

The grounds supporting this application are contained in the affidavit of Timothy Ntale working with 1st applicant as the Secretary.

The intended appeal raises important matters of law and fact which reconsideration by the Court of Appeal including;

- a) The learned trial Judge erred in law in holding that the different causes of action that were introduced by the amendment of the respondent's plaint filed on 20th November 2020 in respect of particulars publications of 14th October 2012, 4th December 2012, 28th December 2012, 29th December 2012, 21st February 2013, 2nd November 2012, 7th November 2012, 9th November 2012, 16th November 2012, 7th March 2013, 26th March 2013, and 10th March 2013, were not barred by limitation.
- b) The learned trial Judge failed to properly evaluate evidence of each impugned publication separately thereby making an omnibus finding of liability against the applicants which constituted an error in principle.
- c) In failing to consider and evaluate evidence adduced in respect of each publication complained of separately, the learned trial judge erred in generally rejecting the defence of qualified privilege without reasonable reference to the particular publications in respect of which it was raised.
- d) The learned trial Judge erred in law in failing to consider the defences of justification and fair comment in respect of publications in reference to which they were raised.
- e) The learned trial judge awarded to the respondent excessive damages of UGX 450,000,000/= which award constituted an error in principle.

That the sum of 450,000,000/= sought to be recovered through execution is clearly based on the above findings of court which are subject of the intended appeal. Realizing the sums by way of execution and taxation will render the appeal nugatory.

That the application for stay has been instituted without any unreasonable delay while the substantive appeal is pending receipt of the courts record of proceedings which was promptly applied for.

That the respondent has commenced the execution process including filing the respondent's bill of costs of UGX 68,857,700/= and the same is due for hearing before the Registrar which will ultimately lead to execution of the decree and orders of court. The taxation is pending a ruling on 6th May 2022.

The respondent filed an affidavit in reply and deponed opposing this application contending that the appellants are out of time to appeal and they have applied to strike out the Notice of Appeal.

That the intended appeal lacks merit and has no probabilities of success and they have not attached a copy of the Memorandum of Appeal for the court to assess whether they have plausible grounds of Appeal.

That if this court is inclined to grant the stay of execution, then the applicants be ordered to deposit the decretal sums in court before execution is stayed.

The applicant was represented by *Kyeyune John Paul* holding brief for *Mr James Nangwala* whereas the respondent was represented by *Mr. Himbaza Godfrey*.

The parties were directed to file written submissions which they accordingly filed. The same have been considered in this ruling.

Analysis:

The purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising his/ her undoubted right of appeal are safe guarded and the appeal if successful, is not rendered nugatory. **See: *Lawrence Musiitwa Kyazze vs. Eunice Busingye SCCA NO. 18 of 1990 [1992] IV KALR 55.***

The general rule is that an appeal does not operate as a stay of execution. The court does not deprive a successful litigant of the fruits of litigation, and lock up funds which prima facie he/ she is entitled, pending an appeal. If however, the appellant (who is seeking the stay) can persuade the court that he will not be able to recover the sums he is required to pay if his appeal succeeds, this may be a basis on which to order a stay.

Order 22, Rule 26 provides that where a suit is pending in any court against the holder of a decree of the court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Order 26 as relied on by the applicants provides that court may order for security for the costs in any suit. It is a settled position of the law that court has inherent power to stay execution and that stay of execution is considered to be discretionary. The court weighs the circumstances of each particular case and exercises discretion whether to stay execution or grant the order sought.

The principles under which an application for stay of execution can succeed are well espoused in a litany of cases but notably in *Lawrence Musiitwa Kyazze vs Eunice Busingye; SC Civil Application No. 18 of 1990, Kyambogo University vs Prof Isaiah Omolo Ndiege Civil Application No.341 of 2013 (C.A) Justice Kenneth Kakuru JA* citing various decisions including the Supreme Court decision in *Lawrence Musiitwa Kyazze vs Eunice Busingye Civil Application No. 18 of 1990* restated the conditions for a stay of execution order as follows;

- a) *The Applicant must show that he has lodged an appeal which is pending hearing.*
- b) *The said pending appeal is not frivolous and it has a likelihood of success.*
- c) *There is a serious and imminent threat of execution of the decree and if not stayed the appeal will be rendered nugatory.*
- d) *The application was made without unreasonable delay.*
- e) *The Applicant is prepared to give security due performance of the decree and;*
- f) *The refusal to stay would inflict greater hardship than it would avoid.*
- g) *The power to grant or refuse a stay is discretionary.*

In the present case, the circumstances are well laid out in the grounds for the application and the supporting affidavit of the Applicants, earlier set out in this ruling.

The applicant's counsel submitted that the appeal has likelihood of success since it involves determination of substantial issue of law and is not filed as a mere matter of routine.

The applicants have sought a stay of execution contending that colossal amounts of money were awarded to the respondent. However, they are ready and willing to furnish security for due performance of the decree in form of an insurance guarantee from a reputable insurance company.

There seems to be a common thinking among litigants that court can grant a stay of every decree as an automatic right which is wrong. While exercising the discretion conferred under the law of stay of execution, the court should duly consider that a party who has obtained a lawful decree/order is not deprived of the fruits of that decree except for good and cogent reasons.

As long as the decree/order is not set aside by a competent court, it stands good and effective and should not be lightly dealt with so as to deprive the holder of the lawful decree/order of its fruits. Therefore, a decree/order passed by a

competent court should be allowed to be executed unless a strong case is made out on cogent grounds no stay should be granted.

Since the appeal has already been heard by the Court of Appeal and it is awaiting judgment on notice, I would order a stay of execution on condition that the applicants furnish security for due performance of the decree in form of an insurance guarantee from a reputable insurance company within 21 days to court-Deputy Registrar.

This application succeeds in the said terms and each party shall bear its costs.

I so order.

SSEKAANA MUSA

JUDGE

14th October 2022