

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPLICATION NO: 03 OF 2013

(ARISING FROM CIVIL APPN. NO.02/2003

BETWEEN

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.....**APPLICANT**
.....

VERSUS

C

.....**RESPONDENT**
.....

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RULING OF KATUREEBE, JSC

This application seeks an interim order staying the execution of decrees passed against the applicant in the High Court, the Court of Appeal and the Supreme Court in ***Civil Appeal No. 13 of 2010***. The application is brought under Rules 2(2) and 6(2) of

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the Rules of this Court. The application is supported by the affidavit of the applicant,

GIULIANO GARIGGIO, dated 1st February, 2013.

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The background to this application stems from the applicant's counsel's inability to get the procedures right in prosecuting the appeal. They seem to have had problems in filing a Notice of Appeal in time and then purporting to obtain the necessary orders from the Registrar of the Court of Appeal instead of from the Court itself. I will not go into the details of those attempted

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procedures. But suffice to say that when the appeal finally came before this court for final disposal, counsel for the respondent

raised a preliminary objection that the appeal was incompetent as there was never filed a valid Notice of Appeal. He challenged the competence of the Registrar of the Court of Appeal to issue the orders that he did.

In its Ruling on this point dated 29th January 2013 this Court found the appeal incompetent and struck it off. This meant that the decrees and orders given by the High Court and Court of Appeal could now be executed since there was no appeal and no

10 order of stay of execution. The applicant has filed in this Court an application seeking to validate the appeal, and another seeking a stay of execution. The application for a stay of execution can only be heard by a full Coram of this Court - hence this application for an interim order of stay of execution which
15 may be heard by a single judge.

At the hearing of this application Mr. Kaggwa Michael, counsel for the applicant, argued that since the appeal was struck out by this court, the applicant has been left to the mercy of the respondent who may decide to commence execution proceedings any time. He pointed out that the respondent had already extracted a decree, annexed to the application as Annexure "AB", and obtained a Certificate of Taxation, Annexure "AB". With these two documents, counsel argued, the respondent could

25 execute anytime notwithstanding that he had not moved to execute before.

Counsel submitted, relying on the decision of this Court (Okello, JSC) in ***ALCON INTERNATIONAL LTD -Vs- THE NEW VISION PRINTING & PUBLISHING Co. LTD, & ANOTHER, CIVIL APPLICATION No.4 OF 2010***, that there are two conditions to be satisfied before the court can grant an interim stay. These were that there had to be a threat of execution. He submitted that these two conditions were satisfied in this case. He relied on Rule 2(2) of the Rules of this Court to pray that if there was no interim order of stay, the respondent could execute and the applications already filed in court would be rendered nugatory. It was in the interest of justice that the order should be granted so that the court would be able to hear the substantive applications on their merits. He therefore, prayed that the court invokes its inherent powers to do justice and grant the order of interim stay of execution.

In a short reply, Mr. Bitaguma, counsel for the respondent opposed the application relying on the affidavit of one Lillian M. Khalayi, an advocate, who stated she was well versed with the

20 facts of the case In particular, counsel relied on paragraphs 6 10 of that affidavit. Counsel argued that the application was not tenable since there was no Notice of Appeal filed in accordance with the Rules. He cited the Kenya case of ***NAIROBI CITY COUNCIL -Vs- RESLEY [2002]2 EA 487*** where it was held that

25 the court has no jurisdiction to make a decision on an application not based on a notice of appeal.

He further argued that the respondent who has had judgment of the High Court since 2004 was being unfairly denied the fruits of his judgment by the dilatory conduct of the applicant. He did concede however that there had been no active steps taken to

5 execute the decree extracted in July 2011. To him, the filing of a fresh application to this court seeking a stay of execution of the judgment of the Court of Appeal and orders of the Supreme Court was tantamount to abuse of court process.

10 I have considered the arguments and submissions of both counsel, and I would first wish to point out one aspect of this application. This is an application for an interim stay of execution. It is not the main application which would be governed by Rule 5(2) of the Supreme Court Rules. As a single

15 Judge, I would not have jurisdiction to grant a stay of execution.

This has to be granted by a full court. It follows therefore that all matters pertaining to whether a stay of execution should be granted or not including authorities such as the NAIROBI CITY COUNCIL case (supra) would have to be inquired into at the

20 hearing of that application. BLACK'S LAW DICTIONARY 9TH Edition, defines "interim order" as ***"A temporary Court decree that remains in effect for a specific time or until a specified event occurs."***

25 In a case like this one, the interim order would only remain in place until the full court hears and determines the main application for stay of execution. However, since filing of an application or an appeal does not act as a stay, there would be

nothing to stop a decree holder from executing the decree if there was no interim order. In that case the main application would be rendered nugatory. The provisions of the Constitution (Article 126) require courts to administer substantive justice without
5 paying undue regard to technicalities.

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
10 granted by a single Judge of the Court invoking its inherent powers under Rule 2(2) of the Rules of this Court. In the instant case, the conditions set in the *Alcon* case (supra) are satisfied. I am satisfied that the applicant has filed two applications in this court for stay of execution and for validation of the appeal that
15 was already filed in this court. I cannot at this stage inquire into the merits of those applications, but I am of the opinion that in the interests of justice, they should be heard. I am also satisfied that the respondent has extracted a decree and has a certificate of taxation. He could, if he wished, proceed to execute, and this
20 would render the applications nugatory.

I am of the firm view, therefore, that this is a case where I should exercise the inherent power under Rule 2(2) of the Rules of this Court to grant an interim stay of execution until the court
25 determines the main application. Accordingly the application is allowed.

With regard to costs, I note that it is the Applicant and his counsel who have not proceeded speedily and according to procedure. I would award the costs of this application to the respondent.

Dated at Kampala thisday ofFebruary, 2013.

B.M. Katureebe
JUSTICE OF THE SUPREME COURT