THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL REFERENCE No 139 OF 2013

(ARISING FROM CIVIL REFERENCE No 166 OF 2013)

(ARISING FROM MISC. APPLICATION No 152 OF 2013)

(ARISING FROM Misc. APPLICATION No 145 OF 2013)

(ARISING FROM HIGH COURT CIVIL SUITS Nos 106; 150 AND 788 OF 2007)

MOHAMED KALISA ……APPLICANT

VERSUS

1. GLADYS NYANGIRE KARUMU]
2. JOHN KATTO]
3. ACCESS PEPROGRAPHIC LIMITED]…….RESPONDENTS

CORAM: HON JUSTICE RICHARD BUTEERA

HON Mr JUSTICE GEOFFREY KIRYABWIRE

HON LADY JUSTICE PROF. DR. LILLIAN E. TIBATEMWA

RULING OF THE COURT

This is a reference to a Bench of three Justices from the Ruling of the Hon. Justice Kenneth Kakuru in Civil Reference No 116 of 2013 dated 5th August

2013. In that decision the learned Justice dismissed a reference made to him as a single Justice from the ruling of the Registrar of this Court.

In the reference from the decision of the Registrar to the single Justice the applicant relied on two grounds namely:-

1) The learned Assistant Registrar erred in law and in fact when she failed to find that the applicants had satisfied the grounds for the grant of an interim order of stay of execution.

2) The learned Assistant Registrar erred in law and in fact when she assumed the jurisdiction of an appellate Court and considered the merits of the appeal.

The reference also sought Orders that

(a) The applicant's be granted an interim order of stay of execution pending the outcome of miscellaneous application no. 145 of 2013.
(b) Costs

It is now the case for the applicant in their letter of reference dated 5th August 2013 that the learned justice erred in law in rejecting the applicant's reference on the basis that the applicant had no right to make reference to a single Justice from the Assistant Registrars' Decision. The applicant in this reference relies on two grounds as stated in the Memorandum of Reference as follows:-

1. The Learned Justice of Appeal erred in law in holding that a single Justice had no Jurisdiction to entertain the applicant's reference from the ruling of the Assistant Registrar
2. The Learned Justice of Appeal erred in Law in rejecting the applicant's reference without considering the merits of the reference.

The applicant also seeks Orders that;

(a) The applicant's be granted an interim order of stay of execution pending the outcome of miscellaneous application no. 145 of 2013.
(b) Costs

The respondents oppose the application and agree with the findings of the single Justice of Appeal's Ruling.

Mr Isaac Bakayana appeared for the Appellants while Mr Alfred Okello Oryem and Geoffrey Kavuma appeared for the Respondents.

Ground one

Arguments for the Applicant

The applicants contest the finding of the learned Justice that he did not have jurisdiction as a single Justice to hear a reference from a decision of a Registrar not to grant an interim Order staying an execution.

Counsel for the applicants noted that the learned Justice found that the Court had no jurisdiction to entertain a reference from the Registrar as there was no right of appeal under **The Court of Appeal (Judicial Powers of Registrars) Practice Direction** No 1 of 2004 (hereinafter referred to as "PD 1 of 2004"). He noted that the learned Justice had found that an appeal was a creature of Statue and could not be inferred. Counsel for the applicants agreed that an appeal was a creature of statute but submitted that it was wrong to refer to a reference as an appeal because it is not and hence this finding was a mistake of law. An appeal in his view involved the reconsideration of a decision from one Court by a higher Court which was not the case here. In this regard he referred us to **Black's Law Dictionary** 8th Edition (P 105).

He further submitted that a reference is not an appeal. He pointed out that rules 12 (2), 15 (4), 55 (1) (b) and 110 (1) the **Judicature (Court of Appeal Rules) Directions** (SI 13-10 hereinafter referred to as the "Court of Appeal Rules") all do not use the word **"appeal**" in them. He referred us to the decision of the Supreme Court in **Bank of Uganda V Banco Arabe Espanol** SCCA 20 of 1999 where it was held that a reference is not an appeal.

He how however pointed out that a reference actually takes the "form" of an appeal as held in the Supreme Court decision of **Motor Mart (U) Ltd V Yona Kanyomozi CA 6 of 1999.** He further referred Court to the decision of **Tsekooko** (JSC) in the case of **Gold Trust V Banax Ltd** SCCA 32 of 1995 where he held that a reference is supposed to be less elaborate than an appeal especially with regard to documentation. That notwithstanding he submitted that a reference is not an appeal.

Counsel for the applicant further submitted that the learned Justice erred when he found that an Assistant Registrar of this Court could not entertain an application for an interim Order to stay an execution Order from the High Court.

He pointed out that PD 1 of 2004 under Para 2 (applying Rule 5) allows Registrars to entertain applications for interim orders. He then referred us to the decision of **Justice A.E.N. Mpagi Bahigeine** (JA as she then was) in the case of **Burundi Tobacco Co. SARL and anor V British American Tobacco (U) Ltd** CA Ref 22 of 2010 where she held that a Registrar had jurisdiction to entertain an application for an interim Order. He also referred to the decision of **Justice A.S. Nshimye (JA)** in the case of **Mandela Auto Spares V Marketing Information Systems Ltd CA Ref 74 of 2008** which he submitted was to the same effect.

Counsel for the Applicant also referred us to the decision of **Justice Tsekooko** (JSC) in the matter of **Florah Ramarungu V DFCU Leasing Co Ltd** Civil Application 11 of 2009 where the Justice faulted the Registrar of the Court of Appeal for not entertaining an application for an interim order on the grounds that there were no proceedings in the Court of Appeal. He also referred us to the decision of this Court in **Muwema & Mugerwa Advocates V Shell (U) Ltd and 10 ors** CA 018 of 2011. In that case an interim order was held to be a lawful Order of Court.

Arguments of the Respondent

Counsel for the respondent submitted that a reference was in the nature of an appeal. He submitted that this reference therefore should be treated as a second appeal where the Court has to determine whether the first appellate Court actually did evaluate the evidence and came to a correct conclusion in arriving at its decision. In this regard he referred Court to the Supreme Court decision of **Fredrick Zaabwe V Orient Bank &** ors CA 04 of 2006.

Counsel for the respondent agreed that a reference is a different type of appeal as stated in the **Banco Arabe case** (supra). He further agreed that Registrars can entertain orders for interim stay as a matter of jurisdiction.

He however submitted that the issue at hand was not the jurisdiction of the Registrars but rather whether there existed a right of appeal from a decision of a Registrar to a single Justice. In this regard the single Justice had found not, but added that such a right did exist to a full bench. Counsel for the respondent submitted that the learned Justice sitting as a single Justice was correct when he rejected the practice that had evolved at the Court of Appeal where appeals from decisions of a Registrar exercising his expanded jurisdiction went before a single Justice and from there a further appeal would lie to a full panel of Justices on the

same question as described by **Justice R Kasule** (JA) in **Buteera Edward V Mutalemwa Godfrey** CA Ref 70 of 2013. He submitted that Justice Kakuru could depart from a decision of another single Justice.

Ground Two

Arguments for the Applicant

With regard to the second ground, counsel for the applicant submitted that a decision of a Registrar when exercising his or her expanded jurisdiction is reviewed by a single Justice of this Court like a first appeal. He submitted that in **the case of Motor Mart (U) Ltd** (supra) the Court held that

"…we should review the evidence and law which was before the single Justice and decide whether the single justice properly exercised his discretion in making the decision the way he did…"

In the case before us the learned Registrar found at Page 51 of the record of appeal that there was an eminent threat of execution and there did exist in the Court at the time a main application as well. This in the view of Counsel for the applicant was sufficient for the Registrar to grant the interim Order. However the Registrar instead misdirected herself in stating that there also had to be shown that the applicant would suffer irreparable loss. This amounted into going into the merits of the case which was not required at this stage of the trial. In this regard he referred us to the case of **Hwan Sung Industries V Tajdin Hussein & 2 ors** SCCA No 19 of 2008.

He submitted that the the Registrar failed to exercise her discretion to grant the interim Order. He therefore prayed that his Court grant the interim Order.

Arguments for the respondent

Counsel submitted that the Registrar had correctly applied her discretion. He submitted that the applicant had to demonstrate that there was a threat of execution that would render the hearing of the main application nugatory but had not. He further submitted that at the time the Registrar heard the application there was no serious threat as the applicant was expected to pay off the bank.

Counsel for the respondent submitted that the applicant simply relied on a photograph at [P 17 of the record] where the respondent went to the land office which in his view proved nothing. He further submitted that there was a caveat on the suit property which was not disputed. Counsel for the respondent submitted that the 1st Respondent had deponed that there existed a claw back clause where the applicant could still recover his money in the event that he suffered loss or damage because of his purchase agreement.

Counsel for the respondent submitted that the Registrar having properly exercised her discretion then this Court should not interfere with it. In this regard he referred Court to the case of **Mbogo V Shah** [1968] EA 93.

Considerations and findings of the Court

Ground one

This reference raises questions as to the jurisdiction of Registrars under their enhanced powers under PD 1 of 2004 and what could be regarded as "appeals" there from when a party is dissatisfied with the decisions they make. On the face of it would appear that these questions have been determined before by Court. However, given the arguments made in this application it is necessary for us to scrutinize them to bring further clarity to the question of jurisdiction; after all questions of jurisdiction are questions of law. Secondly the applicant being dissatisfied with the decisions of the Registrar in MA 152 of 2013 and the Justice of Appeal sitting as a single Justice in Civil Reference 116 of 2013 seek this Court to re evaluate the evidence in MA 152 of 2013 and grant the Orders therein as prayed.

It has been argued that this application is in the nature of an appeal and therefore the duty of this Court would be akin to that of a second appellate Court arising from first the decision of a Registrar that then gave rise to a reference to a single Justice (a first appeal) which then gave rise to this reference from the decision of the single Justice (a second appeal). This analogy arises because none of the rules of Court relied upon to make these references [Section 12 (2) of the Judicature Act, Rule 55 (1) (b) of the Court of Appeal Rules] refer to the word *"appeal"*. The word *"reference"* only appears in the heading of Rule 55 of the Court of Appeal Rules. Furthermore even the application by way of Reference from the decision of the Registrar under his or herenhanced powers under PD 1 of 2004 to the single Justice appears to have evolved out of a practice (see decision of **Justice R Kasule JA** in **the case of Buteera Edward** Supra) as there is no express provision in any law or rule of Court

for it. It is this analogy of appeal leading to a first and second appeal that appears to have led the **Hon Justice Kakuru** to scrutinize its legal basis and consequently find that it is faulty. Of course the applicant here does not agree with the learned Justice hence this further reference to this bench of three Justices.

Recently in another **Civil Reference No.63 of 2013, Bagonza & 9 Ors v Kimala & 4 Ors, Lady Justice Solomy Bossa (JA),** also dismissed a reference made to her from a decision of the Registrar refusing to grant a stay of execution on the ground that it was improperly before her, having found no statutory support for the reference and held that the better option would be to fix the application for stay of execution for hearing before a bench of three Justices. In reaching that finding, she agreed with another ruling of **Kakuru, JA on Constitutional Reference No. 116 of 2013 Herman Kaliisa v Gladys Nyangire & Ors,** that Practice Direction No 1 of 2004 grants the Registrar powers similar to those of a single Justice of appeal under **S.12 of the Judicature Act** to handle interim applications. That while it is clear that a decision of a single Justice of appeal is appealable to a bench of three Justices under **S.12 (2) of the Judicature Act,** there is no specific provision that establishes a reference/right of appeal from the decision of a Registrar to a single Justice of appeal, in respect of the enhanced powers of the Registrar. It is clear to us therefore that there are two approaches in this Court to handling references from decisions of a Registrar under their enhanced powers.

What then are these enhanced powers of Registrars and what remedy exists in the event that the Registrar makes an error? We now reproduce PD 1 of 2004 below

"…**PRACTICE DIRECTION NO.1 OF 2004**.

The Court of Appeal (Judicial Powers of Registrars) Practice Direction.

PURSUANT to the Court of Appeal Rules Directions 1996 made under Section 41 (2) (v) of the Judicature Act 2000, and in order to ensure expeditious disposal of cases, the powers of Registrars shall include, but not be limited to entertaining matters under the following rules.

1. ***Rule 4 – Extension of time***

2. ***Rule 5 – Applications for Interim Orders***
3. ***Rule 34 (2) (c) – Approval of such contested orders / decrees***
4. ***Rule 93 – Orders on withdrawal of an appeal / application***
5. ***Rule 112 – Orders on relief from fees and security in civil appeal.***

This Direction is issued this 2nd day of July 2004.

BJ Odoki

CHIEF JUSTICE…"

The critical words in this Practice Direction are *"…in order to ensure expeditious disposal of cases…"* That is the purpose of PD 1 of 2004 and therein also lies the mischief that the Hon The Chief sought to cure in the exercise of his powers under Section 41 (2) (v) of the Judicature Act which allows for making rules for

"…regulating and prescribing the functions of officers of the Court…"

So it appears to us that PD 1 of 2004 was made as a tool of case management to ensure that cases do not delay in the Courts by giving functions to Registrars to handle matters that would ordinarily have be handled by Justices. In the words of **Justice AEN Mpagi Bahigeine** (DCJ as she then was) in the case of **Muwema and Mugerwa Advocates** (supra) PD 1 of 2004 is for

"…the protection of Court when it is overwhelmed with matters of disposal. Therefore such orders are given under compelling circumstances…".

We agree with these observations. PD 1 of 2004 is a case management tool to ease the work of Justices of this Court. It does not in any way remove Jurisdiction from them. PD 1 of 2004 must therefore be viewed in that light. Case management can be defined as the sequencing of proceedings before a Court with a view to ensuring that cases are heard expeditiously, in the most efficient and cost effective manner within the existing rules of procedure. Examples of this will relate to matters of filing; time frames; scheduling conferences; alternative dispute

resolution; interlocutory applications discoveries and interrogatories to mention but a few. This may be done through rules as was done under **Order 12** of the **Civil Procedure Rules** or through a practice direction as in PD 1 of 2004 (as was done for this Court).

The question that seems to arise here is whether a reference from a decision of a Registrar exercising his or her enhanced powers under PD 1 of 2004 is in fact a form of appeal and to whom should the reference be made.

Enhancement of judicial powers of Registrars began with **Practice Direction No 1 of 2002** (herein after referred to as PD 1 of 2002) affecting the Civil Procedure Rules in the High Court. This had the effect of introducing Rule 10 to Order 50 of the Civil Procedure Rules. PD 1 of 2002 provided

"...pursuant to Order 50 of the Civil Procedure Rules and in Order to ensure expeditious disposal of cases, the powers of Registrars shall include, but not be limited to entertaining matters under the following Orders and Rules..."

Clearly PD 1 of 2004 for this Court borrows heavily from the wording in PD 1 of 2002 for the Civil Procedure Rules (CPR). To our mind the purpose of the two practice directions is the same. It is to assist Judges and Justice expedite the hearings of cases. However the details for the operation of PD 1 of 2002 can be found in Order 50 of the CPR.

Order 50 rule 7 of the CPR provides

*"**Reference to High Court***

*If any matter appears to the registrar to be **proper** for the decision of the High Court the registrar may **refer** the matter to the High Court, and a Judge of the High Court may either dispose of the matter or refer it back to the registrar with such directions as he or she thinks fit..."(Emphasis ours)*

The word "reference" in Order 50 rule 7 of the CPR does not mean an appeal. It means that the Registrar may when he or she deems it proper that a matter he is seized with should be

handled by a Judge rather than a Registrar then he or she shall refer it to the Judge to handle. The Judge may then handle it or refer it back to Registrar to hear with such directions as the Judge deems fit. This makes perfect sense as the Registrar through his enhanced powers is acting on behalf of the Judge to whom the file would have been allocated. If the Registrar finds it is not proper or convenient for him or her to act on the matter then he refers it to the Judge. In other words the Registrar has to act judiciously when deciding whether or not it is proper to hear a matter under the enhanced powers, it is not automatic. This allows for harmony and good order within the judiciary.

If the Registrar does hear the matter and one of the parties is aggrieved by the Registrar's decision then that aggrieved party may appeal to the Judge under Order 50 rule 8 of the CPR which provides:-

"Appeals

Any person aggrieved by an Order of a registrar may ***appeal*** *from the order to the High Court. The appeal shall be by Motion on notice…" (Emphasis ours)*

The operation of PD 1 of 2002 is clearer than PD 1 of 2004 because further procedural details can be found in Order 50 of the CPR. There is nothing similar in terms of detailed procedures under PD 1 of 2004. An aggrieved party under PD 1 of 2002 "*appeals"* the decision of the Registrar by way of Notice of Motion but does not make a reference. The only mention of the word "reference" where a party is aggrieved in the Court of Appeal Rules is under Rule 110 in a matter relating to taxation of costs

"Reference on taxation.

(1) Any person who is dissatisfied with a decision of the registrar in his or her capacity as a taxing officer may require any matter of law or principle to be ***referred*** *to a judge for decision; and the judge shall determine the matter as the justice of the case may require…"(Emphasis ours)*

Under Rule 110 of the Court of Appeal Rules the reference therein is in the form of an appeal. Under Rule 110 (5) of the Court of Appeal Rules such an application may be made informally at the time of taxation or within 7 days of the decision.

The other area is under Rule 15 of the Court of Appeal Rules where a Registrar rejects documents filed on appeal as not conforming to Rule 14 of the same Rules. Rules 15 (4) and (5) provides

"

(4) Any person who is dissatisfied with a decision of the registrar, or a registrar of the High Court, rejecting any document under this rule, may require the matter to be ***referred*** *to a judge for his or her decision.*

(5) An application under sub rule (4) of this rule may be made informally at the time when the decision is given or in writing within seven days after that date…" (Emphasis ours)

Where documents have been rejected by the Registrar then the matter may be "*referred"* to a Judge informally in writing within 7 days.

It appears where ever the words *"reference"* or "*referred"* appear in the above provisions of the Court of Appeal Rule and Order 50 of the CPR the procedure used in making the application is informal. In the case of Order 50 of the CPR the reference is made to the "High Court" or in other words to the Judge who would have heard the matter. In the case of Rule 110 (1) and (7) of the Court of Appeal Rules in taxation a reference from a registrar is first made to a Single Justice (Sub rule 1) and from him or her to the "Court"(sub rule 7) which is a full panel. Rule 110 of the Court of Appeal Rules creates a two tier reference route. This for a taxation matter in our view is unnecessarily lengthy and may lead to delay and backlog of what should not be too contentious a matter. A reference from a Registrar should go to the Court (a full panel) to bring finality to the matter quickly. This would allow for only one tier of reference cum appeal. This is clearly an area for reform for more effective case management. Indeed there does already exist a backlog in other interlocutory matters through the two tier reference route which could not have been the intention PD 1 of 2004. That notwithstanding it would appear that whether the Word *"reference"* or *"appeal"* is used in the above rules this is expressly provided for in the enabling section or rule.

As earlier pointed out it is clear that PD 1 of 2004 does not have the elaboration found in Order 50 of the CPR. How then does a party dissatisfied with a decision of a Registrar under

PD 1 of 2004 proceed to get redress? The Courts previously have grappled with this question. When dealing with a question of taxation in the Supreme Court **Hon Justice J Tsekooko** (JSC) sitting as a Single Justice in the case of **Gold Trust (**Supra) held

"…in my view the central point of the objection is whether a reference is described to be in the same manner as an appeal.

THE NOTCO CASE

Decisions of the former Court of Appeal for Uganda are binding on me. However I don't think that the Notco case of the Court of Appeal for Uganda intended to lay down a rule that in filing any reference the filing has to follow the institution of an ordinary appeal under Rules 81 and 85. I think with respect that the Court there referred to the need for an applicant in an application by way of reference to a full Court to satisfy the Court as it is in ordinary appeals that the decision from which the reference was made was wrong…looking at the scheme of the rules I get the impression that a reference made under Rule 109 is expected to be less elaborate than an appeal…in my opinion the content of references should be the proceedings before a taxing officer which include the bill of coasts or documents upon which the taxation based his taxation in addition to the application for the reference(whether written by the applicant or verbally and therefore, recorded in the Proceedings).

This holding will have the same force of law for a reference under Rule 110 of the Court of Appeal Rules. So a reference when provided for under the rules can be a form of an appeal albeit less formal in presentation.

On the issue of stay of execution again **Justice J. Tsekooko (JSC)** sitting as a single Justice in the case of **Forah Ramarungu** (supra) had this to say

*"…there is apparently **growing a habit** in the Court of Appeal whereby a Registrar of that Court hears applications for stay of execution of an order of that Court and parties are either verbally or by a ruling, such as the one under review, directed to apply for stay in this Court.*

*In this case the Learned Registrar opined that the Court of Appeal was "incompetent to entertain this application" because there were no pending proceedings in the Court. I am not aware of any law or rule of practice which empowers a Registrar of the current Court of Appeal in this Court to make such Orders…**In my view** where a registrar makes a lawful order in the Court of Appeal, a party dissatisfied with his Order can apply for a reference to a single Judge of the Court…Reference of Registrar's decision to Judges of the same Court are intended to expedite disposal of contentions within the Court since the procedure is less formal. It helps internal cleansing, so to speak.*

I think it was improper for a Registrar of the Court of Appeal to make a final decision that a party cannot file an application for stay in that Court…" (Emphasis ours)

Clearly the learned Justice of the Supreme Court was not happy, and rightly so, that a Registrar could make a final decision that the Court of Appeal was incompetent to hear an application for Stay of execution. However he in that process also took the view that where a lawful order was made by a Registrar then a dissatisfied party can make a reference to a single Judge of the Court. We note that no provision of law or rule was cited for this proposition. The riddle seems to find an answer in the decision of **Hon Justice R Kasule** (JA) sitting as a single Justice in the reference of **Butera Edward** (Supra) where he states

*" …like in the case in Rules 15 (4) and 110 (3) of this Court Reference against the decision in respect of documents being filed in Court and in taxation of costs has to be made to a single Justice and not a bench of three Justices. The Bench of three Justices only entertains References from a single Justice under Section 12 (2) of the Judicature Act and Rule 55 (2) of the Rules of this Court. **It logically** follows therefore that Reference to a single justice has to be made in respect of a decision of a registrar made in the exercise of the Registrar's enhanced powers. This Reference is therefore properly before this Court in as much as it is in*

the nature of an appeal against the decision of the assistant Registrar in dismissing Application No 112 of 2013 for an interim order of stay of execution…" (Emphasis ours).

Justice R Kasule (JA) also finds that references of this type from a decision of a Registrar for stay of execution are in the nature of an appeal but then states that logically the said references should be heard by a single Justice as in the case of references for rejection of documents and taxation under Rules 15 (4) and 110 (3) of the Rules of this Court respectively. He states that only references from decisions of single justices can come to a panel of three Justices. This means that PD 1 of 2004 simply created another tier of Registrar under a Justice as provided for under Section 12 of the Judicature Act where a single Justice could hear an interlocutory matter. However the purpose of the Registrar's enhanced jurisdiction was supposed to support the Justice at his level and expedite the hearing of cases. Making a reference from a Registrar to a single Justice then from there to a panel of three Justices we respectively find creates a two tier route to appeal within the same Court. This can create further delay and backlog and cannot be in consonance with the idea of expeditious disposal of a case. In any event there is no express rule in our Court rules to support that finding. If a reference is in the form of an appeal albeit informal then that should be provided for expressly in the law or rules as the case with regard to the rejection of documents or taxation decisions by the Registrar of this Court.

We have already found Registrars perform their enhanced powers on behalf of the Court. An application for stay of execution is an interlocutory matter. The power to deal with interlocutory matters normally vests in a Single Justice. Section 12 of the Judicature Act provides

"*Powers of a single Justice of the Court of Appeal*

(1) A single Justice of the Court of Appeal may exercise any power vested in the Court of Appeal in any interlocutory cause or matter before the Court of Appeal

(2) Any person dissatisfied with the decision of the a single Justice of the Court of Appeal in the exercise of any power under subsection (1) shall be entitled to have the matter determined by a bench of three Justices of the Court of Appeal, which may confirm, vary or reverse the decision…"

It is our finding that PD 1 of 2004 enhanced the powers of Registrars to deal with some of the interlocutory powers of a single Justice under Section 12 (1) of the Judicature Act and therefore those dissatisfied with the decision of the Registrar under the enhanced powers that would have been performed by a single justice can have the matter determined by a panel of three Justices under Section 12 (2) of the Judicature Act. This from case management point of view will expedite the hearings and determination of interlocutory matters.

We therefore agree with Justice Kenneth Kakuru that there is no inherent, inferred or assumed right of appeal and or reference from the decision of a Registrar to that of a single Justice. This practice that has hither to existed in this Court is accordingly streamlined.

It follows that ground one of this reference, fails.

Ground two

Given our finding on ground one it means that ground two that the Learned Justice of Appeal erred in law in rejecting the applicant's reference without considering the merits of the reference also fails.

However before taking leave of this reference altogether there is one other area in the arguments that needs to be settled. It has been submitted that under Para 2 of PD 1 of 2004 Registrars under Rule 5 [6] of the rules of this Court that Registrars can handle applications for interim Orders. Indeed several authorities were also cited to Court on this subject. Rule 6 (2) (b) of the Rules of provide

"…in any civil proceedings, where a notice of Appeal has been lodged in accordance with rule 76 of these Rules, order a stay of execution, an injunction, or a stay of proceedings on such terms as the Court may think Just…"

In the **Muwema & Mugerwa Advocates Case (**Supra) **Justice AEN Mpagi Bahigeine** (DCJ as she then was) held

"*…the Court of Appeal (Judicial Powers of Registrars) Practice Direction No 1 of 2004 made under Section 41 (1) (v) of the Judicature Act 2000, Rule 5 mandates Registrars to issue interim orders to ensure expeditious disposal of cases. Needless to state that an interim order is made in all cases in which it appears to the court to be just and convenient so to do. This is for the protection of the Court when overwhelmed with matters of disposal…"*

We agree with that finding interim orders should be made in all cases in which it appears to the court convenient to do so. In that case however it came to light that Hon **Justice Irene Mulyagonja** (Judge of the High Court as she then was) had an interim Order served on her made by the Registrar of this Court staying all proceedings before her. She stated that this was embarrassing and

"… a challenge by a Registrar of the Judge's Jurisdiction in his or her own Court. No Judge should battle for his or her jurisdiction as such, as happened in this case, with any Registrar…"

In her evaluation and finding of this statement **Hon justice Mpagi Bahigeine** found

"…there is nothing embarrassing for a Judge to be served with a lawful order issued by a Registrar. The Registrar/Assistant Registrar is a vital cog in the judicial machinery…"

On this point **Justice Kenneth Kakuru (JA**) found that an Assistant Registrar could not entertain an application for an interim order to stay an execution Order from the High Court. He found this could cause confusion and could lead to an abuse of Court. He held

"…it is my finding that, as much as possible interim orders especially those staying execution and or proceedings of the High Court should be entertained by a Justice of Appeal and not a Registrar…"

There is no doubt in our minds that a Registrar is an important clog in the Judicial Machinery however we agree with the findings of **Justice Kakuru** that the Registrars of this Court in the

exercise of their enhanced jurisdiction cannot issue a lawful order to a High Court Judge to stay execution or proceedings in his or her Court. It would not be proper to do so. The fact that this Court may be overwhelmed at times by work before it is no compelling reason for this short cut to expeditious disposal. In the case of the CPR and PD 1 of 2002 such a situation can be remedied as seen above through a reference under Order 50 rule 7 where a Registrar can find that it is proper for a matter before him or her to be referred to a Judge of a High Court. The enhanced powers are to be used judiciously when just and convenient to do so. It is our finding that it is not proper just and/or convenient for a Registrar of this Court to issue interim Orders staying Orders and proceedings of High Court Judges. We have read the other decisions cited by the applicant in favour of Registrars staying decisions of High Court Judges and reviewed them. This question was not directly addressed by the **Justice Nshimye** (JA) in the **Mandela Auto Spares Case** (Supra). It was also not directly addressed by **Justice Tsekooko** in the **Florah Ramarungu case** (Supra) where the Court found that it was improper for the Registrar of this Court to make a **final** decision that a party cannot file an application for stay. These cases cannot be authority for the proposition that a Registrar of this Court using their enhanced powers can stay a decision or proceeding of a High Court Judge. The best course of action in our finding that a Registrar can do is to refer the matter to Court of Appeal Justice exercising their powers under Section 12 (1) of the Judicature to issue the necessary stay. We are sure there other interim orders that the Registrar can issue that do not fall within this category. Injunctions and or interim Orders are intrusive Orders and great caution should be had when granting them. Normally a party would apply to the High Court itself to stay its own Orders pending appeal (sometimes with a consideration for security for costs). This allows for the exhaustion of remedies before appeal at the lower Court. However with latitude that the lower Court can be bypassed when it comes to orders for stay and an application for an interim order is instead made directly to the Court of Appeal can be evidence of poor case management and or an abuse of process. This particular application for an interim stay for example has generated four other applications and or references alone in this Court which is very untidy. In the application for an interim order MA 157 of 2013 in this Court there is no mention that the applicant attempted to apply for a stay at the High Court and it was denied him. Indeed judgment at the High Court was made on the 13th day of May 2013 and the application for an interim order was made in the Court of Appeal on the 21st May 2013 (the application was heard on the 22nd May 2013 and ruling made on the 4th July 2013). The process for execution had not even began. At least there is no evidence that costs had been taxed and execution applied for. It only appears that the

applicant came to this Court to have the matter heard by the Registrar because his or her docket was less congested given the above time frames. That notwithstanding, it was not proper for the Registrar to have entertained the application.

All in all this reference is dismissed but given the old practice in this Court for which clarity has now been given each party is to bear their own costs here and below.

Hon Justice Richard Buteera

Hon Justice Geoffrey Kiryabwire

Hon Lady Justice Prof Dr Lillian E. Tibatemwa

Date_____