

**Heywood Group Ltd and Another v Kaffika
Animal Feeds Ltd (Miscellaneous Application
972 of 2025) [2025] UGCommC 96 (29 May 2025)**
[2025] UGCommC 96

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The background to this application is that the respondent/plaintiff brought *Civil Suit No. 0032/2021* seeking recovery of Ugx 70,326,000 as damages for breach of contract of sale and

- 30 supply of goods, general damages for economic and financial loss, incidental and consequential damages and costs of the suit, among others, against the applicants/defendants. In this matter, the respondent/plaintiff had supplied poultry feeds, Koudjis Layer Concentrate 20% and Koudjis Broiler concentrate 30% to the defendant/applicant herein, who did not pay for the 1498 bags valued at Ugx 70,326,000. The suit was determined in favour of the plaintiff/respondent herein in a judgment entered on 24th 35 April 2024 wherein the defendants/applicants were ordered to pay the plaintiff an outstanding contractual amount of Ugx 69,326,000, interest thereon of 20%, Ugx
- 20,000,000 as general damages, interest at court rate on the general damages from the date of judgment till payment in full and costs of the suit. The respondent commenced execution proceedings and an advert for sale of the applicants' property was run on 30th 5 April 2025; hence this interim application for stay.

The grounds of the application were stated in the affidavit of Irumba David, the 2 nd applicant, and they are briefly that:

- 10 1) The applicants have filed a substantive application for suspension and stay of execution in this honorable court.
- 2) The application has not been fixed for hearing and there exists an imminent threat of execution of the decree given that the substantive application for execution of the decree, a notice to show cause why execution should not issue was filed by the respondent and he 15 had just seen a notice of auction of his land in the newspaper.
- 3) If the application for interim suspension and stay of execution is not fixed and heard, the applicant's application for stay of execution of the decree shall be rendered nugatory and overtaken by events and it will defeat the ends of justice for the applicants.
- 4) The applicant will suffer irreparable damage if the application is not granted
- 20 5) The balance of convenience favours the grant of the application.
- 6) The applicants have overwhelming chances of winning both the application for stay of execution and appeal.

The respondent opposed this application and the grounds are stated in the affidavit in reply of 25 Ms. Nanteza Milly, the respondent's Managing Director, and are briefly that:

- 1. The affidavit in support of the application deponed by Irumba David shows that the 1st applicant has not supported the application with an affidavit and Irumba David has not deponed on its behalf.
- 2. The application is not competent and should be struck out.

- 30 3. The applicants were ordered by court to pay the respondent company the outstanding contractual sum of Ugx 69,326,000, interest thereto at a rate of 20% per annum from the date of filing the suit till payment in full, general damages of Ugx 20,000,000, interest at court rate on the general damages and costs of the suit.
- 4. She instructed her lawyers to prosecute the bill of costs which was taxed by this court and 35 she was awarded Ugx 9,486,000; and the total amount of money to be paid by the applicants to the respondent company became Ugx 169,338,000.
- 5. The respondent's lawyers served the applicants with the application for execution and the notice to show cause why execution should not issue, but they did not appear in court nor did their advocates and they had not paid the sum due by the date of this application.
- 40 6. The applicants are aware of the order against them and have capacity to pay since they have over 21000 layers on their farm, which is sitting on 7,448 acres of land in Hoima City; but they have adamantly refused to pay.
- 5 7. Ever since the applicants defaulted on payment, the respondent company has incurred a lot of losses and deserves to be compensated.
- 8. The application is full of falsehoods, are a waste of time and is incurably defective.

Representation at the hearing

10 The applicants were represented by Mr. Luwaga Benson of M/s Mwina, Wananda & Co. Advocates; while the respondent was represented by Mr. Kafeero Alexander of Bigirwaruhanga & Atim Advocates. The parties proceeded by way of oral submissions; which were typed out and are on Court record.

15 Issue for determination

The main issue for determination is whether this application raises sufficient grounds for an order of interim stay of execution?

20 *Determination of court*

The oral submissions of the parties have been taken into consideration. The submissions will, however, not be reproduced here. This matter is decided as follows:

25 Applications for interim stay of execution are generally provided for under Order 43 rule 4 (3) of the Civil Procedure Rules SI 71-1, as amended, where it is provided that an application of this nature must be made after a notice of appeal has been filed and the applicant should be prepared to meet the conditions set out in that Order including: furnishing proof of the fact that substantial loss may result to the applicant unless the stay of execution is granted; that the application has 30 been made without unreasonable delay; and that the applicant has given security for due performance of the decree or order as may ultimately be binding upon him (see *Lawrence*

Musiitwa Kyazze vs Eunice Businge, S. C. Civil Application No 18 of 1990).

Further considerations for a grant of stay of execution were introduced by the Court of Appeal in 35 the case of *Kyambogo University v. Prof. Isaiah Omolo Ndiege, C. A. Miscellaneous Civil Application No 341 of 2013* where the considerations were broadened to include that: there is serious or imminent threat of execution of the decree or order and if the application is not granted; the appeal would be rendered nugatory; that the appeal is not frivolous and has a likelihood of success; and that refusal to grant the stay would inflict more hardship than it would 40 avoid.

- 5 In this particular application, the applicants relied on the following main grounds:
- 1. A notice of appeal has been filed;
- 2. There is imminent threat of execution of the decree in *Civil Suit No. 0032/2021*;
- 3. substantial loss may result to the party applying for stay of execution unless the order is made;
- 10 4. the application has been made without unreasonable delay;

The filing of a notice of appeal

Order 43 rule 4 (3) of the Civil Procedure Rules SI 71-1, as amended, requires that an application 15 for interim stay of execution can only be made after a notice of appeal has been filed. In this particular application, Counsel for the applicant submitted that a notice of appeal was filed in the Court of Appeal and that if the interim stay was not granted, the respondents would proceed to sell the applicant's property; and the applicant will be prejudiced. A copy of the said notice of appeal was attached to the application. Counsel for the applicants prayed that court grants an 20 interim stay of execution pending the hearing and determination of the substantive application.

Counsel for the respondent objected to the applicants' notice of appeal on the ground that there is no competent notice of appeal on court record, as alleged by counsel for the applicant. Counsel for the respondent considered paragraphs 2, 3, 7 and 11 of the applicants' affidavit in support 25 wherein the deponent stated that the appeal was filed whereas not since the notice of appeal attached is not endorsed either by the High Court or the Court of Appeal. Counsel for the respondent further relied on the case of *Osman Kassim Ramthan vs Century Co. Ltd SCCA 035/2019* where three conditions were set for a grant of an interim order for stay, that is: there must be on record a competent notice of appeal; there must be a substantive application; and 30 there must exist a threat of execution. Counsel for the respondent maintained that there was no competent notice of appeal before court and further prayed that the application should be dismissed with costs to the respondent.

This is an application for an interim order of stay pending the hearing and determination of the 35 main application, *Miscellaneous Application No. 790/2025*. What needs to be determined at this point, before other grounds for the application are deliberated, is whether there is a competent notice of appeal filed? A notice of appeal in this instance is a primary precondition that must be satisfied before the other grounds for a grant of this application can be considered.

40 The Judicature (Court of Appeal Rules) Directions SI 13-10 provides thus:

"76. Notice of appeal in civil appeals.

5 *(1) Any person who desires to appeal to the court shall give notice in writing, which shall be lodged in duplicate with the registrar of the High Court..."*

The notice of appeal in this instance is defective as it is not signed by the Registrar of the court. There is, therefore, no competent notice of appeal lodged in court. Where there is no competent notice of appeal, the foundation upon which the application for an interim stay of execution was filed, ceases to exist. In the premises, there is no competent application for interim stay of execution before this court. In the absence of a competent notice of appeal as a primary ground for the application for interim stay of execution, there is no reason for this court to delve into the other grounds advanced for grant of interim order of stay.

It follows, therefore, that this court, is unable to deal with any interlocutory application arising from *Civil Suit No. 0032/2021* unless the notice of appeal is validated. This application for an interim order of stay is incompetent and accordingly struck out with costs to the respondent.

20 I so order.

Dr. Ginamia Melody Ngwatu Ag. Judge 29 25 *th May 2025*

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