

There was pending appeal

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA**

CIVIL APPLICATION NO. 20/2002

HORIZON COACHES LTDAPPLICANT
BETWEEN
PAN AFRICAN INSURANCE COMPANYRESPONDENT

BEFORE: JUSTICE G.W. KANYEIHAMBA , J.S.C.

APPLICANT represented by Mr. David Ndyomugabe of James Matsiko, David Ndyomugabe, Advocates. The learned Registrar and Court Clerk, present.

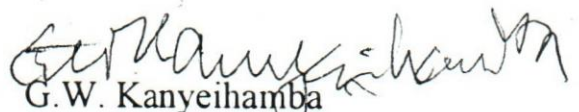
Mr. Ndyomugabe: This is an *ex parte* application under Rules 1 (3), 5 (2) (b) and Rule 41 of the Rules of this court.

Court: Having heard counsel's submissions and perused the affidavit accompanying the application, I decided to allow the application and grant an interim order of Stay of Execution while reserving my reasons to be given later.

O R D E R

Upon this application and having perused the application, the affidavit sworn in support of it and having heard Mr. Davis Ndyomugabe for the applicant and having been satisfied that there is an application pending before this court for Stay of Execution, it is proper and in the interest of justice that an Interim Order for Stay of Execution, pending the disposal of the main application, should be granted. It is so ordered. Costs shall abide the outcome of the main application.

Dated at Mengo this 11th Day of November, 2002.


G.W. Kanyeihamba
JUSTICE OF THE SUPREME COURT

original ready for
delivery.

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IN THE SUPREME COURT OF UGANDA

AT MENGO

CIVIL APPLICATION NO. 20 OF 2002

BEFORE: HON JUSTICE G.W. KANYEIHAMBA JSC

HORIZON COACHES LTDAPPLICANT

AND

PAN AFRICA INSURANCE LTDRESPONDENT

PROCEEDINGS:

The applicant is represented by Mr. Davis Ndyomugabe. The respondent is not represented. Present also is the Registrar of Supreme Court, Mr. Musene and the Clerk, of the Court. Mr. Emma.

Mr. Davis Ndyomugabe : My Lord, this is an *ex parte* application filed under Rules 1 (3), 5 (2) (b) and 41 of the Rules of this Court, for an interim order of stay of execution.

In conformity with Rule 5 (1), I lodged a notice of appeal in accordance with Rule 71 of the Rules of this Court. Under

Rule 46 (2) which provides that in a case of urgency an application other than an application made under Rule 108 may be made *ex parte* before this Court provided that where the applicant is represented by an advocate, the advocate shall sign a Certificate of Urgency authenticated by another advocate. I wish to submit to the Court a Certificate of Urgency duly signed and stamped by the learned Registrar of this Court.

Miscellaneous Application No. 19 of 2002 was filed in this Court on 8th November, 2002, seeking an order for stay of execution and it is pending before a full bench of the court.

Mr. Ndyomugabe further submitted that the applicant was notified that on 12th, November 2002, a garnishee application will be sought against the applicant's Account No. 01020110768800 in Standard Chartered Bank, Kampala. This fact is deponed in paragraph 3 of the affidavit of one Geoffrey Nangumya, sworn on 8th November, 2002, and is also evidenced in Annexure A which is attached to the said affidavit. Annex "A" is an order granted under Order XX Rule 1 of the Civil Procedure Rules. The Order *nisi* was issued in Civil Suit No. 932 of 1999 and Civil Appeal No. 78 of 2001, as an execution order against the judgment debtor who is the applicant before your Lordship to-day.

Counsel further contended that the judgment of the Court of Appeal was delivered on 16th September, 2002, and on the same day, counsel for the applicant wrote to the Registrar of that court seeking a copy of the record of proceedings. Applicant had by then also filed a Notice of Appeal. On 7th November, counsel for the applicant sent a written reminder to the Registrar for a copy of the record of those proceedings. Up to date, the applicant has not received a copy of the proceedings or any response from the Registrar. Both letters were served on counsel for the respondent.

It was counsel's contention that if this Court does not grant the applicant's prayer, the applicant will suffer substantial loss since without this Court's order, the respondent will obtain an order in the High Court to execute judgment and such execution will be effected before the applicant's appeal which he intends to file in this court after receiving the record of proceedings is heard. In that event, the appeal would be rendered futile. The applicant is a reputable transporter with assets worth some Sh. 47 billion, and yet the respondent is seeking an order of execution which, amongst other remedies, is to direct that the applicant be wound up under Company Cause No. 21 of 2001.

On the other hand, the respondent's claim in the High Court was a mere Sh. 33,760,000 and the order of execution sought

in the Court is for a claim of more than Shs. 60,000,000. I wish to tender as authorities the cases of **Ismail Sekeba and Another v. Haji Yahaya Zirabamuzaale** and **Hussein Taharali Amji v. Hussein Abdalla Hamadani** in support of the application. I will supply copies of the authorities.

I pray that this honourable Court grants an interim order of stay of execution.

RULING:

I heard this application on the 11th November, 2002, and granted an interim order for stay of execution and intimated that I would give my reasons for doing so at a later date. I do so now.

Having heard the submissions of counsel for the applicant and having perused the affidavit and the attachments thereof, I am of the opinion that this is a proper case in which an interim order for stay of execution pending the determination of Civil Application No. 19 of 2002 which is before a full bench of this Court.

On the evidence and submissions presented by counsel for the applicant which are enumerated in the proceedings above, I am satisfied that an interim order for stay of execution is essential if the intended appeal were to succeed and that

success were not to be rendered negatory. The authorities cited by counsel for the applicant, namely, **Ismail Sekeba and Another v. Haji Yahaya Zirabamuzaale**, Misc. Application No. 7 of 2001, and **Hussein Taharali Amji v. Hussein Abdalla Hamadani**, Civil Application No. 3 of 2001, support the principle that where a Notice of Appeal, or an application or indeed an appeal is pending before the Supreme Court, it is right and proper that an interim order for stay of execution either in the High Court or in any other court be granted in the interest of justice and to prevent the proceedings and any order therefrom of this court being rendered negatory. I have taken into account the decisions reached at various periods in the authorities cited by counsel. It was for these reasons that I granted an interim order for stay of execution on 11th November, 2002.

Dated at Mengo this...^{21st}.....Day of November, 2002


G.W. Kanyeihamba

JUSTICE OF THE SUPREME COURT