

**New Uganda Securiko v Vision Petroleum
(U) Ltd (Miscellaneous Application No. 1084
of 2024) [2025] UGCommC 214 (14 July 2025)**
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- 20 *High Court Civil Suit No. 544/2021 Vision Petroleum (U) Ltd vs New Uganda Securiko* pending hearing and determination of Civil Appeal No. 1031/2023; and that costs of the application be provided for.
- The brief background to this application is that the respondent/plaintiff, sued the 25 applicant/defendant for breach of contract and vicarious liability. The respondent/plaintiff had contracted the applicant/defendant to provide private security guard services at its filling station at Lutete on Gayaza road. The applicant/defendant deployed Wahakunyu Joram and Malikii Ain Abdu to guard the station on the night of 23rd April 2021; and it was on that night that there was a break-in at the premises as a result of which there was extensive damage to the premises and 30 UGX 65,000,000 was also stolen. The respondent/

plaintiff sought a declaration that the applicant/defendant breached the contract of service with the respondent/plaintiff to provide security guard services and was vicariously liable for the acts of its servants and/or agents; special damages of UGX 71,000,000/=; general damages; interest at 24% per annum from the date of filing the suit till payment in full; costs of the suit and other reliefs deemed fit by court. 35 The plaintiff's was successful and court made various declarations and orders in their favour

- 5 including: an award of special of damages of UGX 70,790,000/=; general damages of UGX 30,000,000/=; interest at 10% on the general damages from the date of judgment till payment in full and costs of the suit. The applicant/defendant, being dissatisfied with the decision of court seeks a stay of execution of the orders in *Civil Suit 544/2021*, pending the determination of their appeal.
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Representation at the hearing

The applicant was represented by Mr. Michael Owinyi, who held brief for Mr. Ntwatwa Jackson of M/s Kaganzi & Co. Advocates while the respondent was represented by Mr. Andrew Kahuma of M/s Kahuma & Co. Advocates. The parties were granted leave to file written submissions.

Issue for determination

The main issue for determination is whether this application raises sufficient grounds for an order of stay of execution to be granted? If it does, whether security for costs should be paid by the applicant; and whether the parties have remedies available to them?

Submissions

This application came up before this court on 11th June 2025 and counsel for both parties were given schedules to file written submissions. The applicant was required to file their written submissions on 20th June 2025; the respondent's submissions in reply were to be filed on 27 th June 2025; and the applicant's rejoinder, if any, was to be filed on 4 th 25 July 2025. Despite the issuance of the schedules for the filing of written submissions in the presence of both counsels, the counsel for the applicant did not comply with the directives issued by court.

Determination

30 The applicant herein relied on provisions of Order 43 rule 4 and 5 of the Civil Procedure Rules SI 71-1, as amended, to apply for stay of execution. Order 43 rule 4 (3) of the Civil Procedure 5 Rules, in particular provides for the conditions that ought to be satisfied before a stay of execution is granted and they include that:

1. substantial loss may result to the party applying for stay of execution unless the order is 15 made;

- 2. the application has been made without unreasonable delay;
- 10 3. that security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

These considerations were cited in the *case of Hon. Theodore Ssekikubo and Ors vs the Attorney General and Ors Constitutional Application No. 03 of 2014* and expanded on by the Court of 15 Appeal in *Kyambogo University vs Prof. Isaiah Omolo Ndiege, Civil Application No. 341 of 2013* to include the following grounds:

1. there is serious or imminent threat of execution of the decree or order and if the 25 application is not granted, the appeal would be rendered nugatory;
2. the appeal is not frivolous and has a likelihood of success;
- 20 3. refusal to grant the stay would inflict more hardship than it would avoid.

The rationale for a grant of stay of execution pending an appeal was laid out in the case of *Lawrence Musiitwa vs Itobu Margaret HCMA No. 0160/2020* where court held that an application for stay of execution pending an appeal aims at preserving the subject matter so that 25 the right of the appellant who is exercising his undoubted rights of appeal are safeguarded and the appeal, if successful is not rendered nugatory. The grant of an order of stay of execution is, therefore, dependent on whether the applicant has raised sufficient grounds to warrant the grant.

The applicant herein, however, filed this application for stay of execution in Civil *Suit No. 544/2021* out of time. As already mentioned, the parties herein appeared before this court on 11th 30 June 2025, wherein the parties agreed to proceed by way of written submissions and schedules for the filing of the same were issued. The directive to file written submissions afforded the applicant an opportunity to demonstrate that they satisfy the grounds for a grant of stay of execution, through the filing of written submissions in support of their application.

- 5 This court issued clear timelines for the filing of written submissions but they were not complied with by the applicant. The applicant chose to file their written submissions a week after the date issued by court. The applicant was directed by this court to file their application on 20th June 2025 but instead filed the same on 27th June 2025 without seeking leave of court.
- 10 In the case of *Susan Theophil Mbilinyi & Mrs. Susan Mbiliyi v. Ivanune Jeru Mbilinyi, Miscellaneous Civil Revision No. 03/2023*, court observed that written submission are a legal requirement for one to file before the Court after an order has been given. Court also stated that the filing of written submissions is an alternative to oral submissions which would have been made on the date set by the court for hearing of a matter; and it is not a matter of choice to file or 15 not file because failure to file submissions as scheduled by the court is like refusing to speak or failure to make oral submissions before a judicial officer when the matter is coming for hearing. Court further observed that written submission are a way of prosecuting one's case.

Order 51 rule 6 of the Civil Procedure Rules SI 71-1, as amended, recognises that court, upon 20 application by a party, has the power to enlarge time where a limited time has been fixed, upon such terms as the justice of the case may require. In this instance, however, the applicant did not advance any reason for the late-filing of their written submissions, nor did they seek an extension of time to file the same.

- 25 Order 17 rule 4 of the Civil Procedure Rules SI 71-1 as amended, provides that where there is failure by a party to perform any other act necessary to further the progress of the suit, including the filing of written submissions, for which time has been allowed, the court can proceed without the input of the defaulting party. In addition, under Direction 7 of the Constitution Commercial Court (Practice) Directions, 1996, it is provided that:
- 30 "failure by a party to comply in a timely manner with any order made by the Commercial Judge in a commercial action shall entitle the Judge...to refuse to extend any period of compliance with an order of the Court; or to dismiss the action or counter-claim, in whole or in part; or to award costs –as the Judge thinks fit."*

5 In the case of *DFCU Bank vs Supply Masters Uganda Limited & Another Civil Appeal No. 1185/2021* at page 3, Justice Stephen Mubiru stated that while a step taken out of time is voidable, it may be validated by extension of time. He further noted that time may be enlarged by validation of a belated step taken in the proceedings where it does not result in abridging, enlarging or modifying any substantive right. The applicant, in this instance, did not advance any

10 reason for the late-filing of their written submissions, nor did they seek an extension of time to file the same. It should be noted that it was the respondent that ensured that this application was fixed for hearing having written letters to court seeking hearing dates on 29th November 2024 and 9th May 2025, for the same. It would appear that the applicant has no or limited interest in prosecuting this application.

In consideration of the foregoing, I find that the applicant's late filing of their written submissions is equivalent to failure to prosecute their application. This court is, therefore, unable to consider the applicant's application for a grant of an order of stay of execution of the orders in *Civil Suit No. 0544/2021* since the defaulting party, the applicant herein, failed to comply with

20 court's directive. In the premises, and in accordance with Direction 7 of the Constitution Commercial Court (Practice) Directions, 1996, this application is, accordingly, dismissed with costs to the respondent.

I so order.

Dr. Ginamia Melody Ngwatu Ag. Judge 14th July 2025

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Prepared on 13 October 2026 · Esheria