

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

MISCELLANEOUS APPLICATION NO. 235 OF 2006

**(Arising out of High Court M.A 109 of 2004, HCCS 1197 of 1999 and
Supreme Court Civil Appeal 02 of 2005)**

STANBIC BANK UGANDA LTD APPLICANT

VERSUS

ATABYA AGENCIES LTD RESPONDENT

BEFORE: THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE.

R U L I N G

This is an application brought under S. 98 of the Civil Procedure Act. It seeks orders that;

- i) Execution be stayed
- ii) Court determines the question whether interest is due on the sum payable under a decree when the sum is deposited in court pending an appeal.
- (iii) If the question is answered in the positive, what sum is actually due for interest.

The brief facts of this matter are as follows. The Applicant bank lost in the High Court and the Court of Appeal Miscellaneous Application 32 of 2004. A further appeal was then made to the Supreme Court. At the Supreme Court the Applicant applied for a stay of execution on the decretal sums ordered by the lower courts. The application for stay was allowed

"ON CONDITION that the Applicant deposits the sum of Ug. Shs.1,110,595,410/= with the Registrar of this court (i.e. Supreme Court) within thirty days" (addition mine).

The Applicant then lost the appeal in the Supreme Court. Following the said loss the Respondent collected the money deposited with the Registrar of the Supreme Court. Thereafter the Respondent's lawyers wrote a letter to the Applicant dated 22/03/06 demanding a further sum of Ug. Shs.148,031,294/= being additional interest for the period 22nd December 2004 to the 22nd March 2006, when the money was deposited with the Supreme Court.

The Respondents on the other hand argued that during this period the decretal sum had been deposited into court and so should not attract interest for that period.

Learned counsels Dr. Joseph Byamugisha appeared for the Applicant while Mr. Bernard Bamwine appeared for the Respondent.

Learned counsel for the Applicant argued concisely that when before the Supreme Court the Respondent insisted that for there to be a stay the Applicants deposit in

cash at the Supreme Court Registry the decretal sum; to which the Applicant agreed to and did. He submitted that the money paid into court was obtained out of the capital of the Applicant bank. The deposit was done pursuant to a consent order signed by both parties. Counsel for the Applicant further argued that the said consent order was silent on interest.

He therefore argues that having complied with the consent order the Respondent cannot insist on further interest.

Learned counsel for the Respondent opposed the application. He argued that the decree of the High Court was clear and that interest would continue to run “...**until payment in full**” to the Judgment Creditor who is the Respondent. He argued that payment of the Judgment debt into court as security for the Judgment Creditor does not amount to satisfaction of the decree.

Counsel for the Respondent argued that while on appeal both parties had a right to the deposited money until the appellate court decided otherwise. He further argued as a result of this the Judgment Creditor does not have an immediate right to the money.

Counsel for the Respondent distinguished the payment into court that occurred in this matter from that under order 19 rule 1 of the Civil Procedure Rules (old rules); where judgment can be satisfied by payment into court.

Counsel for Respondent further submitted that not much should be attached to the source of the money the Applicant used because at the end of the day the money deposited in court was then deposited on an account of a branch of the very Applicant bank. This meant that the Applicant still used the money to make profit for itself. He finally argued that the fact that the consent order did not address the issue of interest directly is not a bar to the Respondent being paid the said interest.

I have heard the submission of both counsel on the matter. The basic issue as I see it is whether when the monetary value of a court decree is paid into court as a condition to stay execution should attract interest in favour of the Judgment Creditor. Both counsels unfortunately did not refer to any legal authority on the matter to assist court. It could be that this area has not been well reported.

The issue/question for court to determine does not seek to review the grant of interest that was agreed to in HCCS 1197 of 1999 by the consent decree of 20th March 2003.

That stands. However the issue/question is, how the interest is to be applied to the decree. Counsel for the Respondent argues that interest is payable till the Judgment Creditor is paid in full. Mr. Andrew Wamina in his affidavit in opposition to the motion depones at paragraph 6

"That the term "till payment in full" or "till settlement in full" in the High Court decree means interest would accrue till the Respondent effectively received payment..."

He goes on to depone at paragraph 8

"That the deposit of Ug.Shs. 1,110,595,410/= into court as a condition of stay was merely a security device to protect the Respondent from total loss in case the Applicant was put under receivership or otherwise taken over by the Bank of Uganda..."

In other words the deposit in court was a security device and not effective payment.

I shall begin by reviewing the legal rationale behind the application of interest generally.

Referring to the right to interest Halsbury's Laws of England 4^{ed} (Vol 32) at para 106 states

"interest is the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another..."

Section 26 (2) of The Civil Procedure Act (Cap 71 Laws of Uganda Rev) provides

"...where and insofar as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid ... from the date of the decree to the date of payment..."

Lord Denning in the case of **Harbutt's "Plasticide" Ltd V Wyne Tank and Pump Co. Ltd** [1970] / All ER 225 (CA) held as follows

"...An award of interest is discretionary. It seems to me that the basis of an award of interest that the defendant has kept the plaintiff out of his money; and the defendant has had use of it himself. So he ought to compensate the plaintiff accordingly. This reasoning does not apply when the plaintiff has not been kept out of his money but in fact has been indemnified by an insurance company..."

In yet another case of

Moir V Wallersteiner and others (No. 2) [1975] 1 All ER 849 (CA)

Lord Denning again reviewing a series of authorities reaffirmed that an award of interest was discretionary under the equitable jurisdiction of the court.

He went on to hold

"...in equity, interest is never awarded by way of punishment. Equity awards it whenever money is misused by an executor, or a trustee or anyone in a fiduciary position – who has misapplied the money and made use of it himself for his own benefit. This presumes that the party whom relief is sought has made that amount of profit which persons ordinarily do make in trade, ... in equity interest is awarded whenever a wrong doer deprives a company of money which it needs for use in its

business. It is plain that the company be compensated for the loss thereby occasioned by it..."

This of course does not preclude the parties themselves agreeing on a rate of interest in writing or for interest to be prescribed by statute. These principles were followed by my learned brother Judge, Justice Yorokamu Bamwine in **Kazinga Channel Office World Ltd V Attorney General** HCCS 276 of 2005 (unreported) as to when interest should be awarded.

In this case as stated above interest was already awarded and indeed both parties do not contest this.

The parties actually at the time the matter reached the Supreme Court had agreed on what the decretal sum and interest was Mr. Andrew Wamina in his affidavit (supra) at paragraph 4 depones *"...the Respondent as a condition of stay of execution, insisted on the Applicant therein pay into court Ug.Shs.1,110,595,410/= which was the decretal sum and accrued interest as 22/12/2004..."*

The question is whether further interest should be paid beyond 22/12/2004. on the legal authorities cited the test to my mind would be whether the present Applicant by depositing the decretal sum in court as a condition for the stay of execution had kept the Respondent out of his money and had use of it himself?

Counsel for the Respondent has asked court to distinguish this payment into court from that under 019 r 1 (a) (now 022 r 1 (a) Rev Ed 2000) which provides

1. *All money payable under a decree shall be paid as follows, namely*
 - (a) *into the court whose duty it is to execute the decree ...*

This of course is a correct position as payment was not made into “...*The court whose duty it is to execute the decree*” (i.e. The High Court) but rather the Supreme Court. The real question is what was paid into the Supreme Court and why.

To my mind after the failure of the appeal at the Court of Appeal then the process of execution against the Applicant commenced yet again after the stay pending the decision of the Court of Appeal. What then was paid into the Supreme Court as stated in the affidavit of Mr. Wamina was the decretal sum and accrued interest as at 22/12/04 being the sum of 1,110,595,410/-.

In other words the Applicant Judgment Debtor paid into the Supreme Court what it would have paid the Respondent Judgment Creditor if execution had not been stayed and had proceeded. Whereas I agree with counsel for the Respondent that the appeal at the Supreme Court could have gone anyway the odds were always in favour of the Respondent and that is why it is the Applicant which had to make the deposit. It therefore means to my mind that if the appeal at the Supreme Court went against the Applicant, which it did, then payment into court was as good as payment to the Respondent. This is because the Respondent now did not have to go through an

execution process to obtain the decretal sum. It would just collect the money from the Supreme Court, which it did.

Clearly the Applicant in depositing the money in the Supreme Court no longer had use of it for itself. This is notwithstanding the allegation that the court still for banking purposes deposited the money in a branch of the Applicant bank. Again to my mind such a deposit is a different matter creating different legal relationships outside the case at hand. If the appeal at the Supreme Court had succeeded then the money was never that of the Respondent in the first place.

Should interest continue to run when the court is holding money in the form of a decretal sum out of a judgment on behalf of a Judgment Creditor and determining if the money should or should not go to him? I think not. To allow interest to run in such circumstances is to allow for further conflict and legal proceedings which is what happened in this case and that is contrary to S.33 of the Judicature Act (Rev Ed 2000) which calls on the High Court to exercise its jurisdiction so that *"...as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided"* (emphasis mine).

I would like to observe that this is a 1999 dispute that culminated in a consent decree in 2003. However the matter continues to be litigated as to the enforcement of the

consent decree. This matter has therefore stayed for a fairly long time in the court system and the parties should really be looking at bringing the matter to finality.

Probably if court held part of the decretal sum and the rest of the sum was with the Judgment Creditor as a result of a stay then interest would continue to run on the money still with the Judgment Creditor if the appeal failed.

I in answer to the question find that in this case since the whole decretal amount as agreed by the parties in a consent order was deposited in court pending appeal it shall not attract further interest. It therefore follows that the sum of Shs.148,031,294/= as interest does not arise.

Further execution against the Respondent an account of interest is stayed. The Applicant did not pray for nor did the parties address me on the issue of costs. In order to bring finality to this long outstanding matter I order each party to bear its own costs.

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Geoffrey Kiryabwire

JUDGE

26/10/06

26/10/06

9:20am

Ruling read and signed in the presence of:

- **Albert Byamugisha for Applicant**
- **Bernard Bamwine for Respondent**

.....

Geoffrey Kiryabwire.

JUDGE

26/10/06

R U L I N G