

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

**MISC. APPLICATION NO. 109 OF 12004
(Arising from HCCS No. 1197 of 1999)**

ATABYA AGENCIES LTD ::::::::::: JUDGMENT CREDITOR/APPLICANT

VERSUS

STANBIC BANK (U) LTD ::::::::::: GUARANTOR/RESPONDENT

BEFORE : THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE.

R U L I N G

Following my ruling this morning in favour of Atabya Agencies Ltd, the Applicant now Respondent, Stanbic Bank (U) Ltd the Respondent now Applicant has decided to informally apply for leave to appeal my orders and for stay of execution. For his informal application he relied on Yunis Busingye vs Kyazze (a Supreme Court decision but he did not give a citation). In another Supreme Court decision G.M. Combined (U) Ltd vs A.K. Detergents (U) Ltd Civil Application No. 23 of 1994, it was held that such informal applications for leave to appeal may be entertained where the party applying has instructions. The test in deciding whether to grant the application was stated by Spry V.P. in the Case of Sango Bay Estates Ltd vs Dresdner Bank A.G. [1971] EA 17 as follows -

“ As I understand it, leave to appeal from an order in Civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration”.

The grounds raised by Mr. Kabugo now for the Applicant are very much the same as those raised during the hearing of the original application. He states that his client is prejudiced because it was declared not to be a party to the appeal and yet the same order is now being used for the purpose of the guarantee. He insists that by virtue of the ruling of the Court of Appeal, Uganda Commercial Bank Limited did not appeal hence there could not have been a proper demand. He also states that the amounts involved are large.

Mr. Walubiri in reply states that there are no serious grounds for leave to appeal that have been put forward. Furthermore the Applicant did not offer any security. Mr. Walubiri says this application is another delaying tactic. Mr. Kabugo then quickly conceded that his clients would offer another guarantee to support the stay of execution. However, it is clear that Mr. Kabugo did not appear to have firm instructions as to the nature of this guarantee. I wonder if Stanbic Bank (U) Ltd having failed to furnish the Bank Draft security at the Court of Appeal can not do so at the High Court level. Mr. Kabugo said that the intervention of a weekend made it impossible for them to furnish the earlier security which had to be given within 48 hours. Mr. Walubiri did not see much merit in this argument and I agree with him considering that the consequences of non compliance would mean no appeal to the Supreme Court and execution then ensuring against them.

Given the History of this case one gets the feeling that Stanbic Bank Limited is not willing to fulfill the obligation in the guarantee. However, given the amount of money involved, I shall grant the leave to appeal and stay execution along the same conditions as the Court of Appeal did in Civil Application No. 12 of 2004.

That is leave to appeal and stay of execution is granted on the condition that Stanbic Bank (U) Ltd shall within 48 hours, deposit with the Registrar of this Court a bank draft for (U) Shs. 1,001,742,124/= (One billion, one million, seven hundred forty two thousand and one hundred twenty four only). The Bank draft must be in favour of the Respondent (Atabya Agencies Ltd). In this way the balance of interests weighed at the Court of Appeal have been restored while giving a chance to the Applicant (Stanbic Bank (U) Ltd) to be heard on appeal. Time will run from the 18th May 2004.



G. KIRYABWIRE

Ag. JUDGE

17th May 2004.