

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 35 OF 2019

(Arising from Civil Application No. 34 of 2019)
(Arising from Court of Appeal Civil Appeal No. 40 of 2010)
(Arising from High Court Civil Suit No. 431 of 2006)

OSMAN KASSIM RAMATHAN:.....:APPLICANT

VERSUS

CENTURY BOTTLING COMPANY LIMITED:.....:RESPONDENT

RULING OF OPIO-AWERI, JSC

This is a ruling on an application seeking an interim stay of execution of orders passed by the Court of Appeal arising from **Civil Appeal No. 40 of 2010**, arising from High Court **Civil Suit No. 431 of 2006**.

21 The application was brought under Section 48 (1) (b) of Judicature Act, Rules 2 (2), 6 (2), 42(1) Form A. First schedule Judicature (Supreme Court Rules) Directions SI 13-10).

The grounds of the application were contained in the affidavit of Osman Kassim Ramathan but briefly are that:-

- 28 1. The applicant was the unsuccessful party in Civil Appeal No. 40 of 2010.
2. The applicant being dissatisfied and aggrieved with the judgment and orders of Hellen Obura, Elizabeth Musoke and Egonda Ntende, Justices of Appeal, filed a notice of Appeal on the 29th day of August, 2019.
- 35 3. On the same day the applicant duly notified the Registrar Court of Appeal of Uganda requesting for a typed copy of the proceedings in order to prepare his appeal but the same has not yet been given to him.

4. The applicant has filed Civil Application No. 35 of 2019 in this Honourable Court for stay of execution.

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5. There is a serious threat of execution as the respondents have already initiated the process of execution of Civil Appeal No. 40 of 2010.

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6. The applicant shall suffer a substantial loss and irreparable damage if the interim order is not granted by this Honourable Court and the execution goes ahead.

7. That the applicant has a high likelihood to succeed in the main application.

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8. That the intended appeal involves a substantial question of law and the intended appeal has a high likelihood of success.

9. It is in the interest of justice that this application be allowed.

The application was supported by affidavit affirmed by Osman Kassim Ramathan.

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The application was opposed by the respondent through affidavit deposed by Apolo Katumba of Mpanga Advocates.

During the hearing of this application, the applicant was represented by Richard Omongole while the respondent was represented by Ernest Kalibala.

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Both counsel were ordered to file written submissions. The applicant filed written submissions on 28th February 2020. The respondent filed a reply on 2nd March 2020. A rejoinder was filed on 5th March 2020.

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Brief facts of the application is that the applicant and his brother Mustapha Ramathan brought a suit against the respondent seeking damages for breach of agency, special

damages for unpaid sums of money, loss of business and profits, interest and costs of the suit.

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The cause of action was that on 29th June 1990, the partnership named Bombo wholesalers made of three brothers Mustapah Ramathan., Ahmed Ramathan and Kassim Ramathan executed an agency agreement with the respondent company for distribution of the respondent's products.

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On 25th April 2005 one of the brothers Kassim Ramathan registered another entity called M/S Top Bombo Wholesalers which in the same year executed a Manual Distribution Centre Agreement (MDC) with the respondent. It was the applicant's case that based on the 1999 agency agreement, the respondent appointed M/S Bombo Wholesalers as their
21 sole agent's to supply the areas of Wobulenzi, Busula, Bammunanika, Kikyusa, Wobusana, Bwizibwera, Kamira, Nakaseke and Kapeeka.

That the respondent in 2005 wrongfully and in breach of the agency agreement created other agencies in the demarcated areas of operation and further went ahead to terminate the
28 agency without notice and thus resulted into loss making the respondent liable for the unlawful and illegal actions terminating the agency agreement.

The High Court dismissed the claim save for an award of general damages of shs. 5,000,000/= plus 50% of taxed costs. The appeal to the Court of Appeal was unsuccessful.
35 The applicant filed a notice of appeal to the Supreme Court before filing the instant application.

I have carefully perused the submissions of both counsel and the relevant authorities. This is a very simple application to say the least. The issue is whether an interim order should be granted for stay of execution.

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7 It is trite that this Court has wide discretion granted under Rule 2 (2) of the Supreme Court Rules to grant orders as may be necessary to achieve the ends of justice. In **Patrick Kaumba v Ismail Dabule No. 3 of 2018 SCCA**, this Court set out the conditions to be considered while dealing with an interim order for stay of execution:-

1. There must be on record a competent notice of appeal.
2. There must be a substantive application.
- 14 3. There must exist a threat of execution.

It is also trite that an interim order should not be granted as a matter of course. The decision is not an exercise of ticking boxes. That surely would tantamount to abuse of process. In other words, the discretion to grant or deny an interim order for stay must be exercised judiciously. In **Hwang Sung Industries Ltd v Tajdin Hussein and others SCCA No. 19 of 2008 G.M Okello JSC**, noted as follows:-

28 *“For an application for an interim order of stay it suffices to show that a substantive application is pending and that there is a serious threat of execution before the hearing of the pending substantive application. It is not necessary to pre-empt consideration of matters necessary in deciding whether substantive application for stay”.*

In a nullshell interim order is a first aid intervention pending a substantive intervention.

35 The applicant in the instant case has clearly adduced evidence in paragraphs 8, 9, 10, 11 and 12 of his affidavit that he has filed a substantive application which is pending before this Court.

That there is need for an interim stay of execution and that there is a serious and imminent threat of execution.

42 It was contented by the respondent that there were no threats of execution in that mere taxation of costs did not

7 institute any threat. With greatest respect, it is not true that
taxation of costs is not a threat imminent or otherwise, of
execution.

14 Execution is a process and not an event. One of the
processes of execution is taxation of costs. Execution in its
widest sense signifies the enforcement of or the giving effect
to the judgments or order of Courts of Justice. **Black's Law
Dictionary 5th Edition** defines execution in the following
terms:-


*“.....it is the carrying out of some act or course of
conduct to its completion and putting into force,
completion, fulfilment, or perfecting of anything or
carrying it into operation and effect”.*

21 It is clear from the above definition that taxation of costs is a
process of law for the enforcement of or giving effect to
judgments or orders of a Court of justice and accordingly
constitutes imminent threats to execution.

28 For the above reasons, I find that this is a proper matter for
granting an interim order to help the parties preserve the
status quo and then have the main issues between them
determined by full Court as per the Rules. See **Guiliano
Gariggo v Calaudio Casadio SCCA No. 3of 2013,
Katureebe, CJ.**

35 The application is accordingly granted with costs in the
cause.

Dated at Kampala this.....**13th**.....day of...**March**....2020


Hon. Justice Opio-Aweri,
JUSTICE OF THE SUPREME COURT.