THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL.NO. 073 OF 2018
(ARISING FROM LABOUR DISPUTE NO. ….OF 201…..)

GEORGE JOHNSON OJOK & 87 OTHERS……………….………….**CLAIMANT**

VERSUS
TORRES ADVANCED ENTERPRISE SOLUTION LLC……......... **RESPONDENT**

BEFORE
1. The Hon. Chief Judge, Asaph Ruhinda Ntengye
2. The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms. Harriet MugambwaNganzi

RULING

This is an application by chamber summon seeking for orders that the respondent pays into court 1,000,000,000/= as security pending determination of Industrial Court Labour Ref. No. 24/2015 and for costs. 8 grounds as basis of the application are stipulated therein and it is supported by an affidavit sworn by one John Johnson Ojok filed on the record on 13/4/2018.

An affidavit in reply filed on 18/06/2018 is on record in opposition to the application. Prof. Jean John Barya appeared for the applicant and Mr. Hussein Kashillingi appeared for the respondent. Both counsel filed written submissions on behalf of their respective clients.

On perusal of the application as well as the supporting affidavit, we discern the case of the applicant to be that the respondent is a foreign company which has a 5 year contract with the American Embassy in Uganda ending in October 2018. The claimant contends that after the end of the contract the respondent will leave the jurisdiction of this court and if the claimants get an award in their favour, such award will be in vain as it will not be executed since the respondent has no known assets within the jurisdiction of this court.

The case for the respondent is that the respondent has multiple business engagements in Uganda and that it was speculative of the applicants to state that the respondent was likely to wind up business in Uganda. It was contended that the respondent owns considerable assets including a fleet of vehicles, an operation office and bank accounts.

SUBMISSIONS

It was submitted on behalf of the applicant by their lawyer that there was no evidence from the respondent that after the end of their five year contract with the American Embassy they would be able to pay any benefits to the applicants in case they were successful. He relied on the cases of **Abby MugimuVs Luciano Basabasa (1991) HCB 70, Ivan SsebadukaVsWarid Telecom Ltd Misc. Appl. No. 204/2014 and Coil Ltd VsTranstrade Services Ltd. Misc. appl. 14/2016.** He contended that this was a proper case calling for

security since the respondent was about to leave the jurisdiction of this court and since no evidence has been provided of their ownership of any assets or funds available after October 2018.

In reply the respondent contended that the applicant having not contradicted paragraph 5 and 7 of the affidavit in reply, the court ought to believe the respondent that it has contracts with Ms. F and Catholic Relief Services and has considerable assets in Uganda. In his submission counsel argued that the applicant failed to show that the respondent intended to delay the applicant or avoid any process of court or obstruct or delay execution of any decree or has absconded or left the jurisdiction of this court. He argued that the orders sought for under order 40 rule 1 of CPR are not applicable to artificial persons.

In Rejoinder, the applicant argued that since there was no reciprocal arrangementbetween the U.S.A and Uganda, there was no way an order of this court could be executed after the respondent relocated to U.S.A. It was contended by counsel that there was no need to reply to the assertions in paragraphs 5, 7 of the affidavit in reply since there was nothing to prove that the said contracts exist and are of such value that would assist court to decide whether or not security be provided before the award.

DECISION OF COURT

The gist or intention of **order 40 r 1 of the CPR** is to provide for situations where a defendant (or claimant) is put to task to show his/her capability to satisfy the judgment debt or award should the said award be entered against him or her. This is not an ordinary situation. While the suit is pending in court the defendant/claimant is entitled to carry on business in the normal course and if at the end of the case business is too low to satisfy the debt, it becomes a loss on the part of the judgment debtor or claimant. Therefore **order 40 r 1** provides for the extra ordinary circumstance where the defendant or claimant is either known to be fraudulent or is likely to be fraudulent leading to suspicion that he/she may probably not be able to satisfy the judgment debt should it be against him/her.

The court in deciding whether to grant or not to grant the application under order 40 r 1 , necessarily has to balance the need to preserve the interest of the applicant before the determination of the suit thus protecting the integrity of court's orders and judgment , and the need to protect the rights of innocent third parties who may be caught up in the course of business of the respondent as a result of the court's order. Consequently, it has been held in **Customs** and **Exercise commissioner VsAncor Foods Ltd (1999 1 WLR 1139** that before an application of this nature is allowed, the applicant undertakes to pay the respondent any damages that may arise should it turn out that the order should not have been in the first place applied for, later on granted. The undertaking may only be dispensed with good reason.

We do not accept the argument that Order 40 r 1applies only to human beings and not to artificial persons such as companies. Indeed an order to provide security has been made before in the cases of **Ivan SsebadukaVsWarid Telecom Ltd Miss. Appl. No. 204/2014 (from C.S 20/2013) and Uganda Electricity Board Vs Royal Van Canteen (u) Limited HCC MA 025/2006.**

Order 40 r 1 provides:

(1) Where at any stage of a suit, other than a suit of the nature referred to in section 12(a) to (d) of the Act, the court is satisfied by affidavit or otherwise: -

    (a) That the defendant with intent to delay the plaintiff, or to avoid any process of the court or to obstruct or delay the execution of any decree that may be passed against him or her.

        (i) Has absconded or left the local limits of the jurisdiction of the court;

        (ii) Is about to abscond or leave the local limits of the jurisdiction of the court; or

        (iii) Has disposed or removed from the local limits of the jurisdiction of the court his or her property or any part of it; or

    (b) That the defendant is about to leave Uganda in circumstance affording a reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

The court may issue a warrant to arrest the defendant and bring him or her before the court to show cause why he or she should not furnish security for his or her appearance."

It seems to us that the consideration is whether or not the court is satisfied that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant. We have no doubt that the respondent is an American Company and that it has a 5 year contract with the American Embassy up to October 2018.

The contention between applicant and the respondent is on whether after completion of the contract in October before the filed suit is heard and determined, the respondent will have left the jurisdiction of the court and therefore leading to inability to execute a decree against it. In answer to the above question under paragraph 5 and 7 of the affidavit in reply the respondent averred that it had multiple business engagements including but not limited to guard services on local contracts with the **Ms. F and Catholic Relief Services** as well as owning a fleet of vehicles, an operational office and bank accounts.

In effect the averments contend that the respondent would in any event be able to satisfy the decree even when business closes with the American Embassy.

We have not seen anything in the affidavit contradicting the assertion of the applicant that after the contract with the American Embassy ends, the respondent will most probably leave the jurisdiction of this court. We agree with the applicant that there was need for the respondent to show that the local contract referred to in paragraph 5, indeed existed and they were of such value that would suffice to satisfy the decree if passed.

There was also need for the respondent to expound on averments in paragraph 7 of the affidavit in reply referring to **"a fleet of vehicles, an operational office and bank accounts".** The need arises simply because the respondent is admittedly a foreign company whose major contract of services to the American Embassy will admittedly end in October this year by which time this court will definitely not have heard and determined the labour dispute between the parties.

We are not satisfied with the evidence adduced by affidavit in reply that the respondent will not get out of the jurisdiction of this court after the end of the above mentioned contract. We are not convinced that the existence of the local contracts they have if at all, will satisfy the decree if passed against the respondent. And we are not convinced that the assets referred to by the respondent were sufficient to satisfy the decree.

Accordingly we allow the application and order that the respondent furnishes court with security in the form of either cash of 150,000,000 (One hundred fifty million shillings) or a bank guarantee in the same amount.

The respondents will at the same time enter an undertaking that they will be able to pay damages worth the bank rate interest that will have accumulated on either the cash deposited in court or the bank guarantee.

No order as to costs in made.

BEFORE
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Panelists

1. Mr. Ebyau Fidel   …………………………….
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3. Ms. Harriet MugambwaNganzi   …………………………….

Dated: 5th September 2018