

UGANDA / JUDGMENT

Roughton International Ltd and Others v Uganda Investment Authority and Public Procurement and Disposal of Public Assets Authority (Civil Application No. 15 of 2023) [2025] UGCA 160 (21 May 2025)

[2025] UGCA 160

COURT

Court of Appeal of Uganda

BEFORE

Muzamiru, JA

CASE / FILE NUMBER

Civil Application No. 15 of 2023

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

THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA CIVIL APPLICATION No.15 OF 2023

(Arising from High Court Misc. App. No. 1750 of 2022, and High Court Misc. Cause No. 87 of 2022)

ROUGHTON INTERNATIONAL LTD 1

- TURNER AND TOWNSEND INTERNATIONAL LTD 2
- JOADAH CONSULT LTD 3
- BASIC GROUP LTD (tN CONSORTTUM) 4

APPLICANTS

YERSUS

1. UGANDA INVESTMENT AUTHORITY

2. PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC ASSETS AUTHORITY (PPDA)

RESPONDENTS

RULING OF MUZAMIRU MUTANGULA KIBEEDI. JA

Introduction

- t1j This is an application for stay of execution brought by way of Notice of Motion under Section 33 of the Judicature Act, and Rules 2(2), 6(2)(b) and a3 (1) of the Judicature (Court of Appeal Rules) Directions S.l. No. 13-10.
- 12) The Applicants seeks orders that:
- a) The Orders in High Court Miscellaneous Cause No. 87 of 2022 be stayed pending the hearing and disposal of the Appeal of the Applicant before the Court of Appeal.
- b) Costs of this Application be provided for.

t31 The Application is supported by the affidavit of Mr. Joel Aita who is stated to be the Managing Director of the 3ro Applicant, sworn on the 9t January 2023.

Page 1 of 13

t41 The 1st Respondent filed an Affidavit in Reply deponed upon by her Corporation Secretary, Ms. Patience Kabijje. On the other hand, the 2no Respondent's case is set out in the Affidavit of Mr. Uthman Segawa, the Senior Manager, Legal and Bop, Affairs for the 2no Respondent

Factual Background

- t5l By the agreement dated 19th August 2019, the Applicants, a Consortium of Engineering Consulting Firms, were contracted by the Government of Uganda represented by the 1rt Respondent to supervise the development of infrastructure at Kampala Industrial and Business Park, Namanve, at the cost of Euros 8,805,781.4 (Eight Million Eight Hundred and Five Thousand Seven Hundred Eighty one Euros and Four Cents) exclusive of taxes. The duration of the contract was six years.
- t6l By the close of 2022, differences had arisen between the Applicants on the one hand, and the 1st Respondent on the other. The Applicants alleged breach of the contract on the part of the 1s Respondent by non-payment of their fees amounting to Euros 1,788,933.32 over a period of 18 months. On the other hand, the 1't Respondent alleged that the Applicants had consistently failed to perform their contractual obligations, professional negligence, misrepresentation of material facts and commission of ethical breaches arising out of provision of alleged defective Powers of Attorney.
- I7l The 1,t Respondent sought legal advice from the Attorney General of Uganda. On 25t August 2022, the Attorney General advised the 1st Respondent to terminate the contract with the Applicants in accordance with clause GCC 1 5.1 (f) of the contract.

- t81 By the 1st Respondent's letter dated 29th August 2022 addressed to the Applicants, the 1st Respondent informed the Applicants that it had taken a decision to terminate the contract and gave them the 60 days' notice of termination as stipulated in the

Contract. The 1st Respondent further required the Applicants "to hand over all project assests, documentation and instruments to the Project Manager, Kampala Industrial Business Park Infrastructure Development Project within the period of notice."

- tgl By the 1st Respondent's letter dated 30th August 2022 and addressed to the Executive Director of the 2nd Respondent, the 1st Respondent recommended that the Applicants be suspended "in line with the provisions of the PPDA (Contracts) Regulations Section 56 (4)" based on the reasons which had given rise to the 1st Respondent's decision to terminate the contract with the Applicants which have already been stated herein above.
- [10] By the letter of the Executive Director dated the 31st of October 2022, the 2nd Respondent notified the Applicants about the recommendation received from the 1st Respondent to suspend them and requested them to submit their evidence in their defence not later than Tuesday 08th November 2022. The 2nd Respondent further invited the Applicants to attend the hearing before it scheduled to take place on 10th November 2022. The documents filed before the Court indicate that at the time of institution of the Applicants' action before the High Court, the hearing proceedings relating to the suspension of the Applicants had been postponed several times on the application of the Applicants and had not been concluded.
- [11] On 17th November 2022, the Applicants' Advocates, M/S Tumusiime, Kabega & Co. Advocates wrote a letter to the Director General of the 1st Respondent requesting him to concur to the appointment of Mr. Paul Kutesa as arbitrator within a period of five (05) days of receipt of the letter.
- [12] The letter summarized the Applicants' claim and proposed course of action thus:

"... differences have arisen between the Consortium and UIA and the consortium hereby refers the dispute to Arbitration under Clause 4(b) of the Consultancy Services Agreement. The Consortium will seek Declaratory Orders from the arbitral

Page 3 of 13

tribunal that UIA has breached the terms of the Consultancy Services Agreement, that UIA should pay the amounts due to Consortium under the Consultancy Services Agreement, and seek an Injunction to restrain UIA from terminating the said Agreement; and retendering and awarding the said Consultancy Services Agreement to any third party and/or continuing in breach of the terms of the Consultancy Services Agreement.

The Consoiium hereby refers fhls drspute to arbitration and nominates Mr. Paul Kutesa of Arcadia Advocates, Plot 6 Acacia Avenue, P. O. BOX 28987, Kampala, Uganda as one of the three Arbitrators. We request you to concur to Paul Kutesa's nomination and fufther request you to nominate the second Arbitrator for our approval. We furlher propose to you that the two Arbitrators should jointly appoint the third Arbitrator in accordance with Clause 4(b) of the Consufancy Serylces Agreement.

Please let us know whether you conc the above proposal of appointing the receipt of this Notice of Reference." ur to the appointment of Mr. Paul Kutesa and second and thid Arbitrators, within 5 days of C9--aZ

- [13] The documents submitted before this Court do not indicate whether the Applicants pursued that course of action to its logical conclusion. However, the Applicants' documents ffiled in Civil Application No. 590 of 2023 between the same parties for a certificate of urgency indicate that by another letter of the Applicants' Advocates, Ref: IKl40l22lCV dated 10th January 2023 they sought the 1st Respondent's concurrence on the appointment of Retired Hon. Chief Justice Bart Katureebe as a single arbitrator to resolve the dispute between the Applicants and the 1st Respondent. The letterwas copied to the Solicitor General.
- [14] By the letter of the Solicitor General signed by Mr. Martin Mwambutsya dated 24th January, 2023 addressed to the Applicants' Advocates, he requested the Applicants to delay the appointment of an arbitrator for 60 days to enable his office to extensively "interrogate the matter in order to advise Government on the appropriate course of action,"
- [15] In the meantime, the Applicants commenced Court action against the Respondents in the High Court of Uganda, Commercial Division, seeking interim measures oy' protection from the Court, namely:
 - a) A temporary injunction as an interim measure of protection be rcsued to restrain the 1't Respondent from tendering, inviting bids, opening bids for, and or awarding the Consultancy Servlces Agreement of an Owner's Engineer to supervise lhe development of infrastructure at Kampala Industrial and Business Park, Namanve until the Arbitral proceedings which have commenced between the Applicants, and the 1't Respondent are heard, determined and an award is made.
 - b) A temporary injunction as an interim measure of protection be issued to restrain the Respondents from terminating and or suspending the Agreement for Consultancy Services of an Owner's Engineer fo supervtse the development of infrastructure at Kampala Industrial and Busrness Park Namanve between the Applicants and the 7st Respondent untilthe Arbitral proceedings between the Applicants and the 1st Respondent are heard, determined and an award is made.

- c) ^Atemporary injunction as an interim measure of protection be issued to restrain the 1st Respondent from suspending the Consultancy Services Agreement or stopping the Applicants from work.
- d) A temporary injunction as an interim measure of protection be issued to restrain the 1st Respondent from acting in breach of the terms of the Consultancy Services Agreement, and to pay the sums due to the Applicants under the Agreement until the Arbitral Proceedings are heard, determined and an award is made.
- e) A temporary injunction as an interim measure of protection be issued to restrain the 2nd Respondent from suspending the Applicants from public procurement until the Arbitral proceedings are heard, determined and an award is made.
- [16] The above application was made pursuant to Section 6 of the Arbitration and Conciliation Act, Cap 4 of the 2000 edition of the Laws of Uganda and registered in the High Court as Miscellaneous Cause No. 0087 of 2022.
- [17] After hearing the parties to the case, the trial Judge, Hon. Lady Justice Susan Abinyo, dismissed the application in her Ruling dated the 12th December 2022.
- [18] In response, the Applicants filed a Notice of Appeal and applied for proceedings of the Court. The Applicants also filed an Application in the High Court for Stay of Execution, but it was dismissed on 29th 12th 2022. Thereupon, the Applicants filed the instant application before this Court seeking the stay of the orders of the High Court in Miscellaneous Cause No. 87 of 2022 pending the hearing and disposal of the-

The Grounds of the Application

C.@/- Applicants' appeal before the Court of Appeal.

- [19] The grounds of the application are set out in the Notice of Motion to be the following:
- a) The High Court made a decision in Miscellaneous Cause No. 87 of 2022 on 12th December 2022 against the Applicants.
- b) The Applicants, being dissatisfied with the above decision filed a Notice of Appeal with the Court of Appeal against the whole decision and intend to appeal against the whole decision to the Court of Appeal.
- c) The Respondents are intent on using the Ruling and Orders arising from the said decision to take actions detrimental and prejudicial to the rights of the Applicants including the termination of the Applicant's contract with the 1st Respondent, suspending them from participating in procurement in Uganda all of which matters are subject of pending arbitration proceedings between the Applicants and the Respondents.
- d) If the Order for Stay of Execution is not granted, the Respondents' above actions will result in irreversible and irreparable reputational and financial loss to the Applicants.

- The intended Appeal has a high likelihood of success and if the Orders herein $\$e)$ sought are not granted pending the Appeal, the Applicants will be gravely prejudiced.
- f) If the Order of Stay is not granted, both the intended Appeal and the Arbitration proceedings will be rendered nugatory.
- The Applicants have a right of Appeal and a right to be heard in Arbitration and $\$q)$ now seek a Stay to preserve the right of Appeal and the right to be heard in $\$k\$ \alpha\$$ Arbitration.
- h) The Applicants are ready and willing to provide security for costs to the Respondents.
- That the Applicants filed an Application for Stay of Execution in the High Court i) vide High Court Misc. Application No. 1750 of 2022 and the same was dismissed by the High Court.
- That this Application has been brought without unreasonable delay and it is in the $\$ \mathbf{j}$ interest of justice that this Application be granted.
- k) It is just, fair and equitable that the Orders in Misc. Cause No. 87 of 2022 be stayed pending the determination of the intended Appeal.
- [20] The 1st Respondent opposed the application by describing the Orders sought by the Applicant to be a disguised application of stay of execution which has an injunctive effect. The 1st Respondent also contended that the Application is a disguised attempt

by the Applicants to re-litigate Miscellaneous Cause No. 87 of 2022 which was dismissed by the High Court on 12th December 2022; and that the order sought to be stayed is a negative order which is not capable of being executed and thus cannot be stayed.

- [21] The Respondents further contended that the Applicants' appeal had no likelihood of success as there is no appeal in the first place since the Notice of Appeal is not endorsed by the Registrar of the Court.
- [22] The 2nd Respondent further claimed that all actions so far performed by the 2nd Respondent following the recommendation for suspension of the Applicants from participating in public procurement are as a result of the mandate accorded to it as the regulator under the PPDA Act, 2003.
- [23] Further, that the Applicants' suspension is not an issue in the arbitral proceedings to which the 2nd Respondent is also not a party.
- [24] The Respondents prayed that the Application be dismissed as totally lacking in merit

Representation

- [25] When this application came up for hearing, the Applicants were represented by Mr. Ivan Kyateka. The first Respondent was represented by Mr. Gerald Batanda, while Ms. Mary Akiror and Ms. Elizabeth Natukunda represented the second Respondent. As all parties had already filed their respective written submissions in the matter as previously directed by the Court, the application was adjourned for Ruling based on the said Written Submissions.
- [26] The parties further agreed to halt the suspension hearing by the first Respondent, until delivery of the Ruling by this Court or until further orders of this Court.

Jurisdiction of Court

- [27] The mandate of a single Justice of this Court to handle this application is derived from Section 12 of the Judicature Act which confers a single Justice of this Court with jurisdiction to hear and determine all interlocutory applications filed in this court with a dissatisfied party having a right to make a reference to a full panel of the court from that decision.
- [28] In the case of Jomayi Propefty Consultants Ltd. Vs. Andrew Maviiri, Civil Reference No. 174 of 2015 (Arising from Civil Application No. 200 of 2015) this Court (Egonda-Ntende, Barishaki - Cheborion & Mutangula Kbeedi, JJA - 19.03.2020) had occasion to consider Section 12 of the Judicature Act vis-i-vis Rule 53(2) of the Court of Appeal Rules, S.I No:13 -10 which barred a single Justice of this Court from hearing applications for stay of execution, injunction or stay of proceedings.
- [29] The unanimous decision of this Court in the Jomayi Propefty Consultants case above is to the effect that Section 12 of the Judicature Act, being an Act of Parliament, overrides the provisions of Rule 53 of the Rules of this court and must now be taken to be the primary legislation providing for jurisdiction of a single judge of court,
- [30] The above decision of this Court is still a good statement of the law.

Preconditions

- [31] It is settled law that the grant of the orders sought by the applicant is discretionary. The principles to guide the Court in the exercise of its discretion have likewise been settled by several decisions of this Court and the Supreme Court including the following: Gashumba Maniraouha Vs Sam Nkundive SC Civil Application No.0024

Page 9 of 13

of 2015', and Hon. Ssekikubo & 3 Ors Vs Attorney General & 4 Ors Const. Appl No.0006 Of 2013.

- [32] In summary the applicant must prove that:

- 1. He/she lodged a Notice of Appeal;
- 2. The appeal has a likelihood of success; or a prima facie case of his right to appeal.
- 3. He/she will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.
- 4. If 2 and 3 above have been established, the Court must consider where the balance of convenience lies.
- 5. The applicant must also establish that the application was instituted without delay.
- [33] From the submissions of all the parties, it is apparent that there is no contest as to the principles that guide the court in determining whether to grant the order of stay or not. What is in application. contest relates to the application of the said principles to the instant

Crux of the Application

[34] After reading the pleadings, the affidavit evidence and the submissions filed in the instant matter, it became apparent to me that central in the resolution of this application is the issue as to the nature of the order of the High Court sought to be stayed. It was the Respondents' case that the High Court Order is a "negative order" and not capable of being executed and/or stayed. The Respondents cited the decision of this Court (Christopher Madrama, JA) in Civil Application No. 220 of ²⁰¹⁹ Finasi/Roko Construction SPV Ltd & Another Vs Roko Construction Ltd rendered on the 09th August 2019 and the decision of the Supreme Court (Tsekooko, JSC) in

Civil Application No. 11 of 2009 Florah Ramarungu Vs DFCU Leasing Co. Ltd rendered on the 08th of July 2009.

- [35] The Applicants did not file a specific response to that claim.
- [36] The dispositive order of the High Court was issued in the following terms :

"This application is dismissed with costs to abide the outcome of the arbitral proceedings".

- [37] The High Court Order speaks for itself. It does not positively determine the rights of the parties. Neither does it purport to order the Respondents to act in a particular way nor refrain from acting in a particular way so as to entitle the Respondents to apply to the Court for enforcement by way of execution. I am satisfied that the High Court Order in the instant matter is not capable of being executed and, accordingly not amenable to being stayed by the Court.
- [38] In the same vein, the issue of irreparable loss and damage cannot arise when execution is not a possibility in the first instance. at' -/-:-

Other Considerations

Status quo to be maintained

[39] I have also considered the evidence before this Court regarding the status of the services which were being rendered by the Applicants under the contract they entered with the first Respondent on behalf of the Government of Uganda to supervise the Kampala Industrial Business Park Infrastructure Development Project. In Paragraph '16 of the Affidavit in Reply of Patience Kabiije filed in support of the first Respondent's opposition to the instant application, she stated that the first Respondent had since contracted MBW Consulting Ltd, in Joint Venture with PM Excellence Ltd to provide

the supervisory services hitherto rendered by the Applicants. The Applicants did not rebut that specific evidence. With such a changed status quo, it would be inequitable for the Court to issue any injunctive orders.

Vigilance of the Applicants

- [40] I have also considered the evidence before the Court of the applicant having filed the Notice of Appeal on 13th December 2023. This was a day after the Ruling in HCCS Misc. Appn. No. 87 of 2022 was delivered by the High Court. However, by the time this matter was heard and also at the time of writing this Ruling, there was no evidence of the Applicant having taken a step further by filing the Record and Memorandum of Appeal commencing the substantive appeal in this Court. I would reiterate my observations in the case of Nakato Sarah & Another Vs James Busonga & 2 Others, Court of Appeal Civil Application IVo. 303 of 2023 where ^I stated that a litigant who displays vigilance through such acts as proactively following up of the certification of the record of proceedings and argues the application for a stay of execution while the substantive appeal has already been filed in this court, elicits more favourable consideration for his/her application than one who is less proactive.
- [41] I can add that the orders sought by the Applicants from the High Court are intended to be interim remedies to enable the arbitral proceedings to go ahead and resolve the underlying dispute on its merits. In the instant matter, no evidence was furnished to the Court to prove the vigilance of the Applicants in the pursuit of the substantive arbitral proceedings beyond the writing of the letters to the 1st Respondent to concur on an arbitrator.

[42] Disposition

- 1. The Application is hereby dismissed with costs to the Respondents.

- 2. The orders issued by this Court staying the proceedings before the 2nd Respondent relating to the suspension hearing of the Applicants pending the disposal of this application are hereby lifted and/or set aside.

I so Order

tY Delivered and dated at Kampala this day of ...2025

Muzamiru Mutangula Kibeedi JUSTICE OF APPEAL

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugca/2025/160/eng@2025-05-21>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/roughton-international-ltd-and-others-v-uganda-investment-authority-and-public-procurement-and-disposal-of-public-assets-authority-civil-application-n--6a3ea4da3b1caa91297e739c>

Prepared on 14 October 2026 · Esheria