

UGANDA / JUDGMENT

Blue Wave Beverages Limited & 2 Others v Kiiza & Another (Civil Application 1308 of 2023) [2024] UGCA 202 (30 July 2024) [2024] UGCA 202

COURT

Court of Appeal of Uganda

BEFORE

Kibeedi Mutangula, JA

CASE / FILE NUMBER

Civil Application 1308 of 2023

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IHE REPUBLIC OF UGANDA IN THE COURT OF APPEAL UGANDA AT KAMPALA ctvtL APPLICATIoN NO. 1308 OF 2023

(Arising from civil Appeal No. 1580 of 2023 & original High coul Misc cause No. 95 of
202s)

- 1. BLUE WAVE BEVERAGES LIMITED
- 2. LANG FANG
- 3. LIU QUAN APPLICANTS

VERSUS

- 1. LILLIAN KIIZA
- 2. SFC FINANCE LIMITED RESPONDENTS

RULING OF MUZAMIRU MUTANGULA KIBEEDI. JA

Introduction

- t1l rhis is an Application for stay of execution brought under Rutes 6(2)(b),42(tN2), 43(1) & (2), of the Judicature (court of Appeat Rutes) Directions s.t 13-10, and Articte 28 (1) (3) of the Constitution of the Republic of Uganda.
- l2l The Applicants seek orders that:

- An order of substantive stay of execution/injunction of the Ruling and orders in [High Court] Civil Miscellaneous Cause No. 95 of 2023 Lillian Kiiza & SFC Finance Limited vs. Blue wave Beverages Limited & others doth Issue against the Respondents staying the implementation of the orders obtained in the said suit until the final disposal of the Applicants' Appeal No. 1sBO of 2023 against the Ruling to the Court of Appeal of Uganda.

Costs of this Application abide the outcome of the Appeal.

- t31 The Application is supported by the affidavit of the third Applicant, Mr. Liu euan, sworn on the 20th day of December 2023.
- t41 The Respondents oppose the application basing on the grounds stated in the Affidavit in Reply sworn by Ms. Lilian Kiiza, the Receiver of the 1st Applicant appointed by the 2nd Respondent. The Affidavit is dated 28th, December 2023.
- t51 At the initial hearing of this matter in 2023, the parties were urged to explore the resolution of their dispute through appellate mediation pending their filing of their Affidavit evidence and written submissions in accordance with the timelines that had been agreed upon. This court further ordered that upon expiry of the 30 days from 28th December 2023, if no settlement had been reached, court would then consider the submissions of the parties and render its decision.
- t61 The parties filed written submissions as directed. Thereafter Court was informed that the mediation failed, thus this Ruling.

Factual Background

- t71 By the facility Agreement dated 10th March 2020, the 2nd Respondent advanced to the 1st Applicant a sum of USD3,500,000 secured by inter alia a Debenture dated the 10th, March 2020 over inter alia the whole of the 1st Respondent's undertakings, property rights and assets located at plot 3 Fourth Link Road, Luzira, and plot 5, Fourth Link Road, Luzira.
- t81 The 1st Applicant defaulted in servicing the loan facility culminating in the demand for repayment of the whole sum then outstanding being USD4,426,074 as at the 22nd December 2022.
- t91 The 1st Respondent was appointed on the 8th August 2023 as Receiver upon default in payment of the monies demanded.
- [10] on the 21st August 2023, the 1st Respondent appeared at the 1st Applicant's factory at LRV 4002 Folio 12 Plot 3 Fourth Link Road, Luzira and LRV 4334 Folio 22 plot 5, Fourth Link Road, Luzira to take custody and control as Receiver of the 1st Applicant's premises and the plant, machinery, equipment and other property located therein including all the 1st Applicant's vehicles and movables. But she met resistance from the 1st applicant.

- [11] subsequently, the 1st Respondent as Receiver and the 2nd Respondent as Debenture Holder, filed High court Misc cause 10 of 2023: Lillian Kiza & sFC Finance Limited vs Blue wave Beverages Limited & others-under section 180(2) (a), and 183(1) and (2) of the Insolvency Act No.14 of 2011 seeking a compliance order by inter alia the applicants allowing them to take over the movables of the 1st applicant being the water purification and bottling plant and machinery located in the premises occupied by the 1st applicant at Plots 3 and 5 fourth link Road, Luzira charged under the Debenture dated 10th, March 2020, and handing over of the Books of Accounts, Inventory, Asset Registers and other related materials.
- [12] As the hearing of the application was still pending, the 1st respondent, who also happened to be the Mortgagee of Plots 3 and 5 fourth link Road, Luzira commenced foreclosure proceedings by issuance of a Notice of Sale of the Mortgaged/Immovable property on the 29th September 2023 and the advertisement for sale of both the mortgaged property as well as the movable property (plant and machinery) in the Daily Monitor newspaper of the 06th November 2023,
- [13] on the 4th December 2023, Hon. Justice Stephen Mubiru heard the Application (High court Misc cause No.95 of 2023) and resolved it in favor of the 1st and 2nd

Respondents. The court found inter alia that the applicants' right, title and equity of redemption to and in the mortgaged property described as LRV 4002 Folio 12 plot 3 Fourth Link Road, Luzira and LRV 4334 Folio 22 plots, Fourth Link Road, Luzira having been foreclosed ordered inter alia that the Applicants forthwith deliver to the respondents possession of the charged property comprised in LRV 4002 Folio 12 plot 3 Fourth Link Road, Luzira and LRV 4334 Folio 22 plot 5, Fourth Link Road, Luzira including the plant, machinery, equipment and stock in possession of the applicants, failure of which possession may be obtained by eviction of the occupants.

- [14] Being dissatisfied with the decision of the trial Judge delivered on the 4th December 2023, the Applicants lodged an appeal in the court of Appeal, vide: civil Appeal No. 1580 of 2023, which is still pending hearing.
- [15] The Applicants now bring this application for an order of stay of execution pending the disposal of the appeal.

The grounds of the Stay application

- [16] The grounds in support of the application are contained in the Notice of Motion and the Affidavit of Mr. Liu Euan, a Director in the 1st Applicant company, sworn on the 20th day of December 2023, and the Affidavit in rejoinder sworn on the 2nd day of January 2024, but in brief are that:

- (i) The appeal raises serious questions of law and fact, thus has high likelihood and chances of success, to wit: among others, the trial Judge exercised jurisdiction not vested in him in total disregard of the Arbitration clause contained in the facility Agreement and that the trial Judge denied the Applicants/ Appellants a right to effective Legal representation when he forced that Lawyer; Joseph Manoba, to proceed against his wish after having stepped down/ withdrawn from the case .
- (ii) there is urgency in this matter as the respondents have since embarked on the implementation/Execution of the Order in fu/rsc Cause No. 95 of 2023.
- (iii) the Appeal will be rendered nugatory if the stay order is not granted and the applicants stand to suffer irreparable damage if the property is sold to a third party by the Respondents, and if the management of the affairs of the 1st Applicant and its Books of Accounts are handed over to the respondents in that the mode of operation/ financial income inflow, in addition to affecting the customer base of the 1st applicant, will be adversely affected.
- (iv) The High court has failed to exercise jurisdiction to hear Miscellaneous Application No. 3005 of 2023 seeking a stay of execution that had been filed before it on grounds of the Directive the Principal Judge made to the Trial Judge requiring him to cease hearing any matters.
- (u) The application was brought without delay and that the appeal raises the right to effective representation which borders on adequate time for preparation for one's defense, among others, which right is non-derogable per Articles 2g and 44 of the Constitution of Uganda.
- (vi) the status quo hasn't changed, yet as the applicants are the ones running the affairs of the 1st applicant and that there is need to protect their economic rights as guaranteed by the Laws of Uganda.
- (vii) it is just fair and equitable that the application for an order of stay of execution/ implementation of the order in Miscellaneous Cause No. 95 of 2023 *Littian Kiiza & sFC Finance Limited vs Blue wave Beverages Limited & others* be granted and all reliefs sought to enable us exercise our right of Appeal.

Grounds in opposition

- [17] The Respondents opposed the application by describing it as in vain since the mortgage and debenture securities were advertised for sale by public auction and/ or private treaty on the 6th December 2023 and the marketing of those securities is ongoing; the possession order in relation to the debenture securities, the subject of this appeal/ application, is immaterial to those sales which sales are not the subject of any litigation or appeal. That, accordingly, no loss substantial or otherwise would be occasioned by the denial of the stay application.

- [18] In further answer to the affidavit of the 1st applicant, the 1st Respondent contended that the Applicants' appeal had no prospect of success. That there is no arbitrable dispute under the facility agreement as the Applicants do not deny their indebtedness. Lastly, that clause 35 of the Debenture clearly indicates that the dispute resolution mechanism is governed by Uganda law and vests jurisdiction in the Uganda courts.
- [19] The Respondent prayed that the application be dismissed as totally lacking in merit.

Rejoinder by the applicants

- [20] In the Affidavit filed in rejoinder, the 1st Applicant deposed that: -
- (i) They at all times made payments towards the loan to a sum of over US\$ 300,000 and the claim of US\$ 4,426,074 which forms the basis of the respondents' alleged receivership and claimed foreclosure that culminated into Misc. cause No. 095 of 2023 is highly disputed by the 1st Applicant which relates to a dispute that ought to have been determined by way of arbitration.
- (ii) The Applicants were never given notice of appointment as receivers for the 1st Respondent and have accorded cooperation to the Respondents and even have their guards still at the 1st Applicant's premises without any inconvenience.

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(iii) No notice of dishonor has ever been served on the Applicants.

- (iv) The Applicants have at all times made advancements to see that they make some further payments towards their obligation since the same had not matured yet, but have since been frustrated by the respondents and their lawyers whose intentions manifest to sell off the Applicants' business than favour their continued operations.
- (v) There is no foreclosure that has ensued.
- (vi) No evidence of any advertisement for December 2023 was attached to guide the authenticity of its existence

Representation

- [21] when this application came up for hearing before this court, the applicants were represented by Mr. Stephen Karari and Mr. Ben Lule, while the Respondents were represented by Mr. Masembe Kanyerezi.
- The written submissions filed for either side were adopted at the hearing and have been considered in this Ruling.

Resolution of the preliminary point of law - Defective Affidavit

[23] In the Affidavit in rejoinder of Mr. Liu euan sworn on the 2,0 January 2024, he stated that he would seek leave of the court to strike out the Affidavit of Ms. Lilian Kiiza in Reply on the ground of the same "...being barred in law, defective and untenable in /aul'. No further and better particulars were set out in the Affidavit to enable the respondents and the court fully appreciate the nature of the complaint of the applicants about the Affidavit in reply. when the applicants subsequently filed their written submissions, this particular matter was not alluded to in order to enable the Respondents reply to it in their written submissions. However, when the applicants

filed their submissions in rejoinder, they resurrected the matter and contended that the Affidavit of Ms. Lilian Kiiza in Reply was defective as it was deposed by her on behalf of 2'o respondent without written authority. counsel referred to the Deed of her appointment as Receiver and contended that it does not state that she was given authority to depose an affidavit in any matter on behalf of the 2na Respondent. As such, the applicants sought to strike it off the court record.

- [24] In support of their submissions, counsel relied on the case ol Luggya Andrew vs. kikonyogo Richard & Anor, court of Appeal civil apptication No. 24g of ²⁰²¹ where this court (Hon. Justice Cheborion Barishaki) struck out the Affidavit in that matter for being defective having been deposed on behalf of another without written authorization as required under orderl Rule 12of the civit procedure Ru/es, s./. No 71-1(CPR).
- [25] I have carefully considered the submissions of Counsel for the Applicants on this point of law. It is trite that submissions in rejoinder should be restricted only to matters raised in the submissions in reply. They should not raise new matters, that is, matters not contained in the submissions in reply, save with leave of court. This is essentially because raising a new matter after the other party has closed his/her/its submissions denies him/her/it an opportunity to respond to it (the new matter) before court resolves it and, as such, would be in breach of the principles of natural justice. It should never be permitted, especially where the omission will adversely affect the party denied the opportunity to address the court on the new issue raised in the rejoinder.
- [26] with the aforesaid in mind, I have considered the arguments of the applicants about the alleged defectiveness of Ms. Kiiza's Affidavit and the authorities cited.
- 127l In paragraphs 1 and 2 of her Affidavit in reply, Ms. Kiiza states thus:

'1 . That I was appointed by the 2no respondent as Receiver of the 1sr Applicant. ^t depone this affidavit on my behalf and on behalf of the 2na Respondent.

2. That I am familiar with the factual background of this dispute, and I have read the applications and the accompanying affidavits of Liu euan in support of the Applications sworn on the 20h day of December 2023 and respond thereto as follows."

- [28] Thereafter, Ms. Kiiza goes ahead to give the factual background to the application, what transpired in the High court, and the applicants' claim in respect of the appeal and the Stay application.
- [29] I note that Order 1 Rule 12 of the CPR was the basis of the decision of this court in Luggya Andrew vs. kikonyogo Richard & Anor (ibid) to strike out the impugned affidavit for being defective on account of having been deposed on behalf of another party without written authorization. The attention of the appellate Judge in that case was not drawn to section 1 of the civil procedure Act, cap. 7i (cpA) which expressly makes the cPA and, by extension the Rules made under it, the cpR, applicable only to the High Court and Magistrates Act. The section is couched thus:

"Application.

This Act [CPA] shall extend to proceedings in the High Court and magistrates courts."

- [30] on the other hand, the law governing Affidavits filed in this court is part II of the Judicature (Court of Appeal) Rules, S.I. No. 13-'10, especially rules 42 - 51.
- [31] Second, not every defect in an Affidavit should lead to the entire Affidavit to be struck out. In the instant matter, the offending part of paragraph 1 of Ms. Kiiza,s Affidavit can

be severed from the rest of the Affidavit which contains matters within the personal knowledge of the deponent.

[32] As such, I am unable to follow the decision of this court in Luggya Andrew vs. kikonyogo Richard & Anor (op cit). I accordingly reject the Applicants' application to strike out the Affidavit in Reply of Ms. Kiiza. Instead, I sever from the Affidavit only the portion in paragraph 1 stating that" I depone this affidavit on my behalf and on behalf of the 7o Respondent' and preserve the other parts of the Affidavit which are relevant to the resolution of the application and contain matters from the deponent's personal knowledge which renders them admissible, inespctive of whether they support her case or that of the 2nd respondent.

Jurisdiction of the Court

- [33] The mandate of a single Justice of this Court to handle this application is derived from section 12 of the Judicature Act, cap. i3 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.

- [34] In the case of Jomayi Property consultants [td. vs. Andrew Maviiri, civil Reterence No. 174 ot 2015 (arising from civit Application No. 200 of 2015) this Cout (Egonda-Ntende, Barishaki - Cheborion & Mutangula Kbeedi, JJA _ 19.03.2020) had occasion to consider section 12 of the Judicature Act vis-d-vis Rule 53(2) of the court of Appeal Rules which barred a single Justice of this court from hearing applications for stay of execution, injunction or stay of proceedings.
- [35] The unanimous decision of this court in lhe Jomayi property consu/fanls case above is to the effect that Section 12 of the Judicature Act, being an Act of parliament, ovenides 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.
- [36] The above decision of this Court is still a good statement of the law.

Preconditions to be satisfied by the applicants

- [37] It is settled law that the grant of the orders sought by the applicants is discretionary. From their submissions, it is apparent that all the parties to this matter agree that the principles to guide the court rn the exercise of its djscretion have been settled by several decisions of this court and the Supreme court including the following: Gashumba Maniraguha vs sam Nkundiye sc civit Application No.0024 of 201s., and Hon. ssekikubo & 3 ors vs Attorney General & 4 ors const. Appt No.0006 of 2013.
- [38] In summary the applicants must prove that:
 - 1t1 They lodged a Notice of Appeal;
 - 1;i1 The appeal has a likelihood of success; or a prima facie case of his right to appeal
 - liiilThey will suffer irreparable damage or that the appeat wilt be rendered nugatory if a stayls not granted.
 - (i lf(ii) and (iii) above have been established, coul must consider where the balance of convenience lies
 - 1v1 The applicanls rnusl a/so eslab/lsh that the apptication was instituted without detay.
- [39] What is in contest relates only to the application of the said principles to the current application.

Analvsis of the instant application

- [40] After reading the pleadings, the affidavit evidence and the submissions filed in the instant matter, I have made the following findings:

Pendency of the substantive Appeal

[41] There is evidence of the applicants having been very vigilant in that they not only filed the Notice of Appeal soon after the trial court had rendered its decision against them, but they also went ahead and filed the substantive appeal before this court, vide: Civil Appeal No. '1580 of 2023. The substantive appeal is pending resolution by this court. Accordingly, this ground has been satisfied by the applicants. As was stated by this court in the case of samuel wuma vs. IJganda Railways corporation court of Appeal civil Application No. 1193 of 2023, a vigilant litigant attracts a more favorable consideration than a non-vigilant one who might wish to obtain the stay orders for purposes of simply frustrating the successful parties from enjoying the benefits of their judgment.

Likelihood of success of the appeal

[42] From the applicants' submissions on this ground, they contend that their appeal has very high chances of success based on three grounds. First, that the trial court had no jurisdiction to entertain the matter before him as the Facility Agreement that gave rise to the Debenture Deed contained an arbitration clause by which disputes between the parties were supposed to be referred to arbitration and not to courts of law. second, that the payment of the loan had not fallen due. And lastly, that the trial Judge erred in

law and fact when he denied the Applicants their right to effective legal representation before determining the application before the High court against them.

- [43] The respondents disagreed and contended that the Applicants, appeal had no prospect of success on any of three substantive grounds raised by the applicants. The respondents argued that no arbitrable dispute exists in the instant matter as the applicants do not deny their indebtedness, neither have they commenced any arbitral proceedings in accordance with Clause 2g of the Facility Agreement.
- [44] Further, that the claim of breach of the Applicants, right to effective legal representation is not borne out of the trial court proceedings.
- [45] From the Memorandum of appeal, the applicants raise three grounds of appeal against the decision of the trial Court. These are:
 - (i) That the agreed dispute resolution mechanism is arbitration and the Trial Judge's order under the debenture was therefore without basis;
 - (ii) That the loan was prematurely called as the loan duration has not lapsed as the date for the payment of the last installment was the 29th February 2026.
 - (iii) that the Appellants were denied the right of legal representation.

- [46] There is a wealth of authority to the effect that when the court is evaluating whether the substantive appeal has chances of success, it must act with extreme restraint so that it does not pre-empt the resolution of the substantive appeal. (see: Hwang sung Industries Ltd vs. Tadjin Hussein and 2 others, sccA /vo. 19 of 200g, Lubega vs. Attorney General and 2 others, sccA IVo. 13 of 201i, and Gashumba vs. Nkundiye, SC Civil Application No.24 of 2015, SCCA t/o. 6 of 2002.)
- [47] From Facility Agreement annexed to Ms. Kiiza's Affidavit as „annexture A,,, the principal loan of usD 3,500,000/= and interest thereon were repayable in ⁶¹
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instalments as set out in clause 6 of the Agreement with the first one falling due on the 28th February 2021 and the final one falling due on 28th February 2026, and subject to the usual default clause. From Ms. Kiiza's Affidavit in Reply, the 1st respondent defaulted in servicing the loan facility culminating in the demand for repayment of the whole sum then standing at USD 4,426,074 as at the 22nd December 2022, and her appointment as Receiver on the 08th August 2023. Mr. Liu euan admits in paragraphs 4 and 5 of his Affidavit in Rejoinder that they did not honour their part of the bargain and that out of the claim of USD 4,426,074 they effected payment of about USD 300,000/= only. The deponent attributes their default to covid 19 pandemic. As such, ^I am unable to infer a bonafide arbitral dispute in existence between the parties.

- [48] To make matters worse, there is no evidence on the court record of the applicants, as the aggrieved party, having attempted to take any steps towards commencement of the arbitration process as prescribed by the arbitration clause.
- [49] I am therefore not satisfied that the applicants meet the second ingredient.

Irreparable damage

- [50] In their submissions, Counsel for the applicants argued that the affidavit evidence they filed proved that if the application is not granted, they will cease to have a proper income flow into the 1st applicant company; the day-to-day operations of the 1st applicant company, together with its customer base, will be affected. In addition, the applicants contend that the selling of the 1st applicant's property will be a violation of its constitutional right to property and yet article 20 of the Constitution enjoins this court to protect property rights.
- [51] The respondents disagreed. They submitted that no loss, whether substantial or otherwise, would be occasioned by the denial of the order of stay sought by the applicants. This is because the mortgage and debenture securities were advertised for
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sale by public auction and/or private treaty, the public auction sale being slated for the 6m December 2023 failing which, the private treaty sale would be any date thereafter when a buyer offering a price higher than the forced sale value is found by the Respondents. That the marketing of the securities was ongoing and the possession order in relation to the debenture securities which is the subject of this appeal/application is immaterial as those sales are not the subject of any litigation or appeal.

- [52] From the court record which I have carefully reviewed, it is apparent that the respondents exercised a multipronged approach to the enforcement of their rights. They first took out an application in the High court, Irlrsce//aneous Application No. gS of 2023, seeking an order that the 1sr respondent as Receiver, be handed possession of the 1't applicant's plant and machinery pursuant to the Debenture. It is from that application that the appeal before thls court, civilAppeal No. 1sB1 of 2023, arises. As such, the stay order that can be granted by the court can only be limited to the protection of the applicants' rights in respect of that appeal.
- [53] As the hearing and resolution of High court Miscellaneous Application No. g5 of 2023 was still pending resolution, the respondents, in their capacity as mortgagees, also commenced foreclosure proceedings by issuance of the Notice of sale of the mortgaged property on the 29m September 2023 and the advertisement for sale of the immovable property as well as plant and machinery/movable property. The advertisement appeared in the Daily Monitor Newspaper of 06rh November 2023 and ^a copy of the said newspaper advert is attached to the Affldavit of Ms Kiiza as 'Annexure G'. The said foreclosure proceedings were not the subject of High court Miscellaneous Application No. 95 of 2023. Neither are they the subject of civil Appeal No. 1580 of 2023. In those circumstances, granting the order of stay of execution pending the disposal of civilAppeal No. '1580 o12023 does not shield the applicants

from the legal consequences of the exercise of the respondents' right to foreclose and sale as a mortgagee which is not the subject of High Court Miscellaneous Application No. 95 of 2023 and the resultant appeal, Civit Appeal No. 1580 of 2023.

- [54] Accordingly, I find that no irreparable loss will be suffered by the applicants from the refusal to grant the stay orders sought by them in the instant matter.

The balance of convenience

- [55] In resolving this ground, I have taken into account the fact that the subject matter of the appeal is a commercial dispute where the applicants do not deny being indebted to the 2no respondent. The claim by the applicants that they repaid about USD 300,000/= unless admitted by the respondents would necessitate better evidence from the applicants to prove beyond what was submitted before this court if they are to satisfy a court of law to the prescribed standard. In any case, deduction of the sum ol USD 300,000/= from the respondents' claim of USD 4,426,074 would still leave the applicants indebted to over USD 4

Million as at 22.12.2022 and the debt continues to grow due to the interest it continues to attract in accordance with the Facility Agreement. As such, it is important for the courts to hold parties onto their legal obligations if business relations are to thrive in Uganda and/or if Uganda is to continue being an attractive foreign investment destination.

- [56] I have also considered that despite their admission of the debt, the applicants have not adduced to this court any evidence of any payment plan that they have submitted to the respondents in respect of the uncontested amounts. Even the opportunity given to the parties by this court to explore appellate mediation was squandered by the parties.
- [57] Lastly, I have noted that the applicants have not alluded at all to making the 30% deposit of the uncontested amounts, in light of Regulation 13 of the Mortgage Regulations, 2012.

Regulations. The case of *Ganafa Peter Kisawuzi v. DFC Bank Ltd* court of Appeal civil Application No. 64 of 2016 is instructive in that aspect. Like the one at hand, the Applicant in that case commenced a suit against the bank contesting its action to recover loan monies through a sale of a mortgaged property. The applicant's suit was dismissed with costs. He appealed to the court of Appeal and also made an application to stay the execution of the High court decree pending the appeal. The application was dismissed on the basis that the applicant did not make the mandatory security deposit. The consequent appeal to the supreme court was also dismissed with costs.

[58] while addressing the question of the 30% deposit in the above case the court of Appeal stated thus:

'we find it pertinent to address the issue raised by counsel for the Respondent in respect of interlocutory applications involving mortgage property like the present one. He submitted that the Applicant had not deposited 30% of the value of the mortgage property contrary to the Mortgage Regulations. Counsel for the Applicant conceded to this but submitted that the Applicant is willing to deposit the said amount if ordered by this court.

Regulation 13(1) of the Mortgage Regulations, 2012 provides that:

"The court may on the application of the mortgagor, spouse, agent of the mortgagor or any other interested party and for reasonable cause, adjourn a sale by public auction to a specified date and time upon payment of a security deposit of 30% of the forced sale value of the mortgaged property or outstanding amount....

The Applicant is in breach of the above provision of the law and as such, grant of an order of a temporary injunction stopping the intended sale is not available to him. We therefore decline to grant the same. We do not find it necessary to consider the PaBe L7 of 18

other conditions for grant of a temporary injunction as highlighted above."

- [59] There is no doubt that Regulation 13 of the Mortgage Regulations was intended to balance the interest of a mortgagee to recover the debt while at the same time the mortgagor can pursue the resolution of his/her claims in the court of law. Nonetheless, in my opinion,

with or without Regulation 13 of the Mortgage Regulations, an appellant who makes a bona fide commitment to deposit 30% of the decretal sums attracts more favorable consideration than one who has not indicated any effort to address the minimum concerns of a successful party.

- [60] Taking into account the aforesaid and the submissions of the parties, it is my finding that the balance of convenience in the instant matter tilts against the applicants.

[61] Disposition

- 1) The application for stay of the execution of the Ruling and orders in High court civil Miscellaneous cause No. 9s of 2023 Lillian Kiza & sFC Finance Limited vs. Blue Wave Beverages Limited & Others is hereby dismissed.
- 2) The Interim order previously issued by this court to maintain the status quo pending the determination of this application is hereby discontinued and set aside forthwith.
- 3) The costs of this application are granted to the respondents

Is Order

Signed, delivered and dated at Kampala this.....,*L,.day It.....2024

Muzamiru Mutangula Kibeedi JUSTICE OF APPEAL

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