

UGANDA / JUDGMENT

**SWT Tanners Limited & 13 Others v
Commissioner General, Uganda Revenue
Authority (Civil Application 27 of 2022)
[2022] UGSC 2 (14 November 2022)
[2022] UGSC 2**

COURT

Supreme Court of Uganda

BEFORE

Opio-Aweri, JSC

CASE / FILE NUMBER

Civil Application 27 of 2022

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THE REPUBLIC OF UGANDA**IN THE SUPREME COURT OF UGANDA AT KAMPALA****CIVIL APPLICATION NO 27 OF 2022**

- 1. SWT TANNERS LTD:.....
- 2. GENERAL AGENCIES UGANDA LTD
- 3. SSUNAD LIMITED
- 4. WILLIEX COMMODITIES LTD
- 5. AKHCOM LIMITED
- 6. JASSANI GENERAL TRADING LIMITED
- 7. SONERI LIMITED \$15\$
- 8. SINGA RICE LIMITED
- 9. ARMOUR TRADING COMPANY LIMITED
- 10. JAM MOHAMMED INVESTMENTS LIMITED
- 11. GLORRE INTERNATIONAL LIMITED
- 12. IMBA FOODS UGANDA LIMITED 20

- 13. ZEN TRADING LIMITED
- 14. MABU COMMODITIES LIMITED

VERSUS**COMMISSIONER GENERAL****UGANDA REVENUE AUTHORITY:..... \$25\$**

(Arising out Civil Appeal No. 28 of 2022; Civil Appeal No.172 of 2019 and Civil Suit No. 880 of 2014)

 $\frac{S}{S}$ **RULING****BEFORE. HON. JUSTICE OPIO AWERI****Introduction**

The Applicants filed this Application seeking an interim order to

issue staying the execution or enforcement of the judgment and

decree of Hon. Justice Christopher Madrama, Hon. Justice S Cheborion Barishaki and Hon. Justice Irene Mulwagonga delivered on 16th September 2022, in Civil Appeal No. 172 of 2019 at the Court of Appeal in Kampala.

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The Application has been brought by Notice of Motion and supported by an affidavit in accordance with Rules 2(2) , 6(2)(b) , 42(1) and 42(1) of the Judicature (Supreme Court Rules) Directions SI 13-11: Section 33 of the Judicature Act, Cap 13.

Background

The background to the above Application is that the Applicants were unsuccessful parties in Civil Appeal No. 172 of 2019 and 15 being dissatisfied with the judgment and decree of the Court of Appeal, they have lodged a Notice of Appeal before the Court of Appeal and before this Court against the whole judgment of the court of appeal.

The grounds are:-20

That there is serious threat of execution of the decree in Civil Appeal No. 172 of 2019, by the Respondent. That the substantive Application for stay of execution lodged in this honourable Court is likely to be rendered nugatory unless an interim stay is granted hence prompting them to file this application.

The Application seeks the following orders;

1. That an interim order to issue staying the execution or enforcement of the judgment and decree of Hon. Justice Christopher Madrama, Hon. Justice Cheborion Barishaki and Hon. Justice Irene Mulwagonga delivered on 16th September 2022, in Civil Appeal No. 172 of 2019 at the Court of Appeal in Kampala.
2. That the Respondent pays costs of the Application.

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- The Application is supported by an Affidavit deponed by Mike $\$S$ Bagenda Muzito and the grounds are briefly as follows:
 1. That the Court of Appeal delivered a judgment vide Civil Appeal No. 172 of 2019 against the Applicants in favour of the Respondent.
 2. That the Court of Appeal further held that the injunction 10 orders pending the Appeal lapsed.
 3. That being dissatisfied with the judgment and orders of the Court of Appeal, the Applicants promptly lodged a notice of Appeal before the Court of Appeal.
 4. That the Respondent has initiated the execution process 15 pursuant to the decision and orders made by the Court of Appeal.
 5. That there is serious threat of execution against the Applicants.
 6. That it is in the interest of justice that the Application be 20 allowed.

The Application was opposed through an affidavit filed by the Respondent and deponed by Tayahwe Sheba and the grounds are briefly as follows;

- 1. That the Respondent was a successful litigant in a suit filed 25 against it by the Applicants
- 2. That there is a similar Application filed in the Court of Appeal by the Applicants vide Misc. App. No. 701 of 2022 which was heard and is pending ruling.
- 3. That the Applicants have not established that they will 30 suffer irreparable damage.
- 4. That the balance of convenience is in favour of not granting the Application

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- The Applicants filed an affidavit in rejoinder and the grounds are $\$S$ briefly as follows:
 1. That the similar Application filed in the Court of Appeal vide Misc. Application No. 701 of 20222 was withdrawn by the Applicants. They attached a correspondence to confirm the withdrawal.

2. That there is need to allow the Application since the respondent has embarked on the execution process.

The following issues have been identified;

- 1. Whether the Application is properly before this Court?
- 2. Whether there are grounds supporting the Application. 15 3. What are the remedies available to the parties?

Counsel William Were and Brenda appeared for the Applicant while Counsel Ronald Baluku Maganda, Mr. Kwerit Sam and Mr. Donald Bakasaba appeared for the Respondent.

Consideration by Court 20

ISSUE 1

Whether the Application is a properly before this Court?

The Respondent argued that there is an existing similar Application in the Court of Appeal vide Misc. Application No. 701

of 2022 and hence this court should not hear and determine the \$25\$ Application at hand.

The Applicants on their part have argued that the said Application before the Court of Appeal was withdrawn by way of filing a Notice of withdrawal and that the only Application

pending is the current Application. 30

> They attached a Notice of withdrawal on their affidavit in support of their argument.

It is the finding of this Court that there is no existing Application \$\mathsf{S}\$ of a similar nature in the court of appeal since the one filed therein was withdrawn.

I find that this application is properly before this Court.

ISSUE 2

An Applicant seeking an interim Stay of Execution. 10

In the case of Hwang Sung Industries Ltd vs Tajfin Hussein and 2 Others Civil Application No.19 of 2008, this court held that for an Aapplication for an interim order of stay, it suffices to show that a substantive Aapplication is pending and that there is a serious threat of execution before the hearing of the pending substantive application. It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive Aapplication for stay.

The Applicant's Affidavit makes mention of having filed a Notice of Appeal. He attached a copy of the Notice of Appeal as annexture \$20\$ "B". The Respondent did not rebut this piece of evidence.

Sir Clement De Lestang, Ag. V. P stated;

I find that there is a pending Appeal filed by Applicants before this Court.

I am satisfied that there is pending in this Court a substantive Application for stay of execution of the decree in **Civil Appeal No. 172 of 2019**, which is the subject of Appeal in this Court.

- I am also satisfied that there is a real threat to execute before the disposal of the substantive Application which is likely to render the substantive Application nugatory unless this Application is allowed.

In the result, I allow the Aapplication.

\$25\$

Costs of this Application to abide the result of the substantive Application.

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HON. JUSTICE RUBE JUSTICE OF THE SUPREME COR

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