

THE COURT OF APPEAL OF UGANDA AT KAMPALA

Coram: Irene Mulyagonja, JA (Single Judge)

CIVIL APPLICATION NO. 034 OF 2024

**ARISING FROM HIGH COURT MISCELLANEOUS CAUSE NO 041 OF
2023**

BETWEEN

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- 1. CHRISTOPHER MUBIRU**
 - 2. GRACE KITAKA**
 - 3. IRENE NABITAKA**
 - 4. KIWANUKA JOSEPH**
{As Administrators of
the Estate of Late Stanley
Kitaka Kisingiri}

.....APPLICANTS

AND

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- 1. MIRIAM SUNDAY NANDYOSE KAVUMA**
 - 2. PROF GEORGE BALUNABA KIRYA**
 - 3. DAVID FREDRICK KISITU MPANGA**
{Executors of the will of the Late
Godfrey Kaaya Kavuma}
 - 4. COMMISSIONER LAND REGISTRATION**

.....RESPONDENTS

REASONS FOR THE DECISION

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The applicants brought this application under rules 2 (2) (b), 6 (2) (b),
42, 43 (1) and (2) and 44 of the Judicature (Court of Appeal Rules)
Directions SI 13-10. They sought an order to stay execution of the
orders in the ruling of the High Court in Miscellaneous Cause No. 0041
of 2023, pending the determination of an appeal in this court.

When the application was called on for hearing on 19th March 2024, I
granted the order but undertook to give more detailed reasons for the
decision later on. I now hereby do so.



Representation

At the hearing of the application, the applicants were represented by Mr Bazira Anthony. The 3rd and 4th applicants were present in court. Mr Akampurira Timothy Nkoreti represented the respondents. The parties
5 filed written submissions before the hearing but were allowed to highlight what was contained in them on the key issues that were to be considered by the court before disposing of the application. The application was therefore disposed of on the basis of both written and oral submissions.

10 Background

The background to the application was deduced from the affidavit in support of the application that was deposed by Kiwanuka Joseph, the 4th applicant, on 22nd January 2023. He stated that the 1st, 2nd and 3rd respondents instituted **HCMC No. 0041 of 2023** against the applicants
15 challenging various orders and declarations that arose from the decision of the Commissioner Land Registration contained in a letter dated 5th January 2023. In his decision, the Commissioner for Land Registration (hereinafter referred to as the “CLR” or “the 4th respondent”) ordered that the certificates of title in respect of land comprised in Mailo
20 Register Kyadondo Block 255, Plots 660, 663, 664, 665, 666 and 667 at Munyonyo in Kampala be cancelled.

Mr Kiwanuka further stated that on the 15th December 2023, the High Court rendered its decision in **HCMC No 0041 of 2023** making several orders, including declarations that:

- 25 a) *The decision of the 1st respondent (the CLR) in the letter dated 5th January 2023 purporting to cancel the registration of the applicants as proprietors of the land in Mailo Register Kyadondo Block 255, Plots 660, 663, 664, 665, 666 and 667 at Munyonyo on grounds of forgery of the signature of the late Godfrey Kaaya Kavuma was made illegally;*



- 5 b) *An order of certiorari issues to quash the decision of the 1st respondent contained in the letter date 5th January 2023 purporting to cancel the registration of the applicants as proprietors of the land in Mailo Register Kyadondo Block 255, Plots 660, 663, 664, 665, 666 and 667 at Munyonyo;*
- 10 c) *And order of certiorari to quash the decision of the 1st respondent purporting to amend the register of Titles by registering the names of Stanley Kitaka Kisingiri and the 2nd to 6th respondents and any of them on the register book as proprietors of the land in Mailo Register Kyadondo Block 255, Plots 660, 663, 664, 665, 666 and 667 at Munyonyo;*
- 15 d) *And order of mandamus issues directing the 1st respondent to amend the register of titles of land comprised in Mailo Register Kyadondo Block 255, Plots 660, 663, 664, 665, 666 and 667 at Munyonyo by reinstating the names of Godfrey Kaaya Kavuma and the applicants therein as the registered proprietors of the said land; and*
- e) *Costs to the applicants therein in equal proportions.*

The applicants, then the respondents, were dissatisfied with the decision of the court and proceeded to appeal against it in this court. They filed a notice of appeal in the High Court and requested for the record of proceedings. The proposed grounds, in a draft memorandum of appeal attached to the affidavit in support were that:

- 25 i) The learned trial judge erred in law in entertaining an application for judicial review against the decision of the Commissioner Land Registration made pursuant to section 91 of the Land Act;
- ii) The learned trial judge erred in law in entertaining an application for judicial review filed without exhausting the remedy of appeal under the Land Act;
- 30 iii) The learned trial judge erred in law in ordering the cancellation of the appellant's titles under an application for judicial review;
- iv) The learned trial judge erred in failing to remit the matter of title to the Commissioner Land Registration upon quashing the latter's decision and thereby exceeded the jurisdiction of the court in judicial review.

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Mr Kiwanuka averred that there was a threat that the orders above would be executed while there is an appeal pending disposal in this court. He explained that even though the court order did not entitle the 1st, 2nd and 3rd respondents to taking possession of the land in dispute, 5 they tried to do so on 19th January 2024, using private security guards. He further averred that he filed an application in the High Court for an order to stay execution which has not been heard. That it is in the interests of justice that the order to stay execution be granted otherwise the appeal will be rendered nugatory. He added that he is willing to 10 comply with an order to pay security for the due performance of the decree, or otherwise, as this court may impose for the grant of the order.

The respondents opposed the application in an affidavit deposed by Miriam Sunday Nandyose Kavuma, on 15th February 2024. In the affidavit she states that the appeal that was filed in this court was out 15 of time for it was filed on 17th January 2024, 18 days from the date of the ruling sought to be appealed from instead of 14 days as is required by the Rules. That therefore the appeal is incompetent and cannot be entertained by this court.

She went on to state that the appeal is moot because the orders in 20 **HCMA No 041 of 2023** have already been implemented in that the certificates of title were cancelled and the name of the late Godfrey Kaaya Kavuma reinstated. That the respondents are therefore the registered proprietors of the land and in possession thereof or deemed to be in possession as the proprietors thereof.

25 She further averred that the respondents shall suffer substantial loss, irreparable damage and prejudice if the applicants are allowed to use the process of this honourable court to deprive the respondents and the beneficiaries of the estate of utilizing and or taking the benefit of the

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land in dispute which was the property of the late Godfrey Kaaya Kavuma, which he acquired in 1986.

Determination

I considered the submissions of both counsel in the application, oral
5 and written. The power of this court to grant orders for stay of execution is provided for by rule 6 (2) (b) of the Rules of this Court as follows:

(2) Subject to subrule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may—

10 (a) ...

(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 76 of these Rules, order a stay of execution, an injunction, or a stay of proceedings on such terms as the court may think just.

15 The criteria for the grant of applications for stay of execution were re-stated in **Theodore Ssekikubo & 3 Others v. Attorney General, & Others, Civil Application No. 6 of 2013**, as follows:

- i. The applicant must establish that his/her appeal has a likelihood of success;
- 20 ii. The applicant will suffer irreparable damage or that the appeal will be rendered nugatory if the stay is not granted;
- iii. If the conditions in i) and ii) have not been established, court must consider where the balance of convenience lies; and
- iv. The application was filed without delay.

25 I will consider the said criteria as the issues that have to be decided by court in order to dispose of this application.

J. Kor.

But before I do so, it must be considered whether the fact that the orders that the applicants seek to stay execution of were already executed when the CLR cancelled the titles as ordered by court and reinstated the names of the 1st, 2nd and 3rd respondents as the proprietors of the
5 land in dispute. That there is therefore nothing left to be stayed.

In that regard, counsel for the applicants explained that there was more to the order than the cancellation of the certificates of title. And that even if that was done, it can be rectified by an order on appeal and so the need to dispose of the appeal that is pending hearing. I accepted the
10 applicant's submissions and I am of the view that the fact that the titles were cancelled would not preclude the hearing of the appeal. Neither would an appeal be rendered nugatory for that reason.

With regard to the objection that the appeal was filed out of time, it is pertinent to note that because the applicant's notice of appeal was filed
15 more than 14 days after the date of the decision appealed from, contrary to what is required by the Rules, the applicant would have to apply for extension of time within which to lodge their notice of appeal or validate it. However, rule 76 (4) of the Rules of this Court provides that:

**(4) When an appeal lies only with leave or on a certificate that a
20 point of law of general public importance is involved, it shall not be necessary to obtain the leave or certificate before lodging the notice of appeal.**

Late filing of the notice of appeal therefore does not disentitle an applicant who seeks to appeal, but for the late filing of the notice of
25 appeal, would have the right to their application for stay of execution being entertained by this court. Such notices of appeal are routinely validated on application by the appellant in order to save the right to appeal. I now turn to the other criteria that ought to be considered by this court before granting the order sought.



With regard to the criterion whether the appeal has a likelihood of success, the order that the applicants complain about resulted from proceedings for judicial review of the orders of the CLR, brought under sections 33 and 36 of the Judicature Act, and the Judicature (Judicial
5 Review) Rules, as amended in 2019. The order under review was issued by the Acting CLR under section 91 of the Land Act and he ordered that the names of the respondents in this application be cancelled from the titles for the land in dispute.

The first two remedies that were sought by the respondents before the
10 trial judge, Musa Ssekaana, J in **Miscellaneous Cause No. 041 of 2023** were as follows:

- a) *A declaration be issued that the decision of the 1st respondent contained in (a) letter dated 5th January 2023 signed by Baker Mugaino, Acting Commissioner Land Registration, purporting to cancel or cancelling the
15 registration of the applicants as registered proprietors on/in certificates of title for the land comprised in Mailo Register KYADONDO BLOCK 255 PLOT NOS 660, 663, 664, 665, 666 AND 666 AT MUNYONYO, on grounds of forgery of a signature of the late Godfrey Kaaya Kavuma, **thereby inferring fraud** and made without according the applicants an
20 opportunity to be heard is arbitrary, irrational, illegal, unfair, procedurally improper, null and void;*
- b) *And order of certiorari be and is hereby issued removing into the High Court and quashing the decision of the 1st respondent purporting to cancel or cancelling the registration of the applicants as registered
25 proprietors in the certificates of title for the said land.*

It was also in evidence before the court that pending determination in the High Court, was an ordinary suit, **HCCS No 399 of 2022**, brought by the applicants (Administrators of the Estate of Stanley Kitaka Kisingiri) against the respondents (Executors of the will of the late
30 Godfrey Kaaya Kavuma). It is indicated in the ruling under appeal, at page 4 thereof, that:



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“The subject matter of the suit is land comprised in Mailo Register Kyadondo Block 255 Plot Nos 660, 663, 664, 665, 666 and 666 at Munyonyo. The 2nd and 3rd respondent’s claim in the suit was among others, a declaration that the late Godfrey Kaaya Kavuma procured registration of the ownership of the land comprised in Plot 81 through fraud or fraudulently, and that the registration of the applicants as registered proprietors of the land comprised in the parcels be cancelled on grounds of fraud and illegality and an order (be granted) to restore registration of the ownership of the parcels of land in the names of the 2nd to the 6th respondents as Administrators of the Estate of Stanley Kitaka Kisingiri.”

It was also stated in the ruling that the Executors of the will of Godfrey Kaaya Kavuma filed a defence in the suit. But the Administrators of the Estate of Kitaka Kisingiri purported to discontinue the suit and proceed with the matter before the CLR, but did not complete the procedures for discontinuation. That as a result, that suit was still pending in court at the time the orders of the CLR were issued.

The trial judge recognised the fact that the CLR had no power to cancel a certificate of title under the provisions of section 91 of the Land Act. Further that power to do so is reserved for the High Court where fraud has been proved against the registered proprietor. In his decision, in respect of the two remedies that were sought reproduced above, the trial judge found for the applicants and, among others, issued the following declaration and order:

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- a) A declaration is hereby issued that the decision of the 1st respondent contained in a letter dated 5th January 2023 purporting to cancel the registration of the applicants as registered proprietors of the land comprised in Mailo Register Kyadondo Block 255 Plot Nos 660, 663, 664, 665, 666 And 666 at Munyonyo on grounds of forgery of the signature of the Godfrey Kaaya Kavuma was made illegally.
 - b) An order of certiorari is hereby issued quashing the decision of the 1st respondent contained in the letter dated 5th January 2023 purporting to cancel registration of the Applicants as registered proprietors on the Certificates of title for land comprised in Mailo Register Kyadondo Block 255 Plot Nos 660, 663, 664, 665, 666 and 666 at Munyonyo.



It is my view that whether or not the suit was still pending in court at the time the trial judge heard and determined the application is very important. The applicants in **HCMC No. 041 of 2023** that is the subject of the appeal in this court, went to court to complain about CLR
5 cancelling certificates of title for forgery of a signature, "*thereby imputing fraud.*" There was a suit still pending in court over the same matter in which fraud was imputed and it was brought to the attention of the trial judge. The presence of the suit, in my view, casts a cloud over the decision of the trial judge in judicial review of the orders of the CLR.

10 If the CLR was wrong when he cancelled the titles, was it within the powers of the court to rectify the error in an application for judicial review by reinstating the former registered proprietors, on grounds of illegality and procedural impropriety? Section 91 of the Land Act under which the Registrar acted provides for a remedy. It is not in an
15 application for judicial review but an appeal to High Court under section 91 (10) of the Land Act.

However, that is only one of the grounds in the proposed appeal with a likelihood of success. It is apparent that this court on appeal will also have to consider whether the learned trial judge was correct when he
20 reinstated the names of the respondents after his findings against the CLR. I therefore find that the applicant's appeal now pending before this court has a likelihood of success.

The findings above obviate the consideration as to where the balance of convenience lies. There is no complaint that there was delay in the filing
25 of the application.

In conclusion therefore, an order shall issue to stay any further action in respect of the certificates of title, be it an eviction, transfer, mortgage, assignment, or any other transaction to the prejudice of the applicants



herein, until the hearing and final determination their appeal in this court, or until further orders of this court.

In addition, since it is not in evidence that the applicants filed their memorandum of appeal and record of proceedings in this court, the
5 applicants shall file their appeal within a period of 30 days from the date of delivery of this ruling, failing which this order shall lapse. The costs of the application shall abide the hearing of the appeal.

Dated at Kampala this 25th day of March 2024.

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Irene Mulyagonja

JUSTICE OF APPEAL

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