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**THE REPUBLIC OF UGANDA**  
IN THE COURT OF APPEAL OF UGANDA  
AT KAMPALA

**CONSTITUTIONAL APPLICATION NO. 35 OF 2013**

10           *(Arising from Constitutional Application No. 34 of 2016: Arising from  
Constitutional Petition No 51 of 2013)*

1. Peter Ssajjabbi  
2. Swift Commercial Establishment Limited } ::::::::::::::: Applicants  
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*VERSUS*

The Attorney General ::::::::::::::: Respondent

**Coram: Hon. Justice Remmy Kasule, JA, sitting as a single  
Justice**  
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**RULING**

25 The applicants seek an Interim Order of injunction to stay the  
application and enforcement of Section 34 of the Anti-Corruption  
Act, 2009. They also seek an order to stay the hearing and  
determination of High Court, Anti-Corruption Division,  
Miscellaneous Application No. 0003 of 2016: Uganda vs Obey  
Christopher and 19 others. The Applicants pray that the Interim  
30 Order of injunction be operative until the hearing and  
determination of Constitutional Application No. 34 of 2016 in which

the applicants pray for a permanent injunction to be issued; and Constitutional Petition No. 51 of 2013 whereby the constitutionality of Section 34 of the Anti-Corruption Act, 2009, is being questioned.

35 The application is supported by the affidavit of the first applicant who is also a director in the second applicant.

Both applicants move this Court through Rule 23(1) of the Constitutional Court (Petition and Reference) Rules, Sections 64(c) & (e) and 98 of the Civil Procedure Act, Cap. 71 and Rules 2(2), 40 43(1)(2) and 44 of the Judicature (Court of Appeal Rules) Directions.

At the hearing, learned Counsel Patrick Alunga appeared for the applicants while Principal State Attorney Odoi Jimmy was for the respondent.

By way of background, a sum of over Ug. Shs. 200 billion being 45 money intended for payment of pension to retired Public Servants was lost through theft and embezzlement and the Uganda Police has over time since 2009 been and continues to carry out investigations as regards this theft and embezzlement. The first and second applicants are some of the subjects of the 50 investigations. The first applicant is a former Secretary of the East African Community Beneficiaries Association (EACOBA) an organisation whose members are retired employees of the East Africa Community whose pension money, is also part of the amount that has been stolen and embezzled. The second applicant is a

55 company registered with limited liability and is under the majority  
share ownership and control of the first applicant.

Through High Court Miscellaneous Application No. 0003 of 2016,  
Anti-Corruption Division, the Uganda Police as a result of  
information received and being received in the course of  
60 investigations of the theft and embezzlement of the pension money,  
has found it necessary that the disposal of some properties of the  
applicants, both moveable and immovable be restricted to avoid  
their dissipation while the Police investigations are still going on  
and there is also a possibility of the said properties being used as  
65 exhibits, just in case it is decided that a criminal trial be held  
against the applicants and, others not parties to this application,  
for the theft and embezzlement of the pension funds.

The applicants contend that they are entitled to be issued with an  
Interim Order of injunction because they have filed in this Court a  
70 substantial Constitutional Application No. 34 of 2016 for a  
temporary injunction order which is pending hearing and  
determination by this Court as regards the operation and  
application of Section 34 of the Anti-Corruption Act as well as the  
determination by the High Court of Miscellaneous Application No.  
75 0003 of 2016. There is also pending in the Constitutional Court  
Constitutional Petition No. 51 of 2013 whereby the applicants are  
questioning the Constitutionality of Legal Notice No. 9 of 2009  
which establishes the Anti-Corruption Division of the High Court,  
Section 34 of the Anti-Corruption Act as well as the Court Orders

80 issued restricting the transfer of ownership of the applicants  
immoveable and moveable properties as well as freezing bank  
accounts being operated by the applicants in a number of  
Commercial Banks.

For the respondent, through an affidavit in reply by Geoffrey  
85 Wangolo Madete, State Attorney in the Attorney General's  
Chambers, <sup>it is</sup> contended that in accordance with the law, the Director  
to Public Prosecutions obtained a Court Order on 07.03.2013 to  
freeze the bank accounts of the applicants and to restrict the  
disposal of the applicants moveable and immoveable properties.  
90 The said orders were obtained because the applicants, together with  
others, are being among those accused of having caused loss of  
colossal sums of money in pension funds belonging to various  
pensioners in the Uganda Public Service and that the restriction  
and ~~fall~~ <sup>freeze</sup> was necessary pending criminal trial of the applicants and  
95 others.

The burden is on the applicant in an application for an Interim  
Order of stay, to show that a substantive application is pending and  
that there is a serious threat of executing that which is prayed to be  
stayed before the determination of the substantive application for  
100 stay. See: Hwang Sung Industries Ltd vs Tajdin Hussein & 2  
Others: Civil Application No. 19 of 2008 (SC)

The applicants in this application have satisfied this Court that  
there is both Constitutional Petition No. 51 of 2013 and a  
substantive Constitutional Application No. 34 of 2016 pending

105 determination of the Constitutional interests of the applicants by  
the Constitutional Court.

The applicants have also to satisfy this Court that there is a serious  
threat of execution which will change the status quo and render the  
substantive application and the Constitutional Petition nugatory if  
110 an interim order to stay is not issued.

The applicants do not dispute the fact that since 2013 a number of  
their moveable and immoveable properties as well as Bank  
accounts have been the subject of the orders of freeze and  
restrictions. The reason for these orders is because the applicants,  
115 together with others, as a result of investigations carried out and  
still ongoing, are suspected to have stolen and/or embezzled  
colossal sums of money of about Ug. Shs. 200 billion and it is  
suspected that the applicants' properties and bank accounts, the  
subject of the freeze and restriction, are proceeds of that suspected  
120 theft and embezzlement.

The Orders of freeze and restrictions of the bank accounts and  
properties of the applicants were obtained and are being enforced  
by the Director of Public Prosecutions and the Uganda Police in the  
course of carrying out Constitutional duties.

125 Article 120(3) (a) and (b) of the Constitution vests in the Director of  
Public Prosecutions powers to direct Police to investigate any  
information of a criminal nature; and also to institute criminal

proceedings against any person or authority in any Court of competent jurisdiction.

130 As regards Uganda Police, Article 212 (c) vests powers in the Police to prevent and detect crime.

The appreciation of the facts of this application leads to the conclusion that the Director of Public Prosecutions and the Uganda Police in carrying out the above stated Constitutional duties found  
135 it necessary that as they carry out those duties, it is necessary to freeze the bank accounts and restrict use of the properties of the applicants for purposes of preventing and detecting crime and carrying out necessary investigations with a view to determining whether or not criminal prosecution is to be undertaken.

140 The applicants have not lost ownership of any bank accounts or properties. The freeze and restrict orders are temporary and are intended to ensure that the truth is arrived at. If the innocence of the applicants is established by the investigations and possible criminal trial, then the orders will be lifted, or if it turns out that  
145 the bank accounts and the properties are the proceeds of a crime, appropriate orders will be made. Any damage suffered by the applicants can be atoned for by way of damages.

In paragraphs 7 and 9 of the first applicant's affidavit in support of this application, the 1<sup>st</sup> applicant asserts that the orders to freeze  
150 bank accounts and restriction of properties have been in place since November, 2012 to date. This application was filed in this Court on

10<sup>th</sup> February, 2016. For this Court to remove or interfere with the said orders now is not to preserve the status quo that was obtaining when this application was filed. It is rather to create a new status quo and that is not the purpose of an interim order of stay. An application for an interim order of stay is not to be entertained and allowed by Court as a matter of Course. It must be based on compelling reasons geared towards preventing a defeat of justice: See: HORIZON COACHES LIMITED VS FRANCIS MUTABAZI & OTHERS Civil Application No. 21 of 2001 (SC).

The facts of this application show that to grant the orders prayed for will amount to interfering with the process of investigating and /or prosecuting a crime of theft and embezzlement of a colossal sum of money being carried out by the Director of Public Prosecutions and the Uganda Police, which investigations and possible criminal prosecution have the applicants, amongst others, as suspects. The properties and accounts involved are also suspected to be proceeds of the crimes being investigated. It is only fair therefore that the fate of the freeze and restrict orders be determined by the criminal and/or Constitutional Justice System as to the innocence, or otherwise, of those involved and also as regards their constitutional validity.

Further, the interim order preserves the status quo. To allow this application will amount to changing the status quo that has obtained since November, 2012 to date as regards the bank accounts and properties of the applicants being subjected to the

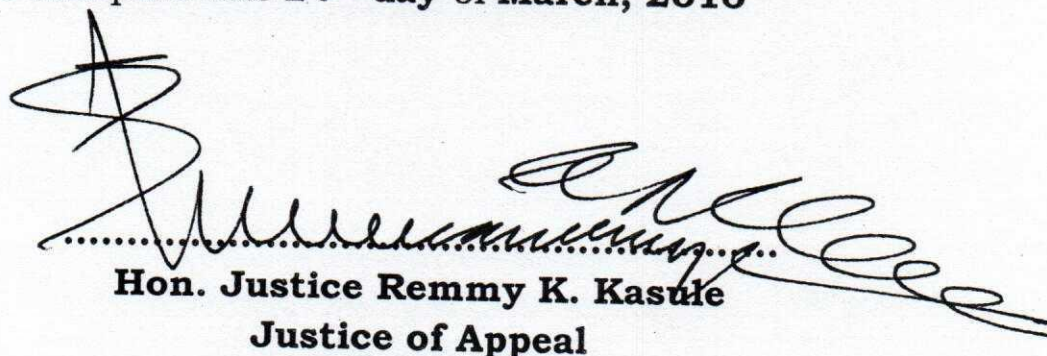
orders of freeze and restriction. That is not the function and purpose of an interim order.

180 The applicants are better advised to pursue the determination to finality of Constitutional Petition No. 51 of 2013, other than pursuing and spending too much time and resources pursuing interim and temporary measures, like this application.

The application stands dismissed with costs to the respondent payable jointly and/or severally by the applicants.

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Dated at Kampala this 24<sup>th</sup> day of March, 2016

  
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**Hon. Justice Remmy K. Kasule**  
**Justice of Appeal**

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