

UGANDA / JUDGMENT

Airtel Uganda Limited v Garfield Spence a.k.a.
Konshens & Mtech Limited (Civil Application
458 of 2024) [2025] UGCA 217 (13 June 2025)
[2025] UGCA 217

COURT

Court of Appeal of Uganda

BEFORE

Kibeedi Mutangula, JA

CASE / FILE NUMBER

Civil Application 458 of 2024

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 458 OF 2024

AIRTEL UGANDA LIMITED :::::::::::::::::::::::::::::::

VERSUS

1. GARFIELD SPENCE a.k.a KONSHENS 2. MTECH LIMITED <table> Image:
RESPONDENTS

RULING OF MUZAMIRU MUTANGULA KIBEEDI, JA

Introduction

- The Applicant filed in this Court Civil Application No. 458 of 2024 against the \$[1]\$ Respondents. The Application was by Notice of Motion under Rules 2(2), 6(2) (b), 42(2), 43(1) & (2), 44(1) of the Judicature (Court of Appeal Rules), S. I. No. 13-10.
- By the said application, the Applicant sought stay of the execution of the decree of the \$[2]\$ High Court of Uganda, Commercial Division (Patricia Mutesi, J) in Civil Suit No. 545 of 2015 pending the hearing and final determination of Civil Appeal No. 1639 of 2023 by the Court of Appeal. The Applicant asked for the costs to abide the outcome of the Appeal.

- The application is supported by the Affidavit deposed by Mr. Hudson Andrew [3] Katumba, the Legal Manager of the Applicant, sworn on the 12th of August 2024.
- The 1st Respondent opposed the Application basing on the grounds stated in the [4] Affidavit in reply sworn on the 19th of August 2024 by Mrs. Olyvia Nakitto Tibayeita, authorized by the 1st Respondent to swear the affidavit of reply on his behalf.
- The 2nd Respondent opposed the Application basing on the grounds stated in the [5] Affidavit in reply sworn on the 21st of August 2024 by Mr. William Chesire, the 2nd Respondent's Chief Executive Officer in East Africa.
- [6] The Applicant's Legal Manager, Mr. Hudson Andrew Katumba, deposed upon two Affidavits in rejoinder to the above Affidavits-in Reply..

Factual Background

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- On the 21st of August 2023, the High Court of Uganda at Commercial Division (Hon. [7] Lady Justice Mutesi) delivered judgement in favour of the 1st Respondent wherein it found that the Applicant, together with ONMOBILE Global Limited (the 2nd defendant in the High Court) jointly and severally liable for infringement of the 1st Respondent's copyright in respect to eight (8) of the 1st Respondent's songs.
 - [8] The High Court awarded the 1st Respondent general damages of USD 180,000 (United States Dollars One Hundred Eighty Thousand), interest on the said sum at a rate of 15% per annum from the date of filing the suit till payment in full, exemplary damages of UGX. 20,000,000 (Uganda Shillings Twenty Million) as against the Applicant, exemplary damages of UGX. 30,000,000 (Uganda Shillings Thirty Million) as against ONMOBILE Global Limited, interest on exemplary damages at a rate of 10% per annum from the date of judgement till payment in full and costs of the suit.
 - The Applicant being dissatisfied with the decision of the High Court in Civil Suit No. [9] 545 of 2015 filed a notice of appeal and a letter requesting for a typed record of proceedings on 24th August 2023.
 - [10] The Applicant later filed Civil Appeal No. 1639 of 2023 before the Court of Appeal against the decision.
- [11] In the meantime, on 16th November 2023 the 1st Respondent filed its bill of costs in the High Court for taxation, vide Taxation Application No. 1485 of 2023. On 13th March 2024, the 1st Respondent's bill of costs was taxed by the Registrar of the High Court and allowed at UGX. 27,000,000 (Uganda Shillings Twenty-Seven Million).

Stay application in the High Court

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- [12] On 25th March 2024, the Applicant filed an application for stay of execution in the High Court, vide Miscellaneous Application No. 560 of 2024. The Respondents opposed the application for stay of execution.
- [13] In its Ruling dated the 9th August 2024, the High Court issued what it termed "a partial* stay of execution" by granting an order "retraining the 1st and 2nd Respondents and their employees or agents from recovering more than 70% of the sums due to them, respectively, in the decree in Civil Suit No. 0545 of 2015 before the hearing and final determination of Civil Appeal No. 1639 of 2023."
- [14] As far as the costs of the application were concerned, the Court having found that the "application [had] largely failed" ordered that "each party shall bear its own costs".
- [15] Dissatisfied with the above decision of the High Court in High Court M. A No. 560 of 260, the Applicant filed the present application for stay of execution in the Court of Appeal vide Civil Application No. 458 of 2024 on 13th August 2024.

The grounds of the stay application in the Court of Appeal

- [16] The grounds upon which this application is based as gathered from the Notice of motion, the affidavits of Mr. Hudson Andrew Katumba are summarized as follows:-
- That the Applicant being dissatisfied with the decision of the High Court in Civil \$ \mathbf{i} \$ Suit No. 545 of 2015 filed a notice of appeal and a letter requesting for a typed record of proceedings on 24th August 2023.
 - That the Applicant later filed Civil Appeal No. 1639 of 2023 before the Court of ii. Appeal against the decision and served the same upon the Respondents.
 - iii. That the taxation of the Respondent's bill of costs constitutes a serious threat of execution which warrants the grant of this application.
 - That in March 2024, the Applicant applied for stay of execution in the High Court iv. vide Misc. Application No. 560 of 2024 but the application was largely denied.
 - That in her Ruling in Misc. Application No. 560 of 2024 delivered on 9th August, \$ \mathbf{V} \$. \$ 2024, the learned judge misapplied the principles when she permitted the 1st and 2nd Respondents to recover up to 70% of the decretal amount (which is over Uganda Shillings One Billion) pending the determination of the Appeal.
 - That as a result, there is imminent and real danger of execution against the vi. Applicant.
 - The appeal is meritorious and has a high probability of success and has serious vii. matters of law that need to be adjudicated.

- That this application will safeguard the Applicant's right of appeal and that if it is viii. not granted, the Applicant's pending appeal will be rendered nugatory.
- That if this application is not granted, the Applicant will suffer substantial and IX. irreparable loss as the 1st Respondent is a foreigner with no known assets in the jurisdiction of this Court capable of being attached in the event that the Applicant's pending Civil Appeal is determined in its favour.
- That the Applicant is a public company listed on the Uganda Securities $\mathbb{X}$ Exchange, holder of a twenty-year telecom operator license from the Uganda Communications Commission, one of the leading tax payers in Uganda and so there is no risk that it will fail to satisfy the decretal sum in the event the Appeal is determined in the Respondent's favor.
- The Applicant is willing to provide security for the due performance of the xi. decree.

Respondents' opposition of the application

- [17] The Respondents opposed the application on the grounds that it was a disguised appeal against the order of the High Court granting a conditional stay of execution to the Applicant.
- [18] The Respondents further argued that the Applicant does not satisfy the criteria for grant of a stay of execution and that the application was simply intended to deny the first Respondent the enjoyment of the compensation granted to him by the High Court for the illegal use of his copyrighted works.
- [19] The respondents prayed that the application be dismissed with costs.

Representation

- [20] When this application came up for hearing, the 1st Applicant was represented by Mr. Sim Katende and Mr. Yusuf Kanyike instructed by M/S Katende, Ssempebwa & Company Advocates. On the other hand, Mr. Cyrus Baguma instructed by M/S Kalenge, Bwanika, Kisubi & Company Advocates represented the 1st Respondent while Mr. Mumbere Abraham instructed by Ortus Advocates represented the 3rd Respondent.
- [21] The Applicant's Legal Manager, Mr. Hudson Andrew Katumba, the Applicant's Legal Manager attended court as well as the 2nd Respondent's authorized Representative Mrs. Olyvia Nakitto. There was no official from the 3rd Respondent.
 - [22] The Parties were given directions to file their respective Affidavit Evidence and written submissions. The parties complied.

Jurisdiction of Court

- [23] The mandate of a single Justice of this Court to handle these consolidated applications is derived from Section 12 of the Judicature Act, which confers a single Justice of this Court with jurisdiction to hear and determine all interlocutory applications filed in this court with a dissatisfied party having a right to make a reference to a full panel of the court from that decision.
- [24] In the case of Jomayi Property Consultants Ltd. Vs. Andrew Maviiri, Civil Reference No. 174 of 2015 (arising from Civil Application No. 200 of 2015) this Court (Egonda-Ntende, Barishaki - Cheborion & Mutangula Kibeedi, JJA - 19.03.2020) had occasion to consider Section 12 of the Judicature Act, Cap. 13 of the 2000 edition vis-à-vis Rule 53(2) of the Court of Appeal Rules, S. I No:13 -10 which bars a single Justice of this Court from hearing applications for stay of execution, injunction or stay of proceedings.
- [25] The unanimous decision of this Court in the Jomayi Property Consultants case above is to the effect that Section 12 of the Judicature Act, being an Act of Parliament, overrides the provisions of Rule 53 of the Rules of this court and must now be taken to be the primary legislation providing for jurisdiction of a single judge of court.
- [26] The above decision of this Court is still a good statement of the law.

Preliminary Objection

- In their submissions, the first and second Respondents contend that the instant [27] application for stay of execution is improperly before this Court and is barred by res judicata since the Applicant made a similar application before the High Court which was granted by the Trial Judge with a condition that the first and second Respondents can only recover 70% of the decretal sum that they are entitled to.
- In support of their argument, the Respondents cited the decision of this Court (Hon. [28] Justice Elizabeth Musoke, JA - as she then was) in the case of Asante Aviation Limited & Others Versus Stanbic Bank Uganda Limited & Ors, Civil Application No. 286 Of 2020 where the Court stated that an application for stay of execution should be made to the Court of Appeal only where the High Court has refused to grant an order of stay of execution.
- [29] The Applicant disagreed and contended that the only requirement under rule 42(1) and (2) of the Court of Appeal Rules is that one should have first made an application before the lower Court. However, if the application is not granted, the Applicant can still make a fresh application to the Court of Appeal. The Applicant cited several Court authorities to back its submission namely: Lawrence Musiitwa Kyazze Versus Eunice Busingye (SCCA NO. 18 OF 1990), Kyambogo University Vs Prof. Isaiah Omolo Ndiege, (C. A No 341 Of 2013), and Emmanuel Nsabimana Vs Sam Jakana & Another (Civil Application No. 222 Of 2023).

- [30] The Applicant further argued that in the instant matter, whereas the application for stay of execution was first filed in the High Court, the stay of execution was largely denied. The applicant submitted that even in her own words, the trial Court Judge very clearly stated that the application had largely failed. As such, the Applicant opined, the application was properly before this Court since the only condition precedent to

exercising the concurrent jurisdiction of the Court of Appeal, namely that the stay has been refused in the High Court, was met by the Applicant. Counsel prayed that the Respondents' preliminary objection be overruled.

- [31] I have carefully considered the arguments of both parties in respect of the propriety of the application before me seeking a stay of execution following the conditional grant of the stay of execution by the High Court. It is settled that both the High Court and the Court of Appeal have concurrent jurisdiction when it comes to applications for stay of execution of the judgment and decree of the High Court against which an appeal has been lodged in the Court of Appeal. Rule 42(1) & (2) of the Judicature (Court of Appeal) Rules enjoins parties who are desirous of applying for a stay of execution pending the appeal before the Court of Appeal to first make the said application in the High Court in the following terms:

"42 Order of hearing applications.

- Whenever an application may be made either in the Court or in the High 1. Court, it shall be made first in the High Court."
- "Notwithstanding subrule (1) of this rule, in any civil or criminal matter, the \$2.\$ court may on application or its own motion...entertain an application under rule 6(2)(b) of these rules, in order to safeguard the right of appeal, notwithstanding the fact that no application for that purpose has first been made to the High Court."
- [32] In the matter before me, there is no contest that the Applicant first made its application in the High Court and the same was granted on condition that the Applicant deposits 70% of the decretal sums in the Court. The Applicant found the condition harsh and opted to make another application for stay of execution which is before me for resolution. The Respondents object to the propriety of the application and contended Page 8 of 18

that it is barred by res judicata. They relied on the authority of Asante Aviation Limited and 3 Others v Stanbic Bank Uganda Limited and Another, Civil Application No. 286 of 2020 (24 November 2020) [2020] UGCA 2133

- [33] The facts in the above case relevant to the resolution of the Respondents' preliminary objection are that the Applicants were unsuccessful in the High Court in that the High Court passed a judgment against them under which they were jointly and severally ordered to pay the Respondents moneys owed under the loan facility and guarantee agreements entered between the Applicants and the Respondents. The Applicants were dissatisfied with the High Court decision, and they filed an appeal to the Court of Appeal. They also applied to the High

Court for an order of stay of execution pending the disposal of the appeal to the Court of Appeal. The High Court granted the stay of execution on condition that the Applicants deposited in the High Court, 70% of the decretal sum within 30 days from the date of the order, in order for the stay of execution of the relevant judgment and decree to be implemented. The Applicants felt that the conditions were harsh and unconscionable, and decided to make a fresh application for stay of execution in the Court of Appeal.

- [34] The learned Justice of this Court in rejecting the application cited the authority of *Lawrence Musiitwa Kyazze Versus Eunice Busingye SCCA No. 18 of 1990* and held that the Court of Appeal can only grant an order of stay of execution of a High Court judgment against which an appeal has been preferred to the Court of Appeal only if the High Court refuses to grant the stay of execution. The learned Justice stated thus:

"... It is... my considered view that [the Court of Appeal] can only grant an order of stay of execution of a High Court Judgment against which an appeal has been preferred in this Court if there is no existent order of stay of execution. In the present case, there is an existent order of stay of execution

Page 9 of 18

made by the High Court. Therefore, if the applicants are aggrieved with the conditions imposed by the High Court when it made a conditional order of stay of execution, they ought to have lodged an appeal to this Court, if they had a right of appeal in the circumstances. In asking this Court to reconsider a matter already determined by the High Court, in this application, the applicants are asking this Court to overlook the doctrine of *res judicata* which bars the consideration of a matter which has already been considered by another competent Court...

Hence, as the High Court has already considered the issue of stay of execution of the relevant decree and judgment, this Court cannot entertain another suit for stay of execution..."

- [35] I am unable to fathom why in the case of concurrent jurisdiction the principle of *res judicata* is invoked only where the application before the High Court is successful and doesn't equally apply when the application is unsuccessful. My understanding of the principle of *res judicata* is that it applies whether the suit is successful or not, provided the matter was heard by a competent Court and decided on its merits, and involved same parties and same subject matter.
- [36] The **locus classicus** on the question of concurrent jurisdiction on the part of the trial Court and the appellate Court in applications for stay of execution is *Lawrence Musiitwa Kyazze vs Eunice Busingye*, Supreme Court Civil Appeal No.18 of 1990, [1990] UGSC 13 (12.02.1990). In that case the Supreme Court guided that a judgment debtor should first make the application for stay of execution in the High Court and be ready to meet the requirements of Order 39 Rule 4(3) of the Civil Procedure Rules, S. I No. 65-3 of the 1964 Revised Edition of the Laws of Uganda (renamed: Order XL111(4)(3) S. I. No 71-1 of the 2000 Revised Edition of the laws of Uganda). It went on to further state that "If the application is

refused, the parties Page 10 of 18

may then apply to the Supreme Court under Rule 5(2) (b) of the Court of Appeal Rules where again they should be prepared to meet conditions similar to those set out in Order XXXIX Rule 4(3)."

[37] The procedure to be followed by any party seeking to invoke the concurrent jurisdiction of the High Court and the appellate Court was elaborately set out by the learned Justices of the Supreme Court in the **Musiitwa case** (ibid) thus:

"The practice that this Court should adopt, is that in general application for a stay should be made informally to the judge who decided the case when judgment is delivered. The judge may direct that a formal motion be presented on notice (Order XLVIII rule 1.), after notice of appeal has been filed. He may in the meantime grant a temporary stay for this to be done. The parties asking for a stay should be prepared to meet the conditions set out in Order XXXIX Rule 4(3) of the Civil Procedure Rules. [S. I. No. 65-3 of the 1964 Revised Edition of the Laws of Uganda (renamed: Order XL111(4)(3), S. I. No. 71-1 of the 2000 Revised Edition of the laws of Ugandal. The temporary application may be ex parte. If the application is refused, the parties may then apply to the Supreme Court under Rule 5(2) (b) of the Court of Appeal Rules where again they should be prepared to meet conditions similar to those set out in Order XXXIX Rule 4(3) of the Civil Procedure Rules, [S. I. No. 65-3 of the 1964 Revised Edition of the Laws of Ugandal. However, there may be circumstances when this Court will intervene to preserve the status quo. In cases where the High Court has doubted its jurisdiction or has made some error of law or fact, apparent on the face of the record which is probably wrong, or has been unable to deal with the application in good time to the prejudice of the parties in the suit property, the application may be made direct to this Court. It may however be that this Court will direct that the High Court would hear the application first, or that an appeal be taken against the decision of the High Court, bearing in mind the interests of the parties

and the costs involved. The aim is to have the application for stay speedily heard, and delays avoided" [Emphasis mine]

- [38] The above dictum should be understood in the context of the Court structure that was in existence at the time of the Court decision in 1990 under which appeals from the High Court lay directly to the Supreme Court. Nonetheless the principles laid out are still applicable under the current Court structure under which appeals from the High Court go to the Court of Appeal.
- [39] The question that arises from the abovesaid quotation is whether, by use of the expression "If the application is refused...", the Supreme Court restricted the scope of the concurrent jurisdiction of the Appellate Court in matters of stay of execution to be available only to applicants whose applications for stay of execution have been rejected by the High Court?

- [40] I think NOT. In my view, the meaning of the expression used by Supreme Court should be understood in the context of the scenario which the Supreme Court was addressing at the material time namely, the scenario where the concurrent jurisdiction of the Appellate Court was invoked after the refusal of the High Court to grant the application for stay of execution. The Supreme Court did not state anywhere in the case of *Lawrence Musiitwa Kyazze vs Eunice Busingye* (ibid) that the concurrent jurisdiction was not available in cases of other scenarios which can likewise cause grievance to a judgment debtor who has first applied to the High Court for stay of execution and the grievance similarly requires speedy redress by the higher Court exercising concurrent jurisdiction. Such other scenarios include the one in existence in the instant matter where the application before the High Court was partly unsuccessful and partly successful, or where the stay order was granted upon the "successful applicant" being required to first fulfil conditions which she/he/it considers to be harsh and unconscionable and/or whose substance renders the stay order a mockery.
- [41] My understanding of the case of *Lawrence Musiitwa Kyazze vs Eunice Busingye* (ibid) is that the Supreme Court was not exhaustive of all the circumstances or scenarios under which the concurrent jurisdiction of Appellate Court is exercisable, and neither did the Supreme Court preclude the scenario before me as undeserving of consideration under the concurrent jurisdiction of this Court.
- [42] Needless to add, if filing of appeals is the only permissible mode of access to the Court of Appeal by a judgment debtor who is aggrieved by the orders of the High Court made in the application for stay of execution other than an order of clear rejection of the application, a flood gate of appeals to this Court arising from the same matter, and the numerous applications arising from each appeal, would be the unintended consequence: The obvious first appeal would be against the judgment and decree in the main suit, and the second appeal would be against the unsatisfactory order of stay of execution by the High. As experience in the Court of Appeal has shown from the Court's statistics, each one of the two appeals would probably attract a minimum of two applications for resolution by the Court of Appeal. This would definitely be the very antithesis of the purpose of providing for concurrent jurisdiction which was stated by the Supreme Court in the *Musiitwa case* (ibid) thus: "The aim is to have the application for stay speedily heard, and delays avoided".
- [43] Accordingly, I am unable to follow the decision of this Court in *Asante Aviation Limited and 3 Others v Stanbic Bank Uganda Limited and Another* (*supra*). As such, I find that the application is properly before me, and the Respondents' objection is hereby rejected. The application will accordingly be resolved on its merits.

Resolution of the substantive application

[44] It is settled law that the grant of the orders sought by the applicant is discretionary. The principles to guide the Court in the exercise of its discretion have likewise been settled by several decisions of this Court and the Supreme Court including the following: Gashumba Maniraguha Vs Sam Nkundiye, Supreme Court Civil Application No. 24 of 2015, [2015] UGSC 7 (23 April 2015); and Hon. Ssekikubo & 3 Ors Vs Attorney General & 4 Ors Const. Appl No.0006 Of 2013.

- [45] In summary the applicant must prove that:
 - 1. He/she lodged a Notice of Appeal;
 - 2. The appeal has a likelihood of success; or a prima facie case of his right to appeal.
 - 3. He/she will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.
 - 4. If 2 and 3 above have been established, Court must consider where the balance of convenience lies.
 - 5. The applicant must also establish that the application was instituted without delay.
- [46] From the submissions of all the parties, it is apparent that there is no contest as to the principles that guide the Court in determining whether to grant the order of stay of execution or not. What is in contest relates to the application of the said principles to the instant application.
- [47] I have carefully considered the Pleadings, Affidavit evidence and the submissions of all the parties filed in this matter. My irresistible conclusion is that the Applicant has satisfied the material conditions for grant of the application for stay of execution as shown below.

Page 14 of 18

Notice of Appeal

[48] By the time the Applicant argued its application for stay of execution in the High Court and before this Court, it had not only filed the Notice of Appeal, but also filed the Memorandum and Record of appeal. This is **prima facie** evidence that the Applicant's advocates were vigilant and had proactively followed-up the preparation and certification of the record of proceedings of the trial Court. I reiterate what I stated in the cases of Roughton International Ltd Versus Uganda Investment Authority & Another, Civil Application No. 15 of 2023, and Nakato Sarah & Another Vs James Busonga & 2 Others, Court of Appeal Civil Application No. 303 of 2023 to the effect that a litigant who displays vigilance through such acts as proactively following-up of the certification of the record of proceedings and argues the application for a stay of execution while the substantive appeal has already been filed in this Court, elicits more favourable consideration for his/her application than one who is less

proactive.

Triable issues raised by the appeal.

[49] From a cursory look at the Memorandum of Appeal, Record of Appeal and the pleadings of the parties in this matter, it is evident that the appeal raises triable issues of fact and law with regard to the assessment of the general damages by the trial Court, the interest rates awarded, the propriety of the award of exemplary damages, and the liability of the Applicant in the context of the claim of indemnity allegedly provided by ONMobile Global Limited to the Applicant under the Caller Ring Back Tune Service Agreement. Once an applicant raises triable issues on appeal, this Court becomes duty bound to exercise its discretion in favour of preservation of the right of appeal pending the final resolution of the appeal on its merits by the duly constituted Court. See: **Gashumba v Nkundiye (Supra)**.

Foreign citizenship of the Respondents

- [50] I have considered the arguments of both parties on the issue of citizenship of the Respondents and their alleged lack of assets within the jurisdiction of this Court. It is trite that a court of law is enjoined to treat all litigants equally and that no litigant should ever be given differential treatment simply on account of his or her citizenship.
- [51] However, the Applicant's case before this Court is that in the event that the Respondents receive the decretal sums, the fact that they are foreigners without any known assets within the jurisdiction of the Court would make the recovery of the moneys received by the Respondents extremely difficult or uneconomical in the event of a successful appeal. In support of their submission, the Applicants cited the authority of **National Enterprise Corporation Vs. Mukisa Foods (Miscellaneous Application No. 7 Of 1998)**, which was quoted with approval by Justice Kakuru in ***P. K Sengendo Vs.* Busulwa Lawrence and Anor (Civil Application No. 207 Of 2014)**, to the effect that:

"As a general rule, the only ground for stay of execution is for the applicant to show that once the decretal property is disposed of there is no likelihood of getting it back should the appeal succeed."

- [52] On the part of the Respondents, it was submitted that there is no risk of failure to refund any moneys paid to them and that there is no evidence adduced to show that they were impecunious.
- [53] I have closely examined the Affidavit evidence filed by the parties in this matter. For the Applicant, it was stated that the Respondents were foreign citizens without any known assets within the jurisdiction of this Court. The 1st Respondent was stated to be a Jamaican citizen who lives in Florida, United States of America. Further, that recovery of the funds from him would be extremely difficult should the appeal succeed. As for the second Respondent, it was stated that it was a Kenyan company without any known assets within the jurisdiction of the Court. And that in the event that the Court of Appeal

Page 16 of 18

was to reverse the decision for costs granted in favour of the 2nd Respondent, the cost of going through the tedious process of recovery could end up being higher than the value of the costs awarded to the 2nd Respondent which would make it unduly prohibitive.

[54] Faced with the above claims, the Respondents bore the evidential burden to rebut them using credible evidence and, perhaps, even furnishing the particulars and location of their assets. However, the respective responses of the Respondents were devoid of the specificity expected of them which led me to accept the Applicant's concerns as founded and to resolve this issue in the Applicant's favour.

Balance of Convenience

- [55] I have considered that the Applicant is a public company listed on the Uganda Securities Exchange and one of the biggest tax payers in Uganda. It is one of the household names in Uganda in telecom sector. The risk of the Applicant failing to satisfy the decree of Court in case the appeal is determined in favour of the Respondents is very remote.
- [56] On the other hand, I have considered that the funds that are the subject matter of the contested decree are not part of the operations budget or working capital of the 1st and 2nd Respondents. Instead, they appear to be some sort of wind fall. In those circumstances, the delay to receive payment of the decretal sums by the Respondents as the Court finalises the resolution of the appeal is not likely to cause any adverse effect on the normal or continued operations and life of the Respondents.
- [57] Above all, whatever loss that may arise from the delay to receive the payment has been catered for by the interest which continues to accrue upon the decretal sum should the Court of Appeal uphold the judgment of the High Court.
- In the circumstances, the balance of convenience tilts in favour of the Applicant. [58]

Disposition

- [59] The application succeeds with Orders that:
- Execution of the judgment and decree in Civil Suit No. 0545 of 2015 against the $\mathbf{i}$ Applicant is hereby stayed pending the hearing and final determination of Civil Appeal No. 1639 of 2023 by the Court of Appeal.
- The costs of this application shall abide the outcome of the said appeal $\mathbf{ii}$.

I so order

Delivered and dated at Kampala this..... $\sqrt{3}$ day
ofe.....

Muzamiru Mutangula Kibeedi JUSTICE OF APPEAL

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