

UGANDA / JUDGMENT

Lively Minds Uganda v Kanyonga
(Labour Dispute Appeal No. 89 of 2018)
[2019] UGIC 17 (22 February 2019)
[2019] UGIC 17

COURT

Industrial Court of Uganda

CASE / FILE NUMBER

Labour Dispute Appeal No. 89 of 2018

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THE REPUBLIC OF UGANDA

THE INDUSTRIAL COURT HOLDEN AT KAMPALA

LABOUR DISPUTE APPEAL NO.89 OF 2018

(ARISING OUT OF LABOUR REFERENCE DISPUTE NO. 16/2018)

LIVELY MINDS UGANDA..... APPELLANT

VERSUS

KANYONGA SARAH..... RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Adrine Namara
2. Ms. Susan Nabirye
3. Mr. Micheal Matovu

RULING

This ruling arises from the above application. The application is by notice of motion supported by affidavit. The respondent filed an affidavit in reply in opposition to the affidavit supporting the application.

The gist of the application is to stay execution of the orders of this court as set out in an Award delivered on 13/04/2018. This court declared the dismissal of the respondent unlawful and awarded her 45,000,000/= in general damages, 5,000,000/= in aggravated damages, 9,900,000/= in severance allowance as well as interest.

The grounds of the application as set out in the notice of motion are:

1. That a notice of Appeal has been lodged in the industrial court by the applicant and served on the respondent.
2. That the applicant is aggrieved by the industrial court's decision and is pursuing an appeal before this Honourable court.
3. That the applicant is in fear of being immediately executed? Against by the respondent.
4. That granting this application will not cause miscarriage of justice on the parties involved.
5. That it is just and equitable that this application be granted.

We have carefully perused the notice of motion together with both the affidavits in support and in opposition. We have also listened carefully to the submissions of both counsel. It was submitted on behalf of the applicant that if the application was not granted, the appeal would be rendered nugatory.

Counsel relied on the authorities of **Dr. Ahamed Kisule Vs Greenland Bank, SCCA 07/2017 and Gashumba Maniraguhe Vs Sam Nkundiye SCCA 24/2015**. He argued that the appeal had a strong likelihood of success since this court “**grossly misapplied and misconstrued the facts thus awarding grossly high damages**”.

In reply counsel for the respondent argued that there was need for security for satisfaction of the decree since all directors of the applicant company were foreigners and there was a possibility that the applicant could close shop and leave Uganda. He relied on the authority of **Serafaco consultants ltd Vs Euro Consult & Anor. C. O. A Civil Appeal 16/2007 and M/A 047/2016 – Mpangire Vs Mugabwa**.

In the submission of the applicant we get the impression that the appeal against the decision of the court is not on the substance as to whether or not the applicant unlawfully dismissed the respondent but on whether or not the damages awarded to the respondent were not excessive.

Award of general or aggravated damages is always a discretion of the court. In the opinion of this court the damages awarded were deserving and sufficient to restore the respondent in the position she would have been had she not been unlawfully terminated. Now that this unlawful termination is not contested in the appeal which is a subject of this application, the question is ; **how justifiable is it to stay execution of the award of damages?**

In the submission of counsel for the applicant the appeal is likely to succeed because according to him this court grossly misapplied the facts. We have not been guided on how the court misapplied and misconstrued the facts as it assessed the damages it awarded. In any case

whether or not there is likely to be a success of the appeal may not be determine by the court against whose decision is appealable. This is because ordinarily the court would have considered in the best genuine way possible all the law and evidence available and in its opinion would have reached a correct decision unless there was an inadvertent omission that could be pointed out by the party alleging such possibility of the success of the appeal.

Consequently we do not think that a likelihood of success of the appeal would be a serious consideration in an application of this nature.

Looking at the grounds as a whole in the notice of motion, we hardly find any evidence in the affidavit in support of the motion to back up the said grounds. The grounds in the motion seem detached from the evidence in the affidavit in support of the same.

The affidavit in reply to the effect that the shareholders and directors of the applicant are foreigners and that in the event that they closed shop and went out of the country before execution of the decree would not be possible was not challenged by any affidavit in rejoinder. This is the reason that the respondent prayed this court to allow the application only after the applicant has deposited security for performance of the decree.

It is our position that the mere lodging of a notice of appeal and a mere pleading of likely substantial loss that may occur without exemplification of how such loss will occur by failure to grant the application, will not be sufficient ground or reason for the court to exercise its discretion to stay execution especially in a matter in which it is alleged that the applicant may close shop and leave the country before execution. The authorities cited by counsel for the applicant were not availed to court and we could therefore not rely on them.

It is therefore only fair that in the circumstances of this case, if the applicants believe that they are highly likely to succeed in the appeal, they deposit at least the decretal sum of 59,999,000/= in court as a pre-condition of stay of the execution. So it is ordered. No order as to costs is made.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

Panelists

1. Mr. AdrineNamara
2. Ms. Susan Nabirye
3. Mr. Micheal Matovu

Dated:22/02/2019

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Prepared on 13 October 2026 · Esheria