



**CYMBELL
ADVOCATES**

Client Alert

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QUESTIONS FOR THE APPEAL COURT:

- If the transaction was illegal, why were orders granted in favour of only one party to the alleged illegality?
- Does a foreign bank require a licence from the Central Bank of Uganda in order to lend into the Ugandan Market?
- Why were contested sums awarded without proof, as required by law?

Banking & Finance Uganda

COURT HAS STAYED EXECUTION OF THE JUDGMENT IN HAM VS DTB

The High Court of Uganda has stayed execution of the recent judgment in **Ham Enterprises Limited Vs Diamond Trust Bank Uganda Limited (DTB)** “the **initial judgement**”. The judgement which raised uproar in the banking fraternity had held among others that syndication of loans is illegal, and that foreign banks can not lend in Uganda without a license from the Central Bank.

Dissatisfied with the judgement, **DTB** appealed, and also filed an application to stay the execution of the orders in the judgment. The court has now ruled that the judgement, which has implications across the banking industry, is a good case for ordering maintenance of the status quo to allow the Court of Appeal pronounce itself on the controversies raised.

Applications for stay of execution call for determination of several conditions. An appeal has to have been filed against the **initial judgement** with a likelihood of success. This calls for a skeletal determination of the issues which will be raised at appeal, which the judge did on both procedural and legality grounds. On procedural grounds, the judge wondered why, if the trial judge had found that the transaction was illegal, that orders were issued in favor of only one party. Under the law, an illegality would affect both parties. The court of appeal will therefore have to determine if a license is required by a foreign bank to lend in the Ugandan market and whether it was right for the trial judge to declare the transaction illegal and yet proceed to make orders in favor of only one party to the alleged illegality.

The judge also brought into question why **the initial judgement** ordered various sums in favor of Ham Enterprises Ltd without formal proof of the same. The law requires that where a sum is contested, a court cannot award it unless it is proved.

Ham Enterprises Ltd also opposed the application for stay of execution on the grounds that no security had been deposited to secure the performance by **DTB** of its obligations under the **initial judgement**, should the appeal not be successful. In this regard the judge clarified that this legal requirement is not intended to fetter the right of appeal, and in any event DTB is liquid enough, according to the judge, to meet its obligations should the appeal not be successful. Each case has to be determined on its own merits.

Finally, Ham Enterprises also argued that there was no threat of execution to warrant the application for stay of execution. Indeed, a stay of execution is granted where there is execution or a threat of execution. In the Judge’s opinion, opposing an application for stay of execution indicates that there is a likelihood or a threat of execution and that if Ham Enterprises did not intend to execute, they would not have opposed the application for stay of execution. The Judge also found that the orders in the **initial judgement** were self-executing, such as the orders for immediate discharge of the mortgages on the properties securing the indebtedness of Ham Enterprises. Such an order can be served on the Registrar of Titles to discharge the mortgages without any further ado.