

**Allan Makula and Others v I-Engineering
Uganda Limited (Miscellaneous Application No.
0191 of 2024) [2025] UGHCCD 57 (13 May 2025)**
[2025] UGHCCD 57

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I-ENGINEERING UGANDA LIMITED :::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE SIMON PETER M. KINOBE**RULING****BACKGROUND:**

The Applicant brought this application under Section 98 of the Civil Procedure Act Cap. 71, Section 33 of the Judicature Act Cap. 16 and Order 22 Rule 23, Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules as amended, for orders that;

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- 1. Execution of the consent decree in civil suit No. 488 of 2018 against the 1st applicant be stayed pending the hearing and determination of the 1st applicant's petition for bankruptcy vide High Court Insolvency Petition HCT-00-CV-IP-0006-2024.
- 2. The costs of the application be provided for.

The grounds of the application are specifically set out in the affidavit of the 1st applicant but briefly are that;

- a) On the 14th February 2022, the applicants executed a consent with the respondent wherein all parties agreed that respondent withdraws all claims against the 2nd 3rd and 4th applicants and that the 1st applicant bears the liability in the suit.
- b) The said consent was endorsed by this Honorable Court on the 9th March 2022.
- c) The parties further agreed that judgment to the suit is entered in favor of the respondent/ plaintiff against the 1st applicant for UGX 1,564,037,608.
- d) The 1st applicant consented to paying the suit sums due to the fear of being sent to jail.
- e) He has struggled to pay the suit sums despite selling all his belongings.
- f) He has so far paid UGX 80,000,000 but is unable to pay the outstanding and has opted to file for bankruptcy vide HCT-00-CV-IP-0006-2024 which is still pending before this Honorable Court.
- g) This application has been brought without undue delay.

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- h) That it is just and equitable that the application be granted.

In opposition to the application, Ahmed Labib on behalf of the respondent filed an affidavit in reply which states briefly that;

- a) The application lacks grounds sufficient to warrant a stay of execution
- b) The applicant willingly agreed to pay the sum to the respondent and that the consent is binding.

- c) The applicant has business engagements with various entities from which he generates income.
- d) The applicant is able to pay the outstanding and is only using bankruptcy proceedings as an escape route from meeting his obligations which is in bad faith and an attempt to frustrate the execution process.
- e) That the applicant used the Respondent's money to acquire for himself properties some of which were registered in the names of third parties.
- f) That the signature was his and he received service but neglected to take the necessary steps.
- g) The application has no sufficient grounds to warrant a stay of execution

REPRESENTATION

The Applicants were represented by Mugarura Jamil while the Respondent was represented by Marion Namutuhirwe.

ISSUE FOR DETERMINATION

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- 1) Whether the applicant has disclosed any grounds to warrant a stay of execution.

DETERMINATION

I have read the application, the affidavit in support, and the one in reply. I have also had the opportunity to look at the submissions of both the applicant and the respondent as highlighted herein.

In brief the applicant seeks a Stay of Execution of a Consent Decree arising from HCCS No. 488 of 2018 until the determination of his Petition for Bankruptcy vide High Court Insolvency Petition HCT-00-CV-IP-0006-2024.

He cites the case of KCB *Bank Vs Gichohi Ngari and 2 ors CA No. 0323 of 2023* that basically highlights the fact that a debtor cannot be sent to civil prison for failure to pay a debt unless it is shown that he has deliberately, willfully and or negligently refused to pay the debt. That poverty-stricken debtors who are unable to pay should not be consigned to prison.

The applicant also relies on the case of National Union of Clerical Commercial Professionals And Technical Employees Vs The National Insurance Corporation Supreme Court Civil appeal No.17 of 1993 [1994] (UGSC 46) which held that;- "it is now settled that the existence of a specific procedure, provision or remedy cannot operate to restrict or exclude the court's inherent jurisdiction under section 101 of the statute. Clearly the existence of a specific rule cannot override the statutory provisions of section 111 which gives court wide residual powers to prevent or correct an injustice. The question whether the court should invoke its inherent powers in a

given case is a matter for court's discretion which should be exercised judiciously...."*

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The respondent on the other hand contends that applicants 2,3 and 4 do not have locus to bring an application for Stay of Execution. The respondent proceeded to state that the applicant is not entitled to a Stay of Execution as there is no appeal or any other proceedings challenging the Judgment /Decree arising from HCCS No.488 of 2018. That as such the Applicant does not fulfil the grounds for the grant of Stay of Execution. Some of the authorities cited include;-

***Isam Fathalrahman salim and anor Vs Ms Gulf Commodities Ltd and 4 ors HMA 598 of 2012, Lawrence Musiitwa Kyazze Vs Eunice Businge SCCA No. 18-1990, Andrew Kisawuzi Vs Dan Oundo Malingu HCMA No. 467 of 2013* among others.**

I agree with all the authorities cited above.

I note from the onset that the applicant does not fulfill the traditional grounds for stay as highlighted in the above cases as there is no pending issue to resolve in terms of an Appeal, a Revision, a Review and in this particular case, an application to Set Aside the Consent Judgment.

However, it is important to note that, over time the grounds for stay have been expanded especially in the midst of justifiable/ sufficient cause, and the inherent powers of court (see National Union of Clerical Commercial Professionals And Technical Employees Vs The National Insurance Corporation Supreme Court Civil appeal No.17 of 1993 [1994] (UGSC 46)).

While inability to pay has been proved to be sufficient cause to invoke the inherent powers of court to grant a stay, I find that for court to make this determination

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evidence has to be placed before it in that regard and the debtor should be properly before court.

Having considered the above, my view, is that the procedure adopted by the applicant is wrong. The applicant ought to have sought for a stay arising from High Court Insolvency Petition HCT-00-CV-IP-0006-2024, as an intermittent relief pending the final determination of his petition for bankruptcy. This would prevent the abuse of court process and an unnecessary multiplicity of applications.

It would also enable the Judge evaluate the sufficiency of the petition for bankruptcy and whether the same discloses a prima facie cause for bankruptcy. It is my view that this particular analysis is vital before a stay can issue (See: In the matter of a Petition for a receiving order by Maria K Mutesi Bankruptcy Petition No.5 of 2011). I also note that until the application for bankruptcy is granted, the same cannot be held as proof of ones inability to pay his debts.

The applicant herein attempts to invoke the inherent powers of court. While this court has extensive inherent powers under Section 98 of the Civil Procedure Rules (also See National Union of Clerical Commercial Professionals and Technical Employees Vs The National Insurance Corporation Supreme Court Civil Appeal No.17 of 1993 [1994] UGSC 46), my view is that this power can only be invoked if the applicant had sufficient cause and is properly before court.

The applicant can only come to this court after the proceedings of a Notice to show cause why execution should not issue or if he was not given an opportunity to be heard.

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Until an order of execution issues, the applicant cannot invoke these inherent powers of court and cannot be said to be properly before court. His application would be premature and preemptive in nature.

I therefore find that the applicant adopted the wrong procedure by filing an application for stay to forestall execution in a matter where there is no appeal, no application to set aside, no application for review or revision, and before exhausting the procedures upon issuance of a notice to show cause why execution should not issue.

A grant of this application will not only occasion an injustice to the judgment creditor but is an abuse of court process.

At the point of notice to show cause why execution should not issue, the judgment debtor, can appear before the presiding officer and raise sufficient cause as a reason for none compliance. Sufficient cause may include, the applicant being poverty stricken in which case the circumstance of the case of KCB *Bank Vs Gichohi Ngari and 2 ors CA No. 0323 of 2023* would come into play*. In the same application for execution the presiding officer can equally advise the debtor to apply for bankruptcy upon the realization that he is unable to pay in line with Section *40 (3)* of the Civil Procedure Act.

In the event that execution issues, this explanation (sufficient cause) regardless, then the judgment debtor can invoke the inherent powers of this court and apply for a stay of execution with the evidence of sufficient cause, but not before.

Since the applicants only grounds for seeking this relief are that, he has filed High Court Insolvency Petition HCT-00-CV-IP-0006-2024 for bankruptcy and that he has been served with a notice to show cause why execution should not issue, I would advise that the applicant make an application for an intermittent relief of stay as arising from High Court Insolvency Petition HCT-00-CV-IP-0006-2024 and or present sufficient cause to the presiding office upon receipt of a notice to show cause why execution should not issue.

I accordingly deny the prayers sought by the applicant and dismiss this application with costs to the respondent.

I so order

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SIMON PETER M. KINOBE JUDGE

DATE: 13 th May 2025

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