

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 13 OF 2021

HAM ENTERPRISES LTD & 2 OTHERS.....APPELLANTS

VERSUS

DIAMOND TRUST BANK (U) LTD & ANOTHER.....RESPONDENTS

Reasons why I declined to halt delivery of the judgment

When the above matter was called for delivery of judgment, learned Counsel Friday Roberts Kagoro, assisted by learned Counsel Anthony Tomusange, representing the Appellants, requested me to halt the delivery of the judgment, giving reasons which are well captured in the record of proceedings. Learned Counsel's reasons were briefly that the Appellants filed Civil Application No. 51 of 2021 seeking judgment on admission, pending hearing before this Court; and that, subsequently, the Appellants received further evidence that would be instrumental in making this Court arrive at a just decision, which prompted them to file Civil Application No. 15 of 2023, also pending before this Court, seeking this Court to arrest delivering the judgment.

In response, learned Counsel Edwin Karugire, assisted by learned Counsel Sebuwufu Usaama, representing the Respondents, opposed the Appellant's request. He gave reasons which are well captured in the record of proceedings. They were briefly that there is no need to delay a judgment in an important matter which had delayed for longer than two years; that one cannot stop a judgment in order to ask court to issue a judgment; that the application to adduce further evidence was filed immediately after receiving the judgment notice; that in any case, this Court is not a trial court and has no original jurisdiction in the matter, neither does it have power to take additional evidence. He cited Rule 30 (1) of the Rules of this Court to support his submissions. HAT

In rejoinder, learned Counsel Kagoro cited the case of **Alcon International V NSSF** (citation not given) and submitted that this Court has power to take further evidence. He stated that I should fix Miscellaneous Application No. 15 of 2023 for hearing, allow it, or dismiss it, so that Miscellaneous Application No. 51 of 2021 which was for judgment on admission, filed two years ago, and which has never been heard, is heard *inter partes*. He reiterated his request that the delivery of the judgment be halted.

In my ruling, I declined to halt the delivery of the judgment and proceeded to deliver/read it, after stating that I would give my reasons later, which I am now proceeding to do. Suffice it to state, before setting out my reasons, however, that after delivering the judgment, learned Counsel Friday Roberts Kagoro stated from the Bar that he had received the judgment in protest, which I accordingly recorded, after informing him that it was his right to do so.

I was mandated by the Head of the Panel, Hon. Justice Alfonse Owiny - Dollo, CJ, who also wrote the lead judgment, to deliver the judgment on behalf of the panel. This was in agreement with all members of the panel, all of whom had duly submitted to me their signed concurring judgments beforehand, which I indeed delivered as *per* the notice of the judgment which was issued by the Registrar and served on both parties through their respective Counsel well in advance.

As I indicated to court on that day, the delivery of the judgment had delayed. The appeal was first heard on 11th November 2021, but Justice Opio – Aweri (RIP) passed on in December 2022 before delivery of judgment. This necessitated a reconstitution of the panel, which was done as soon as new Justices were appointed to join the Court. Justice Musota substituted the departed judge on the reconstituted panel which re – heard the appeal on 5th May 2023. As a member of both the original and the reconstituted panel, I know that the reasons for the reconstitution of the panel were clearly brought to the attention of the parties and their respective counsel when they appeared before the reconstituted panel. They were each invited by the panel to state whether they had anything to add to their submissions. Both sides through their respective counsel adopted their earlier submissions. Each side had nothing new to add, and there was no mention of a pending application, after which court informed them that judgment would be on notice. This is clearly reflected in the record of proceedings of the court sitting before the reconstituted panel.

The gist of the Appellants' Counsel's prayers was that I halt the delivery of the judgment and fix Miscellaneous Application No. 15 of 2023 for hearing, after which they would be ready to receive the judgment. At some stage in their submissions, learned Counsel for the Appellants even suggested that I hear the application, allow it or dismiss it.

The judgment notice, which is on record, was issued by the Registrar of this Court and was duly served on the parties through their respective Counsel. The affidavit of service, sworn by this Court's process server (Veronica Nakyanja) and sealed with the seal of this Court, was also on record as I proceeded to deliver/read the judgment. It stated that learned Counsel for each side or their agents, on 08th June 2023, acknowledged receipt of the judgment notice by stamping and signing on a copy of the judgment notice which was returned to this Court and is on record. There was nothing on the face of the record to indicate that the Judgment notice was received under protest on the part of the Appellants. The record also did not have any court order stopping the delivery of the judgment. The Registrar of the Court, who had audience with me in my chambers just before the delivery of the judgment, did not mention or put before me any record that would give me reason not to proceed with the delivery of the judgment.

I listened to Counsels' submissions from each side and appreciated that Miscellaneous Application Nos. 51 of 2021 and 15 of 2023 were pending hearing in this Court. Counsel for both sides even went to the extent of highlighting some aspects of the merits of each application. However, my considered opinion is that the said applications could only be appropriately raised before a panel competent to hear them on the merits, after the said applications had been properly fixed and cause listed for hearing. At the time I read/delivered the judgment, no such step had been taken, or at least the record and the office of the Registrar of the Court had not indicated anything to that effect.

My simple role in court that day was to deliver/read a judgment, as mandated by the head of the panel in agreement with all other members of the panel, after due notice had been served and acknowledged by Counsel for each side. This role, which could even be performed by a Registrar of this Court, did not confer upon me competence to fix any applications for hearing, let alone hear or determine such applications, or delve into the merits of such applications. I was not sitting in Court as a panel, not even as a Single Justice, in the sense of presiding over a hearing and determining it. My simple role was to deliver/read a judgment of the panel, as opposed to fixing or hearing an application, whether such application was to arrest a judgment, or to adduce further evidence. This is the reason I have refrained from addressing those

aspects of the submissions from both sides which would make me delve in the merits of the two applications as if I constituted the coram competent to hear and determine the two applications.

As I sat to deliver/read the judgment, there was no order from any panel to the effect that judgment be arrested, nor was there anything from the Registrar of the Court, or on the face of the record, giving me reason, or hampering me from proceeding to deliver/read the judgment. This is the reason why I proceeded to read/deliver the judgment.

Dated at Kampala this.....^{29th}.....day of June 2023.



Percy Night Tuhaise

Justice of the Supreme Court