THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 2428 OF 2025

(ARISING FROM CIVIL APPEAL NO. 127 OF 2025)

CRANE PAPER LTD :: APPLICANT

VERSUS

V.G. KESHWALA & SONS LTD :: RESPONDENT

BEFORE: HON. LADY JUSTICE PATIENCE T.E. RUBAGUMYA

RULING

Introduction

This application was brought by way of Notice of Motion under **Section 37 of the Judicature Act, Cap. 16, Section 98 of the Civil Procedure Act, Cap. 282** and **Order 43 rule 4 of the Civil Procedure Rules, SI 71-1,** seeking:

1. An order for stay of execution of the ruling and orders of the Assistant Registrar of Trademarks dated 14th October, 2025, pending the determination of ***Civil Appeal No. 127 of 2025***.
2. Costs of this application be provided for.

Background

The background of this application is detailed in the affidavit in support deponed by **Ms. Nimisha Chandubhai Patel** its Director, and is summarized below:

1. That the Applicant is aggrieved by the ruling and orders of the Assistant Registrar of Trademarks dated 14th October, 2025 wherein

the Assistant Registrar ordered for the variation of the Applicant's trademark No. UG/T/2024/83036 "Crane Paper Diamond" and the device in class 16 in the Names of Crane Paper Ltd.

2. That the Applicant filed a notice of appeal against the said ruling and has since filed ***Civil Appeal No. 127 of 2025*** challenging the said ruling.
3. That the Applicant's appeal has a likelihood of success and the appeal will be rendered nugatory if this application is not granted since the issued orders are self-executing.
4. That there is an imminent threat of execution of the decree and if the application is not granted, the Applicant will be subjected to irreparable injury, substantial loss of income, loss of good will, brand dilution and reputational loss in the stationary market.
5. That the Applicant is ready and willing to deposit a reasonable amount as security for costs as this Court shall deem fit.

In reply, **Mr. Ranmal Keshwara** the Respondent's Director and founding shareholder, opposed the application contending that:

1. The decision of the Assistant Registrar of Trademarks dated 14th October, 2025 was arrived at judiciously and lawfully.
2. On 29th November, 2018 the Respondent duly registered its diamond trademark and has been using it since then however, to its surprise, it was brought to its attention that the Applicant was seeking to use the same trademark, as per the advert in the Daily Monitor newspaper of 31st December, 2024.
3. The Respondent opposed the registration however, the same was later approved. That the action of erroneously obtaining registration of a trademark confusingly similar to the Respondent and later

relying on it was in bad faith and constitutes blatant acts of unfair competition and constitute a ground for cancellation.

4. The Respondent initiated a claim against the Applicant and on 14th October, 2025, a decision was made in favour of the Respondent.
5. It is not true that the Assistant Registrar of Trademark's decision had any errors since he arrived at the right decision to avoid having two similar trademarks on the register.
6. Therefore, the Assistant Registrar of Trademarks did not err in law and fact by ordering the variation of the Applicant's trademark, finding that the Applicant's trademark is not capable of concurrent usage and did not commit a distinct and material error of evaluation.
7. The appeal has no likelihood of success and the Applicant shall not suffer any substantial loss.
8. The orders of the Assistant Registrar of Trademarks are self-executory to an extent that the 14 days granted for the Applicant to comply have since lapsed and therefore, the orders being sought are inconsequential.

In rejoinder, the Applicant through an affidavit deponed by **Ms. Nimisha Chandubhai Patel** its Director, reiterated its averments and emphasized that the Applicant is the registered owner of the trademark and will suffer substantial loss if execution is not stayed.

Representation

Learned Counsel Mr. Kenneth Akampurira and Mr. Andrew Wandera of **M/s Amber Solicitors & Advocates** represented the Applicant while Learned Counsel Friday Kagoro of **M/s Muwema & Co. Advocates**, represented the Respondent.

Both Learned Counsel submitted orally and their submissions have been considered by this Court.

Issues for Determination

Following **Order 15 rule 3 of the Civil Procedure Rules** and the case of ***Oriental Insurance Brokers Limited Vs Transocean (U) Limited, SCCA No. 55 of 1995***, this Court has framed the issues for determination as follows:

1. Whether the application discloses sufficient grounds for the grant of an order of stay of execution?
2. What remedies are available to the parties?

Issue No.1: Whether the application discloses sufficient grounds for the grant of an order of stay of execution?

Applicant's submissions

Learned Counsel for the Applicant first relied on **Section 37 of the Judicature Act** and **Order 43 rule 4 of the Civil Procedure Rules** for the governing law and principles.

Learned Counsel then submitted that the Applicant, aggrieved by the ruling of the Assistant Registrar of Trademarks, filed ***Civil Appeal No. 127 of 2025***. That to preserve the appeal, Court has already issued an administrative order and an interim order. That the appeal has a likelihood of success since in the ruling, the Assistant Registrar took cognizance of the fact that the trademark has been in operation and distribution. That therefore, the Assistant Registrar of Trademarks should have provided for the concurrence of the two trademarks instead of asking the Applicant to vary the same. That therefore, the order of stay of execution should be granted to enable the Applicant prosecute the appeal on matters of law and fact.

Further, that the Applicant will suffer substantial loss if the order is executed since the production has already been completed, taxes paid as well as the salaries of the employees. That the execution of the order will impair the Applicant's business.

In conclusion, Learned Counsel for the Applicant submitted that the application should be granted so as not to render the appeal nugatory in the likely event that the Court finds that the two trademarks can co-exist.

Respondent's submissions

Learned Counsel for the Respondent submitted that the appeal has no likelihood of success because before the matter came up before the Assistant Registrar of Trademarks, the Applicant knew that they were infringing on the Respondent's trademark.

Regarding the issue of the invoices, Learned Counsel submitted that the Company in the invoices is a sister Company to the Respondent. Also, that, if the Court is inclined to grant this application, then the Applicant should be ordered to deposit a substantial sum into Court as security.

Applicant's submissions in rejoinder

Learned Counsel for the Applicant submitted that the Assistant Registrar's orders did not carry any monetary condemnation or award to the Respondent.

That therefore, Court should exercise its discretion and order that the Applicant does not deposit any amount or order that the Applicant deposits UGX 1,000,000/= in Court for the due performance.

Analysis and Determination

I have considered the pleadings, evidence and submissions of both parties to find as follows.

This application is based on the background that on 14th October, 2025, the Assistant Registrar of Trademarks issued a ruling in favour of the Respondent. Dissatisfied with the decision and decree, the Applicant filed a notice of appeal on 22nd October, 2025 as per annexure **"B"** attached to the affidavit in support. Subsequently, the Applicant filed this application and ***Civil Appeal No. 127 of 2025; Crane Paper Ltd Vs V.G Keshwala & Sons Ltd***.

In the cases of ***Olivia da Ritta Siqueira E Facho Vs Siqueira [1933] 15 KLR 34*** and ***Jadva Karsan Vs Harnam Singh Bhogal [1953] 20 EACA 74***, it was held that the inherent jurisdiction may be invoked to stay execution/proceedings where the ends of justice require so or to prevent an abuse of process of the Court. It is now settled law that in such an application, the Applicant must prove that conditions exist to warrant the Court to exercise its discretion in his/her favour. (See: ***Hon. Theodore Ssekikubo and 3 Others Vs the Attorney General and 4 Others, Supreme Court Constitutional Application No. 06 of 2013)***.

I shall proceed to consider the following conditions;

a) Whether there is a pending appeal with a likelihood of success;

It is undisputed that there is a pending appeal vide ***Civil Appeal No. 127 of 2025; Crane Paper Ltd Vs V.G Keshwala & Sons Ltd*** as evidenced by annexure **"C"** attached to the affidavit in support. However, the Respondent avers that the appeal has no likelihood of success.

I have carefully perused the Notice of Motion and the supporting affidavit in ***Civil Appeal No. 127 of 2025*** on Court record, and I find that it contains issues of determination regarding the concurrence use of two trademarks. Therefore, I find that there is a pending appeal and it raises arguable points of law.

b) <u>There is a serious or imminent threat of execution of the decree or order.</u>

In the case of ***Uganda Revenue Authority Vs East African Property Holding Limited, Court of Appeal Civil Appeal No. 144 of 2014,*** **Hon. Justice Richard Buteera, *JA*** held that:

> *"There must be established by evidence a serious and imminent threat of execution of the decree or order, and the evidence should be adduced that if the application is not granted, the main application and the appeal shall be rendered nugatory."*

In the case at hand, it is undisputed that on 14th October, 2025, the Assistant Registrar of Trademarks issued a self-executing order and that the same was to be implemented within 14 days from the date of the ruling. Therefore, I find that there is an imminent threat of execution of the order.

c) <u>The Applicant will suffer irreparable damage and the appeal will be rendered nugatory if a stay is not granted.</u>

The Applicant averred that it will suffer irreparable and substantial loss and that the appeal will be rendered nugatory if the application is not granted. That it will suffer irreparable injury, substantial loss of income, loss of good will, brand dilution and reputational loss in the stationary market since production has already been completed, taxes paid as well as the salaries of the employees and that the execution of the order will impair the Applicant's business. On the other hand, the Respondent avers that the Applicant will not suffer any substantial loss.

In the case of ***Eriabu Kabigiza Vs Lawrence Sserwanja [1975] HCB 199***, it was held that the main criterion for staying execution should be whether the judgment debtor would suffer substantial loss if the decree was executed, notwithstanding that the decree might subsequently be set aside.

In light of the above, I find that if execution ensues the Applicant will suffer irreparable loss and the appeal will be rendered nugatory.

d) <u>The application has been made without unreasonable delay.</u>

According to the Court record, the ruling being appealed against was issued on 14th October, 2025. This application was filed on 28th October, 2025.

Therefore, I find that this application was brought without unreasonable delay.

e) <u>Security for the due performance of the decree</u>

Learned Counsel for the Respondent submitted that, should the Court be inclined to grant this application, the Applicant should be ordered to deposit a reasonable amount in Court as security for the due performance of the order.

In the case of ***Joel Kato Vs Nuulu Nalwoga, SC Misc. Application No. 11 of 2011***, the Supreme Court noted that in an application for stay of execution, the interest of justice would be better served if the status quo is maintained rather than the Court ordering the Applicant to deposit a substantial amount of money as security for the due performance of the decree.

I have also considered the fact that the ruling and orders being appealed against do not carry any monetary condemnation or award to the Respondent. In light of the above authority and considering the nature of the ruling and orders being appealed against, I decline to make orders for security for due performance of the order.

Issue No.2: What remedies are available to the parties?

Considering that the Applicant has satisfied the majority of the conditions for stay of execution, the application is hereby granted with the following orders:

1. The execution of the orders issued by the Assistant Registrar of Trademarks issued on 14th October, 2025 is hereby stayed pending the determination of ***Civil Appeal No. 127 of 2025***.
2. Costs of this application shall be in the cause.

I so order.

Dated, signed and delivered electronically this **27th** day of **November, 2025.**

Patience T. E. Rubagumya
JUDGE
27/11/2025
6:20am

Delivered via ECCMIS

Under the Judicature (Electronic Filing, Service and Virtual Proceedings) Rules, 2025.