:

> ***"In holding that no further interest was payable, the learned trial judge relied on a number of English decisions which considered the circumstances under which the courts exercise discretionary powers to award interest".***

Counsel submitted that the issues did not arise because the appellant deposited the money in court. He argued that it was a condition to be granted a stay of execution and it was never contemplated that the appellant would ever have use of the money until the appeal was disposed of.

He reasoned that, therefore, the appellant did not keep the respondent out of its money and used it for its benefit. He submitted that the learned judge used section 98 of the Civil Procedure Act which provides for inherent powers.

> ***"Nothing in this Act should be deemed to limit or otherwise affect the inherent power of court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."***

He submitted that when a decree is made it is supposed to be executed and a stay of execution is taken out under this section. He argued further that there is no provision regarding interest where money has been deposited into court by consent. The money deposited in court was at the disposal of the respondent. In case the appeal was determined in its favour it would not apply for execution but just get its money from court.

He submitted further that the learned Judge used his powers under section 33 of the Judicature Act, whereby the High Court is enjoined to exercise its jurisdiction so that as far as possible or matters in controversy between the parties may be determined and multiplicity of proceedings concerning any of these matters avoided.

Counsel submitted that there was no evidence and no materials before the judge which he did not evaluate and the Court of Appeal did not hold that the learned trial judge improperly used his discretion.

Mr. Bamwine for the respondent opposed the appeal. He submitted that Miscellaneous Application No. 235/2006 was at execution stage. The duty of the trial judge, at that stage as an executing court, was to read the decree and the order of the Supreme Court to determine whether further interest was payable from the date the sums were deposited in the Supreme Court to the date the judgment was given by the Supreme Court in the main appeal.

Counsel contended that the learned trial judge addressed his mind to section 26 of the Civil Procedure Act and other authorities which govern the granting of interest. According to counsel, Kiryabwire J was not entitled to consider that because the same had already been considered by

Okumu-Wengi J, who tried HCCS No.1197 of 1999 and passed the decree.

Counsel reasoned that Kiryabwire J was neither sitting in appeal nor in review of his brother judge's decree. Counsel was of the considered opinion that because the decree passed in the original suit provided that interest was to be paid until payment in full, further interest accrues inspite of the fact that some payment had been paid in court.

He argued that payment was paid in court to facilitate the judgment debtor to get a stay of execution. It was for appellant's benefit because the purpose of the appeal was to save that money from going to the judgment creditor/respondent in case the appellant won the appeal.

Mr. Bamwine distinguished the payment of money in this court in this appeal and the money paid in court under Order 22 Rule 1. He submitted that under that Order the decretal sum can be paid into court for collection by the judgment creditor. When that is done notice is given to the judgment creditor to collect that money. In those circumstances no interest accrues because it is an unconditional payment. However, in the instant, appeal payment in the Supreme Court was conditional to facilitate the appellant to pursue its appeal to the Supreme Court.

I have carefully read the record and the submissions of counsel on ground 1. According to the decree given by the trial court in HCCS No. 1197 of 1 999, the sums that were awarded to the respondent were to bear interest ***"till payment in full" or "till settlement in full".***

It is important at this juncture to quote in full the order which was given by this court when granting the stay of execution.

"UPON hearing Dr. Joseph Byamugisha Counsel for the applicant and Mr. Bernard Muhangi Bamwine counsel for the Respondent, It is ordered by consent of both parties that an interim order for stay of execution of the High Court Order in M.A No. 109 of 2004 and the Decree of the Court of Appeal in C.A No. 59 of 2004 be granted ON CONDITION that the Applicant deposits the sum of Shs. 1,110.595.410/= with the Registrar of this Court within 30 days from today 22.12.2004. The sum will be paid to the Respondent in the event the intended appeal to this Court fails. This order will last till disposal of the appeal or until further orders are made."

Counsel for the appellant has strongly argued that Court of Appeal erred to find that the learned Judge did not properly evaluate all materials that were before him and because of that, reached a wrong conclusion that the respondent was not entitled to any further interest.

He has strongly argued that there was no evidence or other materials which the judge had to consider. He only used his discretionary powers according to section 98 of the Civil Procedure Act. With due respect to learned counsel, his argument is not tenable. What was before the trial judge in Miscellaneous Application 235 of 2006 was the decree in the original suit which specified that interest had to be paid ***"Till payment in full".***

The learned trial judge only had to consider the terms of the decree in HCCS No. 1197 of 1999 and the terms of the decree which was given by the Supreme Court for stay of execution.

It is trite that once a judgment is given the successful party is entitled to enjoy the fruits of the judgment. With due respect to counsel for the appellant, his criticism of the Justices of Appeal that they erred in holding that the learned judge was wrong to rely on English authorities which considered the circumstances under which the courts exercise discretionary powers in awarding interest is not justified. In the circumstances, there was no appeal before Kiryabwire J and there was no application for review either. The application before him was for stay of execution and determination of whether further interest accrued from the date the amount was deposited in court until the appeal was disposed of. The decree in the original suit had been passed with orders of interest "till payment in full" and "till settlement in full". Further interest accrued because those were the terms of the decree.

Counsel for the respondent has correctly submitted that the deposit of the money with the Registrar of the Supreme Court was a condition for stay of execution. It was to the advantage of the appellant. The Court of Appeal in its judgment correctly considered this point as follows:

> ***"When the respondent deposited money in court, it was for its benefit as condition for it to be granted a stay of execution. It was never contemplated nor did it actually happen that the appellant would ever have access to the money till after its appeal was disposed of. Therefore, the appellant continued to be denied the benefit of his decree which was that he was entitled to payment of the decretal amounts with interest till payment in full.***

In holding that the appellant was no longer entitled to further interest, the trial court indeed was illegally reviewing or setting aside the order of interest made in H.C.C.S. No.1197 of 1999."

I entirely agree with the above holding by the Justices of Appeal. Ground one is devoid of merit and therefore should fail.

I now consider ground 2.

Counsel for the appellant contended that the respondent was represented. The respondent, therefore, knew that a party is given interest because the other party has used the money for its benefit.

On the other hand if the money is paid in court the party does not make profit. According to counsel for the appellant by agreeing to pay the money in court the respondent was waiving any claim to interest.

He submitted that both parties to this appeal consented to the payment of the money into court. The execution was stayed for the benefit of both parties. Counsel for the appellant reiterated his argument that since the court used its discretion to order the execution to be stayed it was for the interest of both parties. The respondent would get the money in case the appeal failed without going for execution. The money would have been beneficial to the appellant alone if it had remained with it. Counsel submitted that consent to have the money deposited in court constituted a waiver.

Counsel for the respondent submitted that in deciding this matter one should consider the order of the Supreme Court. He contended that a proper interpretation of that order does not modify the decree in the

original suit HCCS NO.1197 of 1999. He submitted that canons of construction of the document must be followed. Counsel contended that one looks at the whole document and the language used so as to find out the intention of the maker. In support of his submissions he relied on ***In Re Jodrell. Jodrell V Seale*** Law Reports Chancery Division Vol [1890] pg 590 and ***Black's Law Dictionary.*** Abridged 5th Ed pg 81 5.

He submitted, further that according to the history of the proceedings interest was always taken into account whenever the appellant made a bank guarantee.

In reply, Dr. Byamugisha contended that interest used to accrue when the appellant gave a bank guarantee because it still had the money. Once cash was paid in court interest did not accrue as the respondent had waived its right to interest.

Regarding the point of waiver counsel for the appellant has strongly argued that the respondent knew that interest is paid by a party who keeps the other out of his money and makes profit out of it. It is my considered view that this principle applies when there is no decree passed by court regarding payment of interest. In the instant appeal the court which tried HCCS No. 1197 of 1999 had given its orders that interest had to be paid ***"until payment in full" or "till settlement in full".***

I agree with the submissions of counsel for the respondent that according to the canons of construction of documents the whole document must be read to understand the intention of the maker. In support of his point respondent's counsel cited ***In Re Jodrell. Jodrell V Seale*** (Supra). In that case the testator described the beneficiaries of his estate as his nieces

whereas they were his wife's nieces and not his own. Some of the persons he described as his cousins were illegitimate relatives. The Court of Appeal held that in construing the will, the court had to look at the whole will itself and not to refer to any legal interpretation outside that document.

Lord Halsbury, L.C stated at page 605,

"I am called upon to express an opinion on what is the meaning of this written instrument, and I repudiate entirely the notion of laying down any canon of construction which is to extend beyond particular instrument that I am called upon to give an interpretation to. I do not know what the testator meant except by the words that he used**.....**

> ***For myself I am prepared to look at the instrument such as it is; to see the language that is used in it; to look at the whole of the document, and not to part of it; and having looked at the whole of the document to see (if I can) through the instrument what was the mind of the testator. Those are general principles for construction of all instruments -and to that extent it may be said that they are canons of constructions".***

I respectfully agree with the statement quoted above.

Dr. Byamugisha for the appellant has argued that the respondent waived their right to further interest when they accepted the decretal sum to be paid in court with interest which had so far accrued.

According to ***Black's Law Dictionary,*** 5th Ed defines the verb waive to mean.

"To abandon, throw away, renounce> repudiate> or surrender a claim, a privilege> a right, or the opportunity to take advantage of some defect, irregularity; or wrong. To give up right or claim voluntarily." A person is said to waive a benefit when he renounces or disclaims it, and he is said to waive a tort or injury when he abandons the remedy which the law gives him for it.

In order for one to "waive" a right, he must do it knowingly and be possessed of the facts." (Underlining mine)

According to the above definition the respondent did not voluntarily give up **their** right to claim interest after the money had been deposited in court.

In my view the respondent did not waive its right to be paid interest. The sum of shs. 1,110,595,410/= which was paid in court was for the benefit of the appellant to stay execution and pursue its appeal in the Supreme Court to conclusion. It is the appellant who applied for stay of execution in this court and not the respondent.

As already pointed out part of the order of this court reads:

"ON CONDITION that the applicant deposits the sum of Ug shs 1,110,595,410/ with the Registrar of this court within 30 days from 22-12-2007. The sum will be paid to respondent (the present appellant) in the event the intended appeal to this court fails. This

order will last till disposal of the appeal or until further orders are made."

On the perusal of the Court of Appeal judgment on page 12, the Justices had this to say;

We have scanned the terms of the order of the Supreme Court.

We are unable to read in it any waiver on the part of the appellant to claim further interest. We therefore do not find any merits in this ground of appeal. It fails."

I entirely agree with the holding of the Court of Appeal.

Ground 2 also should fail.

In the result I would uphold the Court of Appeal's order that the appellant pays to the respondent the interest which has accrued till payment in full as stated in the decree in HCCS 1197 of 1999. Accordingly I would dismiss the whole appeal with costs in this court and the courts below.

Dated at Kampala th 30th .....day of May..... **2013**

C.N.B. KITUMBA

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA, AT KAMPALA

(CORAM: ODOKI, CJ., KATUREEBE, KITUMBA, TUMWESIGYE AND KISAAKYE, JJ.SC).

CIVIL APPEAL NO. 03 OF 2012

B E T W E E N

STANBIC BANK UGANDA LIMITED :::::::::::::: APPELLANT

AND

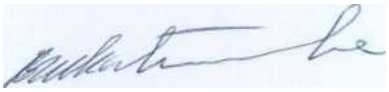
ATABYA AGENCIES LIMITED :::::::::::::::::::: RESPONDENT

[Appeal from a decision of the Court of Appeal at Kampala: (Engwau, Twinomujuni, and Kavuma, JJA) dated the 7th February 2012, in Civil Appeal No.

JUDGMENT OF KATUREEBE, JSC.

I agree with the Judgment of my learned sister, Kitumba, JSC, that this appeal be dismissed. I also agree with the orders she has proposed.

Dated at Kampala this……30th….day of May 2013.



Bart M. Katureebe JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, C.J.; KATUREEBE; KITUMBA; TUMWESIGYE AND KISAAKYE; JJSC.)

CIVIL APPEAL NO. 03 OF 2013 BETWEEN

STANBIC BANK UGANDA LIMITED ::::::::APPELLANT

AND

ATABYA AGENCIES LIMITED ::::::::::::RESPONDENT

[Appeal from the decision of the Court of Appeal at Kampala (Engwau, Twinomujuni and Kavuma JJ.A) dated 7th February 2012 in Civil Appeal No. 20 of 2007]

JUDGMENT OF TUMWESIGYE, JSC

I have had the benefit of reading in draft the judgment prepared by my learned sister, Kitumba, JSC, and I agree with it and the orders she has proposed.

Dated at Kampala this.....30th.....day of .....May.....2013

JOTHAM TUMWESIGYE

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, C.J.,KATUREEBE, KITUMBA, TUMWESIGYE & KISAAKYE, JJ.S.C.)

CIVIL APPEAL NO. 03 OF 2012

BETWEEN

STANBIC BANK UGANDA LIMITED :::::::: APPELLANT AND ATABYA AGENCIES LIMITED :::::::::::::: RESPONDENT

{Appeal from the Decision of the Court of Appeal at Kampala (Engwau, Twinomujuni and Kavuma, JJ.A.) dated 7th February, 2012, in Civil Appeal No.20 of2007}

JUDGMENT OF DR. KISAAKYE, JSC.

I have had the benefit of reading in draft the judgment of my learned sister, Justice Kitumba, JSC.

I concur with her that this appeal has no merit and that it should be dismissed with costs in this court and in the two courts below.

Dated at Kampala this 30th of.....May.....2013.

DR. ESTHER KISAAKYE
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: ODOKI, C.J, KATUREEBE, KITUMBA, TUMWESIGYE AND KISAAKYE, JJ. S.C)

CIVIL APPEAL NO 03 OF 2012

BETWEEN

STANBIC BANK UGANDA LIMITED :::::::::::::::::::: APPELLANT

AND

ATABYA AGENCIES LIMITED :::::::::::::::::::::::::::: RESPONDENT

[Appeal from the decision of the Court of Appeal at Kampala (Engwau, Twinomujuni and Kavuma, JJA) dated 7th February 2012 in Civil Appeal No 20 of 2007]

JUDGMENT OF ODOKI, CJ

I have had the benefit of reading in draft the judgment prepared my learned sister, Kitumba JSC, and I agree with it and the orders she has proposed.

As the other members of the Court also agree, this appeal is dismissed with costs in this Court and the Courts below.

Dated at Kampala this.....3***0th***.....day of...May 2013.

CHIEF JUSTICE