

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Uganda]

2020



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I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

- 1. Is it possible to apply for an interim measure in order to ensure the effective enforcement of a court decision?**

Answer: Yes, an interim order can be issued to preserve the status quo, or to prevent the judgment debtor from disposing of the assets pending the determination of the main claim.¹

- 2. Is it mandatory to pay court fees for this type of application?**

Answer: Yes, the fees payable are however, nominal.

- 3. What is the ordinary/average length of time for this kind of procedure?**

Answer: The procedure could take between 2 days to 3 months depending on the court's schedule and conduct of the parties.

II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES

- 1. For which types of interim measures are the parties allowed to apply? (e.g., injunction, freezing orders, caveat, restraining order, etc)**

Answer: According to the relevant legislation:²

Stay of execution

Injunctions

Orders for detention, preservation or inspection of any property

Orders for deposit of money in court

Search and seizure orders

III. PROCEDURE

- 1. Competent Court**

¹ Section 98 of the CPA, Section 33 of the Judicature Act

² Order 41 of the CPR, Section 98 of the CPA, Section 33 of the Judicature Act

a) Which court has jurisdiction to grant these interim and precautionary measures?

Answer: The court in which the underlying/main lawsuit is pending will have jurisdiction over an application for interim and precautionary measures.

2. When can the application for interim and precautionary measures be submitted?

Is it possible to apply for it at the time the underlying lawsuit is filed? If YES: Are there any special requirements when so doing?

Answer: Yes, it can be filed together with the lawsuit. There are no special requirements for filing the application at the time the underlying lawsuit is filed.

3. Is it possible to apply for interim precautionary measures before filing the underlying lawsuit? If YES: Are there any special requirements when so doing? (e.g., deadline to submit the lawsuit)

Answer: No, interim applications arise out of an underlying/main lawsuit and serve temporary relief pending the hearing of the underlying/main claim.

4. Is it possible to apply for interim precautionary measures after filing the main claim? If YES: Are there any special requirements when so doing?

Answer: Yes, the claimant should prove to court that there is a matter that requires the court's intervention prior to the hearing of the main claim.³

5. Criteria used by the court for granting these measures

What requirements must be fulfilled in order to apply for an interim measure? (e.g. *periculum in mora*, *fumus boni iuris*, security, etc)

Answer: Depending on the remedy sought, the requirements generally include:

- A triable issue/prima facie case with a likelihood of success;
- The applicant to show that he/she will suffer irreparable damage;

³ Order 41 of the CPR, Section 98 of the CPA, Section 33 of the Judicature Act

- There being a matter that must be addressed by the court prior to the hearing of the main claim;⁴
- The applicant to deposit security for costs/due performance.

6. Procedure

a) Which are the main steps of the procedure after filing the interim measure application? (e.g. holding a hearing, presenting evidence, etc.)

Answer: The procedure depends on the nature of the remedy being sought, but generally involves:

- Serving the application on the respondent together with the affidavit in support thereof;
- The respondent filing and serving an affidavit in reply, if necessary;
- The applicant then filing and serving an affidavit in rejoinder, if necessary;
- The hearing to then be fixed and the parties to address the court on the day of the hearing;
- The court issuing a ruling either allowing or dismissing the application;
- An order to be extracted and served upon the respondent.

b) Is it possible for the Court to order an interim measure without hearing the other party? (*in audita parte debitoris*). If YES, under what circumstances can the parties apply for it?

Answer: The practice of courts currently is to afford parties a hearing before issuing orders. The court may, however, issue an interim measure pending a hearing where there is an urgency to maintain the status quo.⁵

c) What are the main steps of the procedure in this case?

Answer:

- File the application for the interim order
- Fix the application for hearing

⁴ Kiyimba Kagwa V Hajji Abdu Nasser Katende, 1985 HCB 43

⁵ High court office instruction No. 1 of 2014

- Appear before court on the scheduled date
- Applicant to argue the application before the court
- The court to then issue a ruling either allowing or dismissing the application
- An order to be extracted and served upon the respondent

7. Opposition of the defendant

- a) **Is it possible for the defendant to oppose interim and precautionary measures?**

Answer: Yes, by filling an affidavit in reply and appearing in court to argue against the application.

- b) **Is it possible for the defendant to ask the court for the substitution of the interim measure for a guarantee?**

Answer: Yes, the court may, upon application of the parties or of its own volition, order for the issuance of a guarantee.

8. Appeal

- a) **Are appeals allowed from the court decision ordering the measures or rejecting the defendant's opposition to them?**

Answer: Yes, orders of the court granting or refusing to grant interim measures can be appealed against.⁶

- b) **Is it possible to enforce the interim measure once an appeal is filed?**

Answer: Yes, an appeal does not amount to an automatic stay of execution.

IV. EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.

1. **Is it possible to enforce the interim measure when the other party obstructs it?**

⁶ Order 44 (1)(q) of the CPR

Answer: Yes, an order of court once issued must be respected and complied with. If the other party obstructs the measure, contempt of court proceedings can be commenced against them.⁷

2. Is it possible to modify a previous interim measure?

Answer: Yes, upon application to the same court with justifiable reasons as to why the court should modify its orders.

3. When is it possible to raise an interim measure?

Answer: It depends on the remedy sought, but it can be at any time including before, during or after the hearing as long as the applicant has justifiable grounds.

4. Are there any rules concerning the costs (e.g., lawyers' fees, etc.) related to the application?

Answer: Costs are a discretionary remedy of the court, but the general principle is that costs ordinarily follow the event.⁸

V. ARBITRATION

1. Is it possible to apply for an interim measure in order to assure the effective enforcement of an arbitration award in your country? If YES: what is the enforcement procedure?

Answer: Yes, a party can seek interim measures from the High Court.⁹

- An application should be filed before the High Court and served upon the respondent who may file a response.
- The application will then be fixed for hearing after which the court will either allow the application or dismiss it.
- An order is then extracted and served upon the respondent.

⁷ Amrit Goyal vs Harichand Goyal and 3 others C.A.C.A No.109 of 2004

⁸ Section 27 of the Civil Procedure Act

⁹ Section 6(1) of the Arbitration and Conciliation Act

2. Are the arbitrators, entitled to order an interim measure?

Answer: No, interim measures in arbitration can only be sought from the High Court.

VI. FOREIGN PROCEDURE & ARBITRATION

1. Is it possible to apply for an interim measure before your country's courts in order to assure the effective enforcement of a foreign court decision or arbitration award? If YES: how is this procedure executed?

Answer: Yes, a party seeking the enforcement of an arbitration award can apply for an interim measure from the High Court.¹⁰ The procedure is as follows:

- An application must be filed before the High Court and served upon the respondent who may file an affidavit in reply.
- The application will then fix the matter for hearing.
- The parties will appear before the court on the scheduled date and argue the application.
- The court will either allow the application or dismiss it.
- If allowed, an order will then be extracted and served upon the respondent.

¹⁰ Section 6(1) of the Arbitration and Conciliation Act

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