

UGANDA / JUDGMENT

**Kalanzi v Absa Bank Uganda Limited
(Miscellaneous Application 1715 of 2024)
[2025] UGCommC 36 (13 March 2025)
[2025] UGCommC 36**

COURT
Commercial Court of Uganda

BEFORE
Ocaya, J

CASE / FILE NUMBER
Miscellaneous Application 1715 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
[MISCELLANEOUS APPLICATION NO. 1715 OF 2024] [ARISING FROM
MISCELLANEOUS APPLICATION NO. 1366 OF 2024, MISCELLANEOUS APPLICATION
NO. 404 OF 2024 AND CIVIL SUIT NO. 86 OF 2024]**

**| | KALANZI MICHELLE
LUCY | | | APPLICANT |**

|---|-----|-----|---|-----|

| | | VERSUS | | |

| 15 | ABSA BANK UGANDA LIMITED | | | RESPONDENT |

Before: Hon. Justice Ocaya Thomas O. R

RULING

20

Introduction

This is application under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, Order 22 Rules 23(1) and 89 of the Civil Procedure Rules 71-1. The Applicant seeks the following reliefs:

- 25 (a) An order doth issue for staying the execution of the orders made in Miscellaneous Application No. 404 of 2024 and Civil Suit No. 86 of 2024 pending the determination and final disposal of Miscellaneous Application No. 1366 of 2024.

- (b) The costs of and incidental to this application be provided for.
- 30 Briefly the Applicant contends that:
- 1. This court delivered a ruling in HCMA 404 of 2024 [LK Enterprises Limited & 2 Ors v ABSA Bank Uganda Limited] against the Applicant in favour of the Respondent having entered default judgment in HCCS 86 of 2024 [ABSA Bank Uganda Limited v LK Enterprises & 2 Ors]
- 35 2. The Applicant was never a party to the said application which was commenced by LK Enterprises Limited and Kamukago Kenneth Kaari, the 1st and 2nd Applicants therein

- 5 for the unconditional leave to appeal and defend HCCS 86 of 2024 and had not authorized the said parties to commence an application on her behalf.
- 3. Upon being served with summons in HCCS 86 of 2024, the Applicant instructed her lawyers M/s ABN Advocates to file an application to file an application for leave to appear and defend in the said matter.
- 10 4. The Applicant's then lawyers did not commence the said application and accordingly, the Applicant engaged new lawyers to wit DN Makubuya Advoctes to institute the said application for leave to appear and defend out of time which was instituted and is pending as HCMA 1111 of 2024 [Kalanzi Michelle Lucy v ABSA Bank Limited] and which was filed on 13 June 2024
- 15 5. Before the said application could be heard and determined, the court rendered the ruling in HCMA 404 of 2024 against the Applicant.
- 6. Dissatisfied with the ruling and orders in HCMA 404 of 2024, the Applicant filed HCMA 1366 of 2024 which is pending hearing and determination before this court.
- 7. There is sufficient cause for stay of execution of the orders in HCMA 404 of 2024 and 20 HCCS 86 of 2024 pending the hearing and determination of HCMA 1366 of 2024. If execution is carried out, it will render the application for review in HCMA 404 of 2024 and HCCS 86 of 2024 nugatory.

The Respondent opposed this application contending that:

- 25 1. The Application is grossly incompetent as the orders made in HCMA 404 of 2024 are negative orders which are incapable of being stayed.
- 2. There is no evidence that instructions were given to ABN advocates or evidence of ABN advocates declining or communicating to the Applicant that they will not or have not represented the Applicant.

- 30 3. The ruling in HCMA 1366 of 2024 discloses no mistake or manifest error apparent on the face of the record or new and important evidence and accordingly, the application is incompetent with no chances no success.

In Rejoinder the Applicant contended that:

35 1. The present application is not misconceived and is good at law.

- 5 2. The Respondent commenced execution in HCCS 86 of 2024 by filing a Notice to Show Cause and an application for execution by way of arrest vide EMA No. 613 of 2024.
- 3. The orders which the Respondent seeks to execute are capable of being stayed.
- 4. The contentions regarding whether M/s ABN advocates were instructed or not were instructed will arise (and be resolved) in HCMA 1111 of 2024 which is pending before

10 this court.

Representation

The Applicant was represented by M/s D. K Makubuya Advocates while the Respondent was represented by M/s ENS Africa Advocates.

Evidence and Submissions

The Applicant led evidence by way of an affidavit in support and an affidavit in rejoinder both deposed by herself. The Respondent led evidence by way of an affidavit in reply deposed by Erick Kibeedi Magoola, the Respondent's Business Support Manager.

Both sides made submissions in support of their respective cases which the court has considered in arriving at its decision.

Decision:

25 The starting point in any application for stay of execution is whether the impugned orders are positive or not negative orders.

In **Kare Distributors Ltd & Anor v NCBA Bank Uganda Limited CACA 100/2023**, the Court of Appeal held that once an order from which an application for stay of execution arises 30 from is negative, that brings the competence of such application into question. The Court of Appeal further held;

"Given that the order, which is sought to be stayed in the present application, is negative and therefore not executable, I equally find that this application is incompetent. I would therefore uphold the preliminary point of law raised by

35 the Respondent."

5 In **Charles Ssemwanga v Nazziwa Aisha & Ors CACA 20/2022**, also cited by Counsel for the Respondent, the court held thus

"What the Applicant has before this court for stay of execution is a negative order of dismissal of the Plaintiffs suit in the chief Magistrates Court. There was no order capable of execution which can be stayed. An application for stay of

- 10 execution presupposes that there is an order capable of execution which may be stayed. In this application such a notion is erroneous because there is no order that is capable of being executed as the order setting aside the decision of the chief Magistrate resulted in a dismissal of the Applicant's suit. The situation is that there is no suit in existence. "
- 15 An order dismissing an application is a negative order because it does not require the parties to do anything. See **Exclusive Estate Limited vs. Kenya Posts and Telecommunications Corporation and Another [2005] 1 EA 53 (CA), Parliamentary Commission v Francis Byamugisha & Anor HCMA 219/2016**,
- 20 In the Kenyan Case of **Raymond M. Omboga v Austine Pyan Maranga Kisii HCCA No 15 of 2010**, the court held thus:

"The order dismissing the application is in the nature of a negative order and is incapable of execution save, perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour of the Respondent which is capable of execution, there can

- 25 be no stay of execution of such an order... The Applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing that the Applicant has lost. The refusal simply means that the Applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory do not arise..."
- 30 See also **Jennifer Akinyi Osodo v Boniface Okumu Osodo & 3 others [2021] eKLR**

Where orders are made dismissing a suit, the same are negative orders which cannot be stayed. However, if the orders dismissing a suit contain a condemnation as to costs, the order condemning a party to costs is itself a positive order which may be stayed by the court. See

5 Aya Investments Limited v International Development Corporation Of South Africa HCMA 3063/2023

However, if the effect of negative orders in a decree or ruling is that they affect a party's appeal against such a decision or their pursuit of justice in that regard, a party may make an

10 application invoking the inherent powers of the court and seek the relevant reliefs which, if court is convinced would be in the interests of justice, it will award. See **Nelson Lukozi v Meera Investments Limited & Ors HCMA 1970/2023**

In the present case, the Applicant's application seeks an order staying the enforcement of 15 orders in HCMA 404 of 2024 and HCCS 86 of 2024. A review of the orders in HCMA 404 of 2024 shows that the court made the following orders;

- (a) This application is dismissed with costs to the Respondent.
- (b) Judgment is entered in the main suit for the entire sums claimed and costs against the Respondents jointly and severally."
- 20

It follows that in HCMA 404 of 2024, only the order of dismissal is a negative order. The rest of the orders are positive orders. Additionally, the decree in the main suit contains positive orders compelling the payment of monies claimed. Accordingly, with the exception of the application for dismissal, the rest of the orders can be stayed.

Additionally, the fact that an order is a negative order and cannot be stayed does not mean that the enforcement of rights that are a consequence of the order cannot itself be enjoined. A suit may be dismissed entitling a successful party to assert rights. In the event of parallel proceedings or an appeal, a party may properly make an application to prevent the enforcement of rights as a result of the negative order/decreed pending the appeal against such negative order or the determination of parallel proceedings. See **Nelson Lukozi v**

Meera Investments Limited & Ors HCMA 1970/2023

Stay of Execution

35 Rule 6(2)(b) of the Court of Appeal rules provides thus:

5 "in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 76 of these Rules, order a stay of execution, an injunction, or a stay of proceedings on such terms as the court may think just."

Rule 42(1) of the Court of Appeal Rules provides thus:

10 "Whenever an application may be made either in the court or in the High Court, it shall be made first in the High Court."

Order 22 Rule 26 of the CPR provides thus:

"Where a suit is pending in any court against the holder of a decree of the court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided."

It should be noted that **Order 22 Rule 26** applies to a wide range of suits, and not just 20 appeals. Where there is litigation between the parties in the same court or different courts (be they higher or lower) between the same parties, **Order 22 Rule 26** may be relied on to stay execution pending the determination of those matters.

I note that there isn't an explicit provision of the CPR that provides for stay of execution from 25 decisions of the High Court. However, Rule 42 of the Court of Appeal Rules requires the application for stay to be made first in the High Court.

There has been a steady stream of authorities to the effect that the considerations for stay of execution pending an appeal to the High Court are the same as those in Order 43 Rule 4. See

- 30 **Lawrence Musitwa v Eunice Busingye SCCA 18/1990, Tropical Commodities Supplies Ltd and Others versus International Credit Bank Ltd (In Liquidation) HCMA 379 of 2003, Transtrack Ltd v Damco Logistics (U) Ltd HCMA 608 Of 2012, DFCU Bank Ltd v Ann Persis Nakate Lussejjere HCMA 78 of 2003.**
- 35 In other instances, courts have considered applications for stay under the provisions of Order 22 Rule 26. See **UMEME v Irene Nankabirwa HCMA 154/2021, Peter Mulira v Mitchell**

5 Cotts HCMA 715 of 2009, Rebecca Nabunya Iga v Senteza Kabali Bunya HCMA 948 of 2020

Order 43 Rule 4 is confined to appeals to stay of execution in respect of appeals to the High Court. If the rules committee had wanted to apply it to other matters in which the High Court

- 10 is empowered to grant stay, it would have said so. In my view, the proper provision of law, albeit being a broad provision, is **Order 22 Rule 26**. The decision in *Lawrence Musitwa* (supra) is correct in as far as it finds that the considerations are similar, since a reading of Order 43 Rule 4 and Order 22 Rule 26 show significant similarity of Considerations.
- 15 Having established that Order 22 Rule 26 is the appropriate law, we must identify the considerations for grant of this application. A reading of the provisions establishes that the considerations are
 - (a) Is the pendency of a suit by a judgment creditor/losing party against a holder of a decree.
- 20 (b) Existence of a threat of execution
- (c) Sufficient Ground for grant of the relief sought

See Beeline Travel Care Limited & Anor v Finance Trust Bank HCMA 296/2023, Uganda Debt Network v Edward Ronald Sekyewa HCMA 1657/2023.

25 Pendency of A Suit

It is common ground that the Applicant has filed HCMA 1111/2024 for leave to file an application for leave to appear and defend out of time which is pending before this court. Additionally, the Application commenced HCMA 1366/2024 seeking review of the decision in HCMA 404/2024 on account that judgment was entered against the Applicant in her

30 absence and while she had a pending application for leave to file an application for leave to appear and defend out of time vide HCMA 1111/2024.

Section 2(x) of the Civil Procedure Act defines a "suit" to include applications of this nature, including the present one. See **Rutagarama Bosco v Meera Investments Limited HCMA**

35 2128/2023, Sinba (K) Ltd & Ors v UBC (2015) UGSC 21.

5 Accordingly, I find that the Applicant has pending suits within the meaning of Order 22 Rule 26 and this requirement is met.

Threat of Execution

Imminent threat means a condition that is reasonably certain to place the applicant's 10 interests in direct peril and is immediate and impending and not merely remote, uncertain, or contingent. An order of stay will issue only if there is actual or presently threatened execution. There must be a direct and immediate danger of execution of the decree. There should be unequivocal evidence showing that unconditional steps as to convey a gravity of purpose and imminent prospect of execution of the decree, have been taken by the 15 respondent. Steps that demonstrate a serious expression of intent include; extracting the

- decree, presenting and having a bill of costs taxed, applying for issuance of a warrant of execution and issuing a notice to show cause why execution should not issue. See **Formula Feeds Limited & Ors v KCB Bank HCMA 1647/2022, Hon. Hajji Mohammed Kato v Justus Kyabahwa HCMA 875/2023**
- 20

It is not in dispute that the Respondent has commenced an application for execution by way of arrest vide EMA No. 613 of 2024. Accordingly, this requirement is met.

Sufficient Ground

- 25 To demonstrate sufficient ground for grant of a stay, a party must demonstrate that: (a) The suit has a likelihood of success
- (b) The Applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted
- (c) If 1 and 2 above has not been established, Court must consider where the balance of
- 30 convenience lies

- (d) that the Applicant must also establish that the application was instituted without delay

Likelihood of Success

In my view, for a suit to satisfy this ground, it should reveal at least one matter warranting 35 adjudication by the court. Essentially, a triable issue is a material proposition of law or fact

5 between parties that is capable of, and warrants determination by court. See **Maria Odido v Barclays Bank HCMA 645/2008**, **Children of Africa v Sarick Construction Limited HCMA No. 134/2016**, **Donati Kananura v Tribet Rujugiro HCMA 1782/2022**

The Applicant's suit seeks review of the decision of the court rendering judgment against her 10 when (a) she was not represented and (b) when HCMA 1111 of 2024 in which she seeks leave to file an application for leave to appear and defend out of time was still pending.

In my view, a review of the pleadings on their face in HCMA 1366/2024 does not reveal that the said application is absolutely unmerited or that the contentions therein are completely

15 implausible. I find that HCMA 1366/2024 raises triable issues with a chance of success and accordingly, this application is merited.

Irreparable Harm/Rendering of The Appeal Nugatory

In the case of Proline Soccer Academy v Commissioner Land Registration HCMA 494 of

20 2018, the court defined irreparable damage in the following way;

"By irreparable injury it does not mean that there must not be physical possibility of repairing the injury, but it means that the injury or damage must be substantial or material one, that one cannot be adequately atoned for by way of damages."

- 25 It is the position of the court, expressed in numerous precedents, that where the orders sought to be executed are for the payment of a sum of money, stay of execution should typically be denied because money can always be refunded, save (a) where it can be demonstrated that there is a real reason to believe that the same may not be refunded or (b) where it is in the interests of justice that an order be made otherwise or (c) it is an application
- 30 for interim stay.

See **Mabu Commodities Limited v Sophie Nakitende & Ors HCMA 530/202**, **UMEME Limited v Jane Nankabirwa HCMC 154/2021**, **China Henan International Cooperation Group Company Limited v Justus Kyabahwa CACA 101/2021**

5 The Applicant did not demonstrate or lead any evidence to show that the money would not be refunded. The Respondent is a financial institution and the court takes judicial notice of its reputation in the market as one of the leading financial services institutions.

Additionally, I have not seen any evidence of a failure to by any of the Respondents in the past 10 to pay costs decreed against them or to refund costs recovered where an appeal against the decree ordering costs recovered has succeeded.

The mere payment of money pursuant to a decree or judgment does not, in and of itself, render a pending suit or appeal nugatory. In legal proceedings, the obligation to pay money 15 is merely a consequence of a judicial determination on the merits—whether through a fully

contested trial, a summary determination, or a default judgment. The act of making payment does not affect the substantive issues in dispute, nor does it interfere with the appellate court's ability to review the merits of the case. This is because the payment of money does not alter the evidence previously adduced, the legal principles applied, or the materials 20 under consideration by the court in deciding the case.

Courts generally decline to grant applications for a stay of execution in money judgments because financial awards are, by their nature, reversible. If an appeal or review is successful, the law provides mechanisms for restitution, allowing the prevailing appellant to recover 25 any sums paid. Unlike orders affecting proprietary rights, liberty, or other irreversible interests, monetary awards do not create a legal impossibility for the appellate process to rectify. Consequently, the enforcement of a money judgment, by itself, does not render subsequent proceedings futile, nor does it deprive a litigant of meaningful redress should the judgment be overturned.

As a result, the law generally assumes that compliance with orders for the payment of money does not render related proceedings—such as appeals or concurrent proceedings in respect of which a stay would be sought—nugatory.

- 5 However, this court is cognizant of the fact that the thrust of the Applicant's case is that the Applicant was not heard when judgment was rendered against her and that there was a pending application in respect of which she sought leave to apply for leave to appear and defend in respect of the impugned suit. As to whether these contentions are true is a question for HCMA 1111/2024 and HCMA 1366 of 2024. This makes this application slightly different
- 10 to the other precedents as those applications have dealt with parties who do had litigated interparties in the proceedings resulting in the orders sought to be stayed.

Balance of Convenience

In **Moses Kasozi v Muhammad Batte & Ors HCCA 24/2020**, the court defined "balance of 15 convenience" thus;

"balance of convenience literally means that if the risk of doing an injustice is going to make the Applicants suffer then probably the balance of convenience is favourable to him/her and the court would most likely be inclined to grant to him/her the application for a temporary injunction."

20 See Also **Proline Soccer Academy v Commissioner Land Registration HCMA 494 of 2018**, **GAPCO Uganda Ltd v Kaweesa & Anor HCMA 259 of 2013**, **Vision Empire Ltd v Uganda Communications Commission HCMA 1141 of 2020**.

I recognize that both sides will experience some hardship whichever way this decision goes. 25 However, the court must consider who is likely to suffer the most harm.

In **Stanbic Bank Limited v Kesacon Services Limited HCMA 724/2023** I dealt with some of the policy considerations relating to how this Court considers applications/actions involving money or its recovery

- 30 "The role of the Commercial Court in my view is to ensure that there is expeditious disposal of suits to avoid thrombosis in commerce occasioned by a backlog of an unresolved commercial claims or disputes. This is more so where the claims are for money. It must be recalled that money is an asset and a lengthy period of its retention means credit will become more expensive as lenders are precluded from putting their monies to
 - 35 use and will shift to prefer institutional borrowers that are unlikely to default as opposed
- 5 to other borrowers. This has the effect of raising the cost of money and making it difficult, if not impossible, especially for domestic borrowers to access credit."

See also Ropani International Limited & Ors v DFCU Bank Limited HCMA 1919/2023, **Luwa Luwa Investments v Uganda Revenue Authority HCMA 1336/2022**

10 In an application of this nature, Court has to balance the right of one party to preserve the purpose of parallel proceedings so that the same are not rendered nugatory and the right of another party to exercise rights conferred/affirmed or pronounced in a judgment, in this case recovery of money due and owing. In doing so, the court should consider which party is likely to suffer the most amount of inconvenience in the circumstances of the case and whether 15 there are any mitigants.

As a general rule, preventing recovery of sums decreed as due and owing will typically prejudice the party entitled to payment more than the party who seeks to delay such payment. As noted in the decisions referenced above, the role of the commercial court is to 20 ensure expeditious disposal of commercial disputes, and this includes expeditious realisation of the fruits of the determination of such disputes. Left otherwise, there is a real chance of economic peril as money is tied down in long winding litigation. **Luwa Luwa Investments v Uganda Revenue Authority HCMA 1336/2022**, **Stanbic Bank Limited v Kesacon Services Limited HCMA 724/2023**

The Court is, however, empowered to achieve a balancing act and mitigate any harm/ prejudice that might be occasioned to a party that is kept out of the proceedings of its money through a number of mechanisms, key of which is requiring a party to provide security for the payment of the decreed sums should the proceedings in respect of which a stay is sought

30 be determined against them.

Order 22 Rule 26 of the CPR requires the provision for security as a precondition for grant of stay of execution. The security need not be paid before the application is filed or determined, but the quantum of security is often determined in the ruling and must be paid in the

35 timeframe imposed therein. See **Augustine Kasozi v Arvind Patel HCMA 503/2021, Luwa**

5 Luwa Investments v Uganda Revenue Authority HCMA1336/2022, Uganda Debt Network v Edward Ronald Sekyewa HCMA 1657/2023.

I find that, considering that the Applicant contends that there has been an affront of her right to be heard, and considering that staying enforcement of the impugned orders would have

10 the effect of keeping the Respondent out of its money in so far as the mode of payment would to seek relief against the applicant, the balancing act of security would be the avenue at limiting any harm in the present proceedings.

Conclusion

- 15 Accordingly, this court allows the Applicant's application with the following orders:
- (a) An order doth issue for staying the execution of the orders made in Miscellaneous Application No. 404 of 2024 and Civil Suit No. 86 of 2024 **ONLY** as against the Applicant pending the determination and final disposal of Miscellaneous Application No. 1366 of 2024. For the avoidance of doubt, the Respondent may proceed to enforce 20 the orders in Miscellaneous Application No. 404 of 2024 and Civil Suit No. 86 of 2024 against the other parties therein.
- (b) The Applicant shall provide security for the payment of the sums due to the Respondent by way of providing any of the following securities:
 - i. A payment of cash into an account designated by the Registrar of this Court 25 equivalent to one-third of the sums due and owing to the Respondent as at the date of this ruling.
 - ii. A provision of an unconditional, irrevocable, on-demand guarantee or bond in favour of the Registrar of this Court for a sum equivalent to one-third of the sums due and owing to the Respondent as at the date of this ruling.
- 30 (c) The Applicant shall provide the security in (b) above **within thirty (30) days from the date of this ruling** falling which the conditional stay of execution issued herein shall immediately lapse.

- 5 I so order.

10 Ocaya Thomas O. R Judge 13th March 2025

15

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugcommc/2025/36/eng@2025-03-13>

Prepared on 13 October 2026 · Esheria