

UGANDA / JUDGMENT

**Parambot Distillers Limited and
Another v Standard Chartered Bank
(U) Limited (Civil Application No. 65
of 2025) [2025] UGCA 118 (5 May 2025)
[2025] UGCA 118**

COURT

Court of Appeal of Uganda

BEFORE

Gashirabake, JA

CASE / FILE NUMBER

Civil Application No. 65 of 2025

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

Civil Application No. 65 of 2025

[Arising from Civil Appeal No. 59 of 2025] [Arising from HCCS No. 92a of 2025]

I. PARAMBOT DISTILLERS LIMITED

2. TURYATUNGA MOLLY ::::::::::::::]:::::::::::::: APPLICANTS 3. DAVID OCHIENG

VERSUS

STANDARD CHARTER. ED BANK (U) LIMITED ::::::::::::::: RESPONDENT

CHRISTOPHER GASHIRABAKE, JA

(Single Justice)

RULING OF COURT

tll This application was brought under Rule 2(2),6(2)(b),42(2),43 and aa(l) of the Judicature (Court of Appeal Rules) Directions seeking that;

- 1. An order for stay of execution doth issue restraining the Respondents, its servants and or agents from executing the Judgment and orders of the High Court delivered on 2nd May 2024 in HCCS No. 924 of 2020.
- 2. That the costs of this application be provided for.

t2) The grounds upon which this application is premised are stated in the Notice of Motion and the affidavit in support of the application deposed by MOLLY

TURYATLTNGA on the 10'h of February 2025 and an affidavit in rejoinder sworn on the 22nd of April 2025.

The grounds are briefly that;

- 1. The Respondent herein instituted a suit vide HCCS No. 924 of 2020 at the High Court (Commercial Division) against the Applicants as guarantors of a facility issued to Parambot Breweries Ltd wherein the Applicants were ordered and decreed to pay Uganda shillings 7,100,000,000/= (Ugandan Shillings Seven Billion One Hundred Million) being the guaranteed amount on the guarantee deed.
- 2. Being dissatisfied with the said judgment and orders therein, the Applicants filed a notice of appeal and a letter requesting for certified record of proceedings through the lawyers IWs Alliance Advocates dated the 6th May, 2024 which was duly served on the Respondent and court.
- 3. The Applicants proceeded and filed a Memorandum of Appeal in Civil Appeal No. 59 of 2025 and the grounds of appeal stated therein are not frivolous and vexatious but raise pertinent issues that need adjudication on appeal.
- 4. There is a serious threat of execution and allowing execution of the Judgment to proceed will render the appeal nugatory and will not safeguard the right of appeal and yet the Applicants appeal has a high likelihood of success.
- 5. The Trial Judge in her Judgment held that there was a default by the Principal Debtor on the basis of indebtedness and yet this alleged indebtedness was not the default envisaged in the facility/offer letter guaranteed.
- 6. That the above notwithstanding, the Honourable Judge was aware that whether there was a default or not was a matter which is subjudice and currently the subject of hearing before Justice Stephen Mubiru in HCCS No. 443 of 2016, Parambot Breweries Ltd (In Receivership) Vs Standard Chartered Bank (U) Ltd and Another.
- 7. The Applicants' appeal has serious questions to raise on appeal with a high likelihood of success, for which execution should not ensure to render the same nugatory.

- 8. The Applicants would suffer irreparable loss and damage if execution ensues in that it is a valuable loss for the Applicants to pay the said sums and yet the Principle Debtor has not as yet been adjudged to be indebted to the Respondent, and no default has as yet occurred.

t3l The Respondents filed an affidavit in reply deponed by RICHARD SSUNA, on behalf of all the Respondents and sworn on the 28'h of March 2025 opposing the application on the grounds that;

- 1. This Application is incurably defective as it is prematurely before this Court of Appeal, is an abuse of court process and a preliminary objection shall be raised at the earliest time of hearing seeking for the dismissal of this application.
- 2. The current Application and the Affidavit in support thereof are fatally defective for lack of authorization from the 3'd Respondent.
- 3. Applicants had previously filed Miscellaneous Application No. 1081 of 2024 for stay of execution and Miscellaneous Application No. 1273 of 2024 for interim stay of execution in the High Court. The substantive application for stay of execution was not validated and it consequently abated, therefore leaving the interim application baseless.
- 4. The abatement of the Stay of execution application before the High Court was as a result of failure by the Applicants and their lawyers to follow up on the same from June 2024 until January 2025 when it abated.
- 5. The only remedy for the Applicants was to file a fresh application for stay of execution before the High Court.
- 6. The appeal lacks merit, is frivolous and vexatious, and has no real likelihood of success.
- 7. The Applicants are bound by their pleadings, in which they unequivocally admitted to signing guarantees in relation to the loans issued to the principal debtor and failed to present any substantive evidence to challenge the Respondent's proof that they had indeed guaranteed the loan facility.
- 8. The issue of the principal debtor's default and the liability of the guarantors was not sub judice. Civil Suit No. 65 of 2025 extensively addressed the liability of the Applicants as guarantors, while HCCS No. 43 of 2016, Parambot Breweries Ltd (In Receivership) v. Standard Chartered Bank (U) Ltd & Anor, dealt specifically with the issues of receivership and outstanding mortgage sums.
- 9. Execution of the judgment is a legal entitlement of the Respondent. Consequently, the Applicants cannot claim that execution would cause them irreparable loss. When they executed the loan agreements, they did so with full knowledge that failure to meet their repayment obligations would inevitably result in litigation and, upon default, the Respondent's right to enforce the judgment.

t4l 2025 The Applicants filed an affidavit in rejoinder sworn on the 22d of April by the 3'd Applicant, MOLLY TURATUNGA.

Representation

t5] At the hearing of this application, Mr. Joseph Kyazzs appeared for the Applicants while Mr. Bonny Koro appeared for the Respondents. Both parties filed written submissions which were adopted as their legal arguments with leave of court.

t6] The Respondent's counsel raised preliminary points of law in the written submissions, which I find pertinent to address first.

Preliminary points of law.

17l The Respondent's counsel submitted that this application is incompetent as the same has no valid affidavit in support. Counsel argued that Mr. Ochieng David, the 3'd Respondent, did not depone an affidavit in support of the application and yet the orders arising from the judgment in HCCS No. 924 of 2020 were against the guarantors both jointly and severally. Accordingly, judgment was entered against Mr. David Ochieng in his individual capacity as a guarantor and that his failure to file an affidavit in support meant that the application lacked evidence.

t8l The second preliminary objection is that the 2nd Respondent, Molly Turyatunga, had no written authorization to depone an affidavit on behalf of the 3'd Applicant. Counsel relied on the decision in *Kaingana V Dabo Boubou* (1986) HCB 59, for the proposition that a person cannot depone an affidavit in representative capacity unless they are an advocate, a holder of a power of attorney, or otherwise duly authorised. Counsel submitted that in this case the affidavit failed to comply with Order I Rule 12 of the Civil Procedure Rules which requires authority where a person is acting on behalf of another.

t9l The 3'd preliminary point of law is that this application is incompetently before this court as the same ought to have been first filed at the High Court under Rule 42(l) of the Judicature Court of Appeal Rules Directions SI 13-10. Counsel

argued that the Applicant's application at the lower court abated for failure to follow up with the court and the only remedy would be filing a fresh application before the High Court.

Applicants' reply to the preliminary points of law

[10] In response to the 1st and 2nd preliminary points of law, the Applicant's counsel submitted the affidavit deposed by the 2nd Applicant was in her own right and on behalf of the 1st and 3rd Applicants and argued that the Respondent conceded to the fact that HCCS No. 924 of 2020 was against both applicants jointly and severally. Under Section 133 of the Evidence Act, there is no number of witnesses required to prove a fact. Thus, where parties are sued jointly and severally, one of them who is well versed with the facts can testify.

[1 ^I] Counsel relied on Rule 44(l) of the Judicature Court of Appeal Rules Directions SI 13-10 and submitted that every formal application to the court shall be supported by one or more affidavits of the Applicant or of some other persons having knowledge of the facts. In the instant application, Molly Turyatunga was sued jointly and severally with the 1st and 3^d Applicants, she, together with the 3^d Applicant are directors of the 1st Applicant and well versed with the relevant facts in the instant application.

tl2l [n response to the 3^d preliminary objection, counsel submitted that Rule ⁴² of the Rules of this Court empowers this court with discretion to entertain such an application for stay of execution, where the High Court has declined to grant an order. In addition, this court may entertain such an application in special circumstances where the interest of justice dictates that this court hears the application, even where the applicant has not first filed in the High Court. Counsel

argued that prior to the filing of this application in this court, the Applicants filed Miscellaneous Application No. 1081 of 2024 for an order of stay of execution, but despite letters requesting for a hearing date, the court abated the same on grounds that the application had not been validated. Further, the application for interim stay of execution at the High Court was heard by the Deputy Registrar and is pending ruling, but the substantive application has since been abated by the court.

[3j Counsel argued that the order of abatement was in error, and give the nature of the orders sought to be executed and the threat, the Applicants were justified in bringing the instant application before this court.

Consideration of the preliminary points of law

ll4l Lack of an affidavit from the 3^d Respondent and lack of authorization from the 2nd Applicant

I have carefully studied the submissions of both parties, the authorities cited and the law applicable. This Court is called upon to determine the prelininary objections raised by the Respondent in response to the Application filed by the Applicant. The Respondent contends that certain procedural and substantive grounds preclude the Court from entertaining the Application at this stage. In accordance with established legal principles, the Court must first address these preliminary issues to ascertain whether it has the requisite jurisdiction and whether the Application is properly before it. This determination is made without prejudice to the substantive merits of the case, which will be considered only if the preliminary objections are overruled.

[15] It is an agreed fact that the 2^d and 3^d Applicants were sued jointly and severally in HCCS No. 924 of 2020. Rule 44(l) of the Rules of this Court provides as follows;

44. Supporting documents.

- (1) Every formal application to the court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts.
- [6] The 2nd Applicant did not only depone the affidavit as one conversant with the facts of the case, but also as an applicant to this court against whom the orders in HCCS No. 924 of 2020 were made. The fact that the 2'd Applicant was a parry to the suit in the High Court and is party to the appeal in this court and the application before me, makes her a person with material knowledge of the facts that can depone an affidavit in this case.
- [17] In *Miriam Kuteesa v. Edith Nantumbwe and Others*, Supreme Court Civil Application No. 20 of 2014, the Court held that a person who swears an affidavit must have personal knowledge of the facts to which they depose, except where the matters are based on information and belief, in which case the source of such information must be clearly disclosed.
- [8] Having found as I have above, the 1" and 2nd preliminary objections are overmrl.

^t19] Failure to prosecute the application in the Hieh Court

Rule 42 of the Rules of this court provides as follows;

42. Order of hearing applications.

- (1) Whenever an application may be made either in the court or in the High Court, it shall be made first in the High Court.
- (2) Norwithstanding subrule (I) of this rule, in any civil or criminal matter, the court may, on application or of its own motion, give leave to appeal and

aDDlication for that purpose has /irst been made to the Hish Court. (Emphasis added) grant a consequential extension of time for doing any act as the justice of the case requires, or entertain an application under rule 6(2)(b) of these Rules, in order to safesuard the risht of appeal. notwithstanding the fact that no

120l From the evidence on record, it appears the Applicant first filed the Application for stay of execution at the High Court vide Miscellaneous Application No. 1081 of 2024 for an order of stay of execution. The interim application was heard by the Deputy Registrar and is pending ruling to date. The substantive application was placed before the Judge for hearing but the same was abated on grounds that it had not been validated. I must note that validation of suits on ECCMIS is done by the Judicial officer in charge of the station and could not have been by any fault of the Applicants. The Applicants wrote a letter to the trial Judge marked annexure 'F' seeking for a hearing date, but the same was never acted upon.

[21] It is my considered view that the Applicants complied with Rule 42 of the Rules of this Court and filed their application in the High Court first but were frustrated by the court hence the application before me. This application is therefore properly before this court and thus, the 3^d preliminary objection is also overruled.

Consideration of the application

[22] I have carefully considered the affidavits, the submissions of both parties and the authorities provided by both counsel for which I am grateful.

[23] The jurisdiction of this court to grant a stay of execution stems from Rule ⁶ (2) (b) of the Rules of this Court which provides that;

6, Suspension of sentence and stay of execution.

(2) Subject to subrule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may-

(a) ...

(b) 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

[24] The Supreme Court in *Hon. Theodore Ssekikubo & Others vs. The Attorney General and Another*, Constitutional Application No 06 of 2013 clearly re-stated the principles as follows:

[25] In order for the Court to grant an application for a stay of execution;

"(1) The application must establish that the applicant has a likelihood of success; or a prima facie case of his right to appeal

(2) It must also be established that the Applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.

(3) If 1 and 2 above have not been established, the Court must consider where the balance of convenience lies.

(4) That the Applicant must also establish that the application was instituted without delay."

[26] The issue for determination by the Court is whether the Applicants have adduced sufficient reasons to justify the grant of a stay of execution.

1. Prima facie case with likelihood of success

[27] On the issue of likelihood of success, the applicant's counsel reproduced the grounds of appeal as laid out in the Memorandum of Appeal filed in this court in Civil Appeal No. 59 of 2025 in paragraph 4 of the affidavit in support of the application.

[28] The Applicant's counsel relied on the decision in *Akright Projects Ltd V H & L Exporter Ltd*; No. 1288 of 2023 for the proposition that an arguable appeal need not necessarily succeed, but must raise serious questions worth judicial interpretation. Counsel argued that in the instant case, there was misrepresentation thus vitiating the guarantee, improper demand under the guarantee, variation of facility terms without the guarantors' consent and condemnation of the Applicants without full innovation of the terms of guarantee.

[29] For the Respondent, counsel submitted that this application is an abuse of court process and only meant to buy time for the Applicants who have failed to meet their contractual obligations. Counsel argued that a stay of execution is an equitable remedy and one who comes to equity must come with clean hands.

[30] From my perusal of the applicant's affidavit in support of his application, paragraph 4, the applicant states the grounds which will be considered on appeal demonstrating that there are arguable grounds to be determined by this court in the appeal. The Applicant has laid out the grounds in the Memorandum of Appeal filed in this court in paragraph 4 of the affidavit in support and stated;

"4. That in line with paragraph 3 above, the Applicants proceeded and filed Civil Appeal No. 59 of 2025 and the Memorandum of Appeal therein with the following grounds;

- a) The Learned Trial Judge erred by finding that the Principal Debtor, Parambot Breweries Ltd was in default of the loan and thereby held that the appellants were liable as guarantors to pay the sum of US\$ 7,100,000,000/- (Shillings Seven Billion One Hundred, Million Only), arriving at a wrong decision occasioning a miscarriage of Justice.
- b) The Learned Trial Judge erred in law and fact by finding that the Appellants guaranteed the facility in issue and thereby arrived at a wrong decision occasioning a miscarriage of Justice.
- c) The Learned Trial Judge, in finding that the guarantees covered the facility, erred by invoking the guarantee before the agreed terms in the facility were exhausted.
- d) The Learned Trial Judge erred in law by finding that the Appellants were raising issues in cross-examination that were not pleaded, nor absolved them from their obligations and thereby arrived at a wrong conclusion occasioning a miscarriage of Justice.
- e) The Learned Trial Judge erred in law by failing to find that the guarantee deeds were void on account of misrepresentation and thereby arrived at a wrong decision occasioning a miscarriage of Justice.

f) The Learned Trial Judge erred by finding that the demand on the guarantee were issued to and received by the Appellants, and thereby arrived at a wrong decision occasioning a miscarriage of Justice.

- g) The Learned Trial Judge erred in law by failing to find that the terms of the facility guaranteed were varied and thereby discharging the guarantors by law and thereby arrived at a wrong decision occasioning a miscarriage of justice.
 - h) The Learned Trial Judge did not properly evaluate the evidence on record with regard to the sum claimed of Ugx 7.1 B and thereby arrived at a wrong conclusion occasioning a miscarriage of justice.
 - i) The learned Trial Judge erred in law by failing to find that the wasting away of the Principal debtor's properties under the watch of the Respondent discharged the Appellants as guarantors, and thereby arrived at a wrong decision occasioning a miscarriage of justice.
- [31] The Court of Appeal of Kenya described an arguable appeal in *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* [2013] e KLR in the following terms: "vii). An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous. viii). In considering an application brought under Rule 5 (2) (b) the court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal. "

[32] I find the decision in *Stanley Kang'ethe Kinyanjui v Tony Ketter & ⁵ Others* (supra) of persuasive value and would adopt the same reasoning. It is thus not necessary to pre-empt considerations of matters for the full bench in determining the appeal. In the instant case, the applicant ably laid out the questions for this court to determine in the appeal. It is therefore my considered view that the applicant has established that he has a prima facie case pending determination before this court.

2. Irreparable damage

- [33] The second consideration is whether the applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.
- [34] In this regard, the Applicant's counsel argued that the Taxation Application No. 266 of 2024 was already fixed for hearing and EMA No. 0259 of 2024 is pending with a notice to show cause having been issued and scheduled for 16th April 2025 at 11:00am. [It was counsel's contention that there is an imminent threat of execution against the Applicants which will cause irreparable damage by confining the 2nd and 3'd Respondents in civil prison.
- [35] For the Respondents, it was submitted that there is no existing threat of execution as alleged by the Applicants. Counsel relied on the decision in *Emaku Joseph & another v Emulu Ojamuge* (Miscellaneous Application 140 of 2023 ¹²⁰²⁴¹ UGHC for the proposition that taxation is one of the long processes before execution can ensue and it is not execution in itself, fixing a taxation application for hearing does not warrant an order of stay of execution. In my understanding, the applicant has to show that the damage bound to be suffered is such that it cannot be undone or compensated for in damages.

[36] In *Giella v. Cassman Brown & Co.* [1973] E. A 358, it was held that 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 is; one that cannot be adequately atoned for in damages. Likewise, In the case of *American Cynamide vs Ethicon* [1975] 1 ALL E. R 504 it was held;

"The governing principle is that the court should first consider whether if the Plaintiff were to succeed at the trial in establishing his right to a Permanent Injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the Defendant's continuing to do what was sought to be enjoined between the time of the Application and the time of the trial.

[37] In the instant case, the evidence of irreparable loss/ damage is in paragraph 6,7,8 and 9 of the Applicant's affidavit in support of the application which I have reproduced below;

6. That the Judgment that has been passed against the applicants is a money Judgment that can be executed anytime, and a very colossal sum at that.
7. That the Respondent has already filed its Application for taxation vide Misc Appln No. 266 of 2024 and fixed for taxation on the 18th February 2025. A copy of the filed Bill of Costs and Taxation Hearing Notice is attached herewith as "C I" and "C2" respectively.
8. That the Respondent has also opened an Execution file with the Court for purposes of execution vide EMA No. 0259 -2024 showing the Respondent's commencement of the execution process and it is fixed for Notice to show cause why execution should not issue on the 18th February 2024 at 10:00. A copy of extract from the ECMISS record is attached herewith as ttDtt
9. That there is a serious threat of execution and allowing execution of the Judgment to proceed will render the appeal nugatory and will not safeguard our right of appeal and yet the Applicants appeal has a high likelihood of success.

[38] Applying the above to the principals of irreparable damage, I find that there is an imminent threat of execution especially considering that the hearing of the Notice to Show Cause has already been fixed. I therefore find that the Applicant is likely to suffer irreparable damage if execution is effected and the 2nd and 3rd Applicants arrested.

[39] Having found as I have above, I find no reason to consider the issue of balance of convenience for reasons that court should only consider the balance of convenience where it is in doubt on 1 and 2 above.

[40] In the result, this application is granted with the following orders;

- 1. An order for stay of execution is hereby issued restraining the Respondents, its servants and or agents from executing the Judgment and orders of the Court delivered on 2nd May 2024 in HCCS No. 924 of 2020.

- 2. Costs shall abide the outcome of the appeal.

Dated this j* day of 2025

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Christopher Gashirabake JUSTICE OF APPEAL

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