

INTERLOCUTORY APPLICATIONS: DO'S & DON'TS

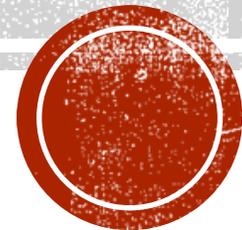
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WHAT ARE INTERLOCUTORY APPLICATIONS? DEFINITION AND EXAMPLES

An interlocutory application is an application to the court in any suit, appeal or proceeding already instituted in such a court, other than a proceeding for execution of a decree or an order.



COMMON INTERLOCUTORY APPLICATIONS – PART A

1. Interim and Temporary Injunctions (Order 50A and Order 41 CPR)
2. Amendment of pleadings (Order 6 Rule 19-21 CPR)
3. Addition of parties (Order 1 Rule 10 CPR)
4. Attachment before judgment (Order 40 CPR)
5. Discovery of documents (Order 10 CPR)
6. Security for costs (Order 26 CPR)



COMMON INTERLOCUTORY APPLICATIONS – PART B

7. Stay of execution pending appeal (Order 43 Rule 4(2))
8. Applications for setting aside (Order 36 Rule 11, Order 52 Rule 1)
9. Reinstatement of suits (Order 52 Rule 1)
10. Leave to appear and defend (Order 36 Rule 3)
11. Appointment of an interim liquidator (Rule 27 Companies (Winding Up) Rules)
12. Judgement on admission (Order 8)



WHAT TO REMEMBER WHEN FILING INTERLOCUTORY APPLICATIONS – PART A

1. Applications must generally be filed in a timely manner after close of pleadings and before trial or scheduling save for extraordinary circumstances
2. Applications must not be filed as a matter of course (common with unnecessary injunction applications)
3. The Procedure (Notice of Motion or Chamber Summons) should not be ignored even if this may be construed as a technicality.



WHAT TO REMEMBER WHEN FILING INTERLOCUTORY APPLICATIONS – PART B

4. The signing of the Motion or Chamber Summons and ensuring accompanying affidavits are duly signed and commissioned, ditto for annexures to affidavits
5. Deponents of affidavits should appear before the Commissioner for Oaths to take oath prior to signing off their affidavits and it is good practice for them to know the name of the Commissioner and his/her chambers or court (if Magistrate): if proof is elicited through cross examination or other means that deponent did not appear, the affidavit is incompetent
6. Applications should be drafted with sufficient clarity and legal basis to enable a reader or judicial officer appreciate whether the same ought to succeed without need for submissions or oral arguments; applications were never intended to constitute a protracted proceedings



WHAT TO REMEMBER WHEN FILING INTERLOCUTORY APPLICATIONS — PART C

7. It may be advantageous to file accompanying legal arguments in support of the application for purposes of expeditious handling even in lower courts and not only in appellate courts where it is a requirement
8. It is critical to appear before the judicial officer ready to orally argue an application as opposed to presuming a directive for written submissions will be issued
9. The best interlocutory applications are well founded only because the head suit, on which they are based, is equally well founded and has merit on the face of it.



WHAT TO REMEMBER WHEN FILING INTERLOCUTORY APPLICATIONS - PART D

10. It is therefore critical to issue pleadings in the main suit/ head suit are well drafted, the cause of action or defence are well crafted to leave no room for doubt as to the cause of action or defence. This enables easier appreciation of the merit or otherwise of an application
11. Certain categories of applications require mandatory annexures in form of either rulings, directives or other essential court document for them to have a prima facie case; examples include applications for leave to appeal
12. Finally, a reminder that applications will not be fixed if no one is moving the court (particularly in appellate courts but also prevalent in lower courts).



OPPOSING INTERLOCUTORY APPLICATIONS

13. From the Respondents' point of view, the task of opposing an interlocutory application begins with a thorough review of the filed Motion (It's always practical to quickly obtain a copy and not wait for service so as to have sufficient time to study the application and respond to it.)
14. There are usually precedents in form of rulings for and against; the latter are critical in managing responses to applications
15. In appropriate cases, it may be advantageous to insist on right to cross examine especially if grant of an application has a huge bearing on the head suit; especially injunction applications raising status quo assertions



LEADING DECISIONS TO REMEMBER

| APPLICATION | DECISION |
|------------------------|---|
| Amendment of Pleadings | GASO Transport Services (Bus) Ltd v Martin Adala Obene SCCA No. 4 of 1994 Tororo Cement Co. v Frokina International Ltd SCCA No. 2 of 2001 |
| Amicus | Prof. Joe Oloka Onyango & Ors v Yoweri Kaguta Museveni & Ors SC Civ. App. No 2 of 2016 |
| Discovery | Kabaka of Buganda vs Male Mabirizi Civil Appeal No. 184 of 2017 Angubua Peter v Housing Finance Bank (u) Ltd & ors. (HCMA 434 of 2022) Simbamanyo Estates Limited & Anor v Equity Bank & ors. (HCMA 0583 of 2022) |
| Execution | Kaijuka Richard v Kananura Andrew (SC Civ. App. No. 10 of 2017) |
| Injunction | Kiyimba Kaggwa v Haji Nasser Katende [1985] HCB 43 Davis Wesley Tusingwire v Attorney General Const. App. No. 6 of 2013 |



LEADING DECISIONS TO REMEMBER

| APPLICATION | DECISION |
|--------------------------|---|
| Leave to Appear & Defend | Geoffrey Gatete & Anor. v William Kyobe (SCCA No. 07 of 2005) |
| Mistake of Counsel | Capt. Philip Ongom v Catherine Nyero Owota SCCA No. 14 of 2001 |
| Reinstatement | Galleria in Africa Limited v UEDCL (SCCA No. 08 of 2017) Departed Asians Property Custodian Board v Jaffer Bros (SCCA No. 9 of 1998) Bank of Uganda v Banco Arabe Espanol (SCCA No. 23 of 1999) |
| Security for Costs | Bank of Uganda v Banco Arabe Espanol (SCCA No. 23 of 1999) Joel Kato & Margaret Kato v Nuulu Nalwoga (SCCA No. 12 of 2011) G.M Combined (u) Ltd v A.K Detergents (u) Ltd Civil Appeal No. 7 of 1998 |
| Setting Aside | Departed Asians Property Custodian Board v Jaffer Bros (SCCA No. 9 of 1998) China Road Bridge Corporation v Welt Maschinen Engineering & Ors (SC Misc Cause 12 of 2022) |



INTERLOCUTORY APPLICATIONS IN APPELLATE COURTS

1. Stay of execution applications in appellate courts (Court of Appeal and Supreme Court) are supposed to be entertained only after the lower court has declined to grant stay. See Rule 42 of the Judicature (Court of Appeal Rules) Directions
2. Needless to state, the judgment of the lower court should ideally be attached to the affidavit supporting this applications of this kind
3. It is more practical to file submissions supporting applications without having to wait for conferencing schedules from the court; that is for a party interested in expeditious determination



INTERLOCUTORY APPLICATIONS IN CRIMINAL MATTERS

1. There are not many applications in criminal matters save for bail and the now emerging jurisprudence under the Human Rights Enforcement Act 2019
2. With bail applications in High court, the above rules still apply while in Magistrates' courts where bail applications are oral, there is the added requirement of being well prepared in advance of appearance before the Magistrate



THE END

THANK YOU

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