

UGANDA / JUDGMENT

Uganda Corporation Creamaries Ltd and Henry Kawalya v Reamaton Ltd (Civil Application 71 of 1999) [2000] UGCA 54 (20 April 2000)

[2000] UGCA 54**COURT**

Court of Appeal of Uganda

BEFORE

Manyindo, DCJ, Okello, JA, Mpagi-Bahigeine, JA

CASE / FILE NUMBER

Civil Application 71 of 1999

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THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA

CORAM: HON. S. T. MANYINDO, DCJ ✓ HON. G. M. OKELLO, J. A. HON. LADY JUSTICE A. E. M BAHIGEINE, JA.**CIVIL APPLICATION NO. 71 OF 1999****BETWEEN**

| \$(1)\$ | UGANDA CORPORATION | | | -----|-----|-----|-----| | |
CREAMARIES LTD. | \$ \cdots \cdots \cdots \$ | APPLICANTS | | (2) | HENRY KAWALYA | | |

AND**REAMATON LTD.....****RULING OF THE COURT** **$\mathbf{1}$**

This is an application under rule 5 (2) (b) of the Rules of this Court seeking orders for stay of execution of the decree pending the disposal of Civil Appeal No. 44 of 1999.

The applicants were the defendants in High Court Civil Suit (HCCS) No. 738/95 wherein judgment was entered against them for payment of US\$365,000 plus interest thereon at the rate of 25% per annum to the respondent. The applicants filed a notice of appeal against the whole judgment and they eventually filed appeal No. 9 of 1998. It is important to point out that at the beginning of the hearing of the suit, a preliminary decree was entered in favour of the respondent for US\$211,200

upon the applicant's admission. The applicants did not appeal against that preliminary decree within the prescribed period or at all.

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Upon filing the Notice of appeal, the applicants applied for and obtained from the High Court an order for stay of execution pending the disposal of the appeal. That notice of appeal was however, later struck out at the request of the respondent on the ground that no essential step was taken by the applicants to prosecute the appeal. The applicants had not obtained proof of service of the letter requesting for the proceedings. Upon the striking out of the notice of the appeal, the appeal itself was also subsequently struck out on 31/7/98 on the ground that it had ceased to exist after the notice of appeal and the appeal itself were struck out by this court.

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Following the striking out of the Notice of the appeal and the appeal itself, the applicants filed Miscellaneous Civil application No. 4¹ of 1999 seeking an order for extension of time to file a fresh notice of appeal and the appeal itself. That application was heard by a single Judge of this Court and he granted it. Thereafter, the applicants filed Civil Appeal No. 44 of 1999. Later, they also filed this application for an order for stay of execution pending the disposal of the appeal.

Meanwhile, the respondent being aggrieved by that order granting the extension of time, appealed by way of a Reference to the full Court challenging that decision of a single Judge (Reference No. 55 of 1999). The reference was heard and allowed. The effect of allowing the reference, rendered the pending appeal No. 44 of 1999 a nullity as the order extending the time within which the notice of appeal and the appeal were filed was set aside as being null and void. In view of that ruling, this application also fails as there is no notice of appeal or appeal pending as required by rule 5 (2) (b) of the Rules of this Court.

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In the result, the application is struck out with costs in favour of the respondent for being incompetent.

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Dated at Kampala this 20th day of April 2000.

Maujindo

S. T. MANYINDO, DEPUTY CHIEF JUSTICE

$\mathcal{L}_0$ G. M. OKELLO.

JUSTICE OF APPEAL

DevC A. E. MPAGLBAHIGEINE, JUSTICE OF APPEAL

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