**Tropical Commodities Suppliers Ltd and others v International Credit Bank**

**Ltd (In Liquidation)**

**Division:** High Court of Uganda at Kampala

**Date of ruling:** 13 November 2003

**Case Number:** 132/98

**Before:** Ogoola J

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Civil procedure – Stay of execution – Stay of execution by the High Court of its own decision –*

*Procedure and the law applicable – Whether the law applicable in Order 39 or rules of practice derived*

*from Order 39 – Substantial loss – Meaning of substantial loss.*

**Editor’s Summary**

The applicants entered a consent judgment in the High Court for UShs 200 million whereupon they paid

UShs 72 million. They then applied to set aside the consent judgment. The review application was refused and the applicants filed an appeal against that refusal.

The applicants in the meantime applied to the High Court for a stay of execution against the consent judgment. The application for stay was brought under section 78 of the Civil Procedure Act (Chapter 71) which gives the Court inherent jurisdiction. The respondent argued that the applicable law was Order 39 of the Civil Procedure Rules.

**Held** – There is no provision in written law governing the procedure for applying for a stay of execution in appeals emanating from the High Court any of its orders.

The procedure for obtaining a stay of execution in the High Court from a ruling emanating from the

High Court is governed by rules of practice derived from Order 39. A party must satisfy three conditions to obtain a stay of execution namely; that substantial loss may result unless the order of stay is made, the application has been made without unreasonable delay, and security for costs has been given by the applicants.

Substantial loss does not represent any particular size or amount but refers to any loss, great or small, that is of real worth or value as distinguished from a loss that is merely nominal. Application was allowed. Security for costs of UShs 20 million ordered.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*DFCU Bank Ltd v Lusejjere* civil application number 29 of 2003 – **C**

*Kaggwa v Kawalya-Kaggwa* administration cause number 21 of 1972 – **C**

*Kampala Bottlers Ltd v Uganda Bottlers* [1995] LLR 223 (SCU) – **D**

*Kyazze v Busingye* [1990] LLR 190 (SCU) – **APP**

*Mugenyi and Co Advocates v National Insurance Corporation* Supreme Court civil application number 3

of 1984 (UR) – **APP**

*Singh v Runda Coffee Estates Ltd* [1966] EA 263 – **C**

*Tahar Fourati Hotels Ltd v Nile Hotel International Ltd* High Court miscellaneous application number

614 of 2003 – **C**

***United Kingdom***

*Wilson v Church* [1879] 12 Ch D 454 – **C**

***Others***

*Re Krause’s Estate* 173 WASH 1, 21p 2d 268 – **C**

*Seglem v Skelly Oil Co* 145 KAN – **C**