



**Background to the application:-**

The respondents sued the applicant in High Court Miscellaneous Application No.157 of 2016. On 9<sup>th</sup> September, 2016, Yasin Nyanzi, J, passed a decision in favour of the respondents ordering the applicant to pay UGX 266,608,985/= and interest of 24% and costs of the suit. Being dissatisfied with the decision of the High Court, the applicant lodged Civil Appeal No.27 of 2017 in this Court on 9<sup>th</sup> February, 2017.

The respondents commenced execution proceedings in the High Court and on 13<sup>th</sup> September, 2016, a Garnishee Order Nisi attaching the applicant's Bank Account No.2201102635 held with KCB Bank was issued and on 19<sup>th</sup> December 2016, a Decree Absolute was issued in respect of the same account. The Garnishee Bank honored the Court order and transferred UGX 1,034,442,861 to KCB Bank Account No.030290003434 held by the respondents' former Advocates.

By a Consent signed by the respondents' former Advocates and the applicant, and dated 22<sup>nd</sup> December, 2017, the Decree Absolute issued on 19<sup>th</sup> December, 2016, was set aside. The respondents' former Advocates transferred the sum of UGX 1,034,442,861/= back to the Garnishee Bank, which in turn remitted the money to the applicant's account No. 2201102635 held with KCB Bank.

The respondents filed High Court Miscellaneous Application No. 94 of 2017, seeking to annul/set aside the Consent Order entered into on 22<sup>nd</sup> December, 2017, for illegality. On 8<sup>th</sup> August 2017, Hon. Justice Flavia Senoga Anglin declared the Consent Order null and void and ordered the applicant to refund a sum of UGX 1,034,442,861/= improperly returned by the respondents' former Advocates within two weeks from the date of the ruling. By Order dated 15<sup>th</sup> August, 2017, the High Court (Flavia Senoga Anglin, J) renewed the Garnishee Order Absolute issued on 19<sup>th</sup> December, 2016.



Upon the application of the applicant, on 15<sup>th</sup> August, 2017, the implementation of the Decree Order Absolute was stayed by the High Court until the 21<sup>st</sup> August, 2017.

Being dissatisfied with the decision of Flavia Senoga Anglin, J, in Miscellaneous Application No. 94 of 2017 setting aside the Consent, the applicant filed a Notice of Appeal in the High Court.

The applicant subsequently filed this application for stay of execution in this Court arising from Miscellaneous Application No.94 of 2017. The applicant also filed MA 255 of 2017 for interim orders which application was granted by Kavuma, DCJ (as he then was) on 21<sup>st</sup> August 2017 with orders that:

- "1. An Interim Order of Stay of Execution in this matter is hereby granted restraining the respondents and the Garnishee or their agents, assignees or any person claiming under any of them and all banks holding the applicant's bank accounts from executing the High Court Decree/Order directing payment of UG. Shs. 1,034,442,861/= and interest thereof plus costs until the hearing and final disposal of the applicant's substantive Application for Stay of Execution.*
- 2. This matter having been heard ex parte, it is further ordered that the Registrar of this court ensures that court process in the said Main Application for Stay of Execution is served on the respondents and is fixed for hearing within 21 (twenty one days) from the date hereof or until such other or further orders of this court.*
- 3. The costs of this Application to abide the outcome of the hearing and final disposal of the substantive Application."*



### **Grounds for this application:-**

The grounds on which the application is based are contained in the Notice of Motion and the affidavits in support of it and in rejoinder. Briefly, the grounds are that:-

1. The respondents will execute the Decree / Orders which will render the Civil Appeal No. 27 of 2017 and the Appeal arising from HC Miscellaneous Application No. 94 of 2017 nugatory and useless;
2. The applicant's appeals are not frivolous and vexatious and have a high likelihood of success;
3. The respondents are several and scattered all over Uganda, and shall not repay the decretal amount and costs if execution ensues and the applicant's appeal succeeds;
4. The applicant is willing and able to furnish security for the due performance of the decree and order;
5. It is just and in the interest of justice that the application is granted.

On the other hand, the respondents opposed the application and filed an affidavit in reply dated 18<sup>th</sup> October, 2017, deponed by the 1<sup>st</sup> respondent who is the Chairman of the Uganda Spinning Mills Former Workers Committee. The grounds in opposition of the application are briefly as follows:

1. The applicant is bent towards abusing Court process to frustrate the respondents from enjoying the fruits of their Judgment;
2. Civil Appeal No. 27 is an appeal against the ruling in High Court Miscellaneous Application No. 157 of 2016 in which execution was completed and the applicant used irregular and illegal means processes to frustrate the respondents from enjoying the fruits of the Judgment;
3. The applicant's intended appeals are incompetent, frivolous, vexatious and an abuse of court process;
4. The respondents are senior citizens with ample means to comply with court orders if made against them;



5. Execution in this case was completed when a garnishee order absolute was issued and implemented by the Garnishee.

**Representation:-**

At the hearing of the application, the applicant was represented by Mr. George Okello, an Assistant Commissioner Litigation in the Legal Department of the applicant assisted by Ms. Gloria Twinomugisha, the Supervisor of Litigation in the same Department (Counsel for the applicant). On the other hand, the respondents were represented by Mr. Ronald Kasisa (Counsel for the respondents).

**Applicant's submissions:-**

Counsel for the applicant, Mr. George Okello submitted that this application was seeking to stay execution of the order of Flavia Senoga Anglin, J, setting aside the consent entered into by the parties. He submitted that a Notice of Appeal and a letter requesting for the Record of Proceedings had been filed and served upon the respondents.

Counsel further submitted that the decree sought to be executed was targeting the revenue collection account of the applicant which was not attachable. Counsel relied on ***Kampala International University Versus Steel Rolling Mills LTD and Uganda Revenue Authority and Attorney General, High Court Miscellaneous Application No. 509 of 2006***, for the above submission.

Counsel submitted that the applicant had lodged Civil Appeal No. 27 of 2006 challenging the decree which was the root of the execution. Further, that if execution was not stayed, there was a probability that the applicant would not be in position to recover the decretal sum from the respondents considering that they are scattered all over the country. He relied on ***201 Former Employees of G4S Security Services Uganda Ltd Versus G4S Security Services Uganda Limited, Supreme Court Civil Appeal No. 18 of 2010*** for the above submission.



Counsel further submitted that the respondents' interest could be taken care of by the applicant providing security. He invited Court to take judicial notice of the fact that the applicant was a Government Corporation which has been in existence for the last 25 years and has sufficient funds to meet any ultimate awards which may be made by this Court.


Counsel contended that if the application was not granted, the appeal would be rendered nugatory.

**Respondent's submissions:-**

Counsel for the respondents submitted that the applicant did not have a right of appeal against the decision of Flavia Senoga Anglin, J, considering that the orders were issued in exercise of her discretion. In that regard, that the applicant ought to have sought for leave of Court before appealing.

Counsel further submitted that while the applicant indicates that this application arises from Miscellaneous Application No. 94 of 2017, while from the submissions of counsel for the applicant, the stay of execution sought is that arising from the orders granted by Yasin Nyanzi, J, in Miscellaneous Application No. 157 of 2016. Counsel contended that this application was an abuse of Court process in as far as execution was completed in Miscellaneous Application No. 157 of 2016 until the applicant acted illegally. Counsel pointed out that the order which the respondents were seeking to implement was that of Flavia Senoga Anglin, J, in Miscellaneous Application No. 94 of 2017.

With regard to the contention of the applicant that the account sought to be attached was a collection account which could not be attached, counsel submitted that the above allegations could only be proved by the Attorney General. If the Attorney General was aggrieved by the attachment, he would be the right party to object to the attachment rather than the applicant. The applicant had no locus to appear before this Court to object to an execution for funds that did not belong to it.



Counsel further submitted that the applicant's appeal had no chances of success because there was no Court which would allow the applicant to change court orders as they pleased, as was done in this case. Further, that security in form of a bank guarantee offered by the applicant was not good enough for the respondents who had so far waited for 12 years to realize the fruits of their Judgment.

Further, that the respondents were responsible and retired citizens in different parts of the Country and were not destitute as the applicant wanted this Court to believe. They would, therefore, be in a position to refund the money, if court ordered so.

Counsel prayed that the application be dismissed with costs to the respondents.

**Applicant's rejoinder:-**

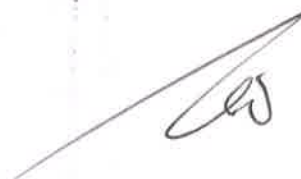
In rejoinder, counsel for the applicant submitted that the respondents were delving into the merits of the appeal which was not allowed at this stage. He submitted that in an application of this nature, court needs to be satisfied that the appeal is not frivolous or vexatious without delving into the merits of the appeal.

Counsel further submitted that the account was a revenue collection account operated by the applicant. Therefore, to expect the Attorney General to oppose the execution on the account was delving into technicalities, considering that the applicant was a body mandated by law to collect taxes in Uganda.

Counsel reiterated his prayer that the application be granted.

**Court's consideration:-**

We have considered the pleadings as well as the submissions of counsel in support of and against this application. We have also carefully considered the evidence and the law applicable to the application.



The power of this Court to grant stay of execution is based on **rule 6(b)** of the Rules of this Court. It states that where a Notice of Appeal has been lodged, this Court may order a stay of execution on such terms as the Court may think just.

The Court in ***Hon. Theodore Ssekikubo & Ors Versus The Attorney General & Ors, Supreme Court Constitutional Application No.06 of 2013***, while citing ***Akankwasa Damian Versus Uganda, Constitutional Application No. 7 and 9 of 2011***, stated the principles to be followed in allowing an application for stay of execution as follows;

1. Applicant must establish that his appeal has a likelihood of success; or a prima facie case of his right of appeal.
2. That the applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.
3. If 1 & 2 have not been established, Court must consider where the balance of convenience lies.
4. The applicant must also establish that the application was instituted without delay.

The first ground to be determined is whether the appeal has a likelihood of success. From the perusal of the Notice of Motion and the affidavit in support of this application, it appears to us that this application arises from the decision of Flavia Senoga Anglin, J, in High Court Miscellaneous Application No. 94 of 2017. The title to the application and the affidavit clearly indicate that the application arises out of Miscellaneous Application No. 94 of 2017. At the hearing of the application, counsel for the applicant also indicated that this application was arising from Miscellaneous Application No. 94 of 2017 and not Civil Appeal No. 27 of 2017.

It is not in contention that a Notice of Appeal and request for the Record of Proceedings was filed in the High Court in Miscellaneous Application No. 94 of 2017. We have not had the opportunity to look at the Memorandum of Appeal which would have been of aid to us in determining this ground. However, from the arguments of counsel and from the perusal of the ruling





of the High Court setting aside the Consent between the parties, we find that an important question whether the applicant's collection accounts were attachable or not, arises. Therefore, we find that the intended appeal raises questions that merit consideration by this Court.

We are further convinced that the applicant's appeal is likely to be rendered nugatory if execution is not stayed and the respondents who are over 1000 in number are paid the amounts which was awarded and are due for execution. In **201 Former Employees of G4S Security Services Uganda Ltd Versus G4S Security Services Uganda Limited, Supreme Court Civil Appeal No. 18 of 2010**, Court sated as follows:

*"It is also important to note that the appellants, who originally totaled 201 former employees, are many. If the award was to be executed as was ordered by the High Court, payments would have been made out to individual appellants who would disperse across the country. In the event that the respondent's appeal was successful, the chances of tracing some of the individual appellants to recover the money would be very minimal".*

In the instant application, we accept the submission of Counsel for the applicant that it may be very difficult to trace each individual respondent who are scattered all over the country.

In the result, the application for stay of execution is allowed with the following conditions:-

1. The applicant shall deposit with this Court, security in form of a Bank Guarantee to the tune of UGX 1,034,442,861/= within 14 days from the date of this order.
2. Should the applicant fail to comply with the above condition, the order of stay granted herein shall automatically lapse, unless the court orders otherwise.

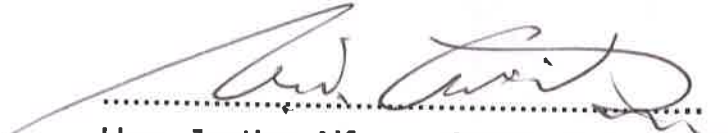


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3. Costs of this application shall be in the main appeal.

We so order.

Dated at Kampala this 20 day of Apr, 2017

  
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Hon. Justice Alfonse Owiny Dollo,  
**DEPUTY CHIEF JUSTICE**

  
.....  
Hon. Justice Elizabeth Musoke,  
**JUSTICE OF APPEAL**

  
.....  
Hon. Justice Hellen Obura,  
**JUSTICE OF APPEAL**