

THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CIVIL APPLICATION NO. 241 OF 2011

5 HAJJI NUMANI MUBI AKULAMUSA ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. FRIENDS ESTATE LTD

2. MALKAN ::::::::::::::::::::::::::::::::::: RESPONDENTS

10 CORAM: HON.MR. JUSTICE REMMY KASULE, JA  
HON. LADY JUSTICE FAITH E. MWONDHA, JA  
HON. MR. JUSTICE KENNETH KAKURU, JA

RULING OF THE COURT.

15 This is an application for leave to appeal.

The facts as set out by the parties in their conferencing notes are briefly as follows;

That the applicant filed his Application No 435 of 2011 at the High Court, against the respondents for orders that the property comprised in  
20 Leasehold Register Volume 149 Folio 81 Rubaga Road be released from

attachment and execution. The said application was dismissed on grounds, among others, that it was brought under a wrong law.

The dismissal also related to aspects of fraud and illegalities surrounding the title of the applicant herein. An application for leave to appeal was  
5 made before the learned trial Judge, who dismissed it.

Hence this application.

Court clarifies from the onset that an application for leave to appeal such as this one is not an appeal.

Although the learned Judge dismissed a similar application before him,  
10 made orally after his ruling and order on 21<sup>st</sup> Nov. 2011, this application is not an appeal from that ruling and order.

This application is stated to have been brought under Rules 43 and 45 of the Rules of this Court as a substantive application to be heard and determined by this court exercising its own inherent jurisdiction.

At the hearing of this application Mr. Cosma Kateeba together with Mr. Andrew Wamina appeared for the applicant and Ms. Leah Namulondo appeared for the 1<sup>st</sup> respondent. This application names two respondents.

5 However neither the 2<sup>nd</sup> respondent nor his counsel were present, at the hearing of this application.

Mr. Kateeba, then withdrew this application against the 2<sup>nd</sup> respondent with leave of court. No order was made as to costs.

Mr. Kateeba made a correction on his notice of motion to the effect that this application was brought under rule 40 (2) (b) of the Rules of this court,  
10 and not under Rules 43 and 45 as indicated thereon.

Rule 40(2) (b) states as follows;

*“40(2) (b) where formerly an appeal lay from the High Court to the Supreme Court with leave of either the High Court or Supreme Court the same rules shall apply to appeals to the court-*

15

*(b) if the High Court refuses to grant leave, or where an appeal otherwise lies with leave of the court, application for the leave shall be lodged by notice of motion within fourteen days after the decision of the High Court refusing leave, or as the case may be, within fourteen days after the decision against which it is desired to appeal; and the decision of the court granting or refusing to grant leave is final.*

5

10

The facts and issues in the court below do not concern us very much here as those will be re-appraised on appeal in the event that this application succeeds and the applicant proceeds to file an appeal.

We have listened to the rather lengthy arguments of both counsel in this matter.

We have also read the authorities cited to us. We will only briefly set out the back ground to this application as we have understood it.

15

This matter arose from the Commercial Division of the **High Court in Civil Suit No 435 of 2003.**

The appellants in this application were not parties to the suit. That suit was heard and determined. In execution of the decree an order of vacant possession was issued. It required that the decree holder be granted vacant possession of a property comprised in Leasehold Register 140 Folio 5 8 Plot 1 Rubaga Road, Kampala. It seems the order that was issued by court was not a '**warrant of attachment**', but rather an order for vacant possession.

However the persons to whom the order was addressed were not in possession of the suit property above described. It was the applicant in this 10 matter who is said to have been in possession.

The applicant faced with this situation filed **High Court Miscellaneous Application No 435 of 2007**. The application was for release of the above property from 'attachment' and was made by motion under Order 22 Rules 55, 56, 57 and 52 (1) of the Civil procedure Rules.

15 This is what is referred to as objector proceedings.

The objector application was heard by **Hon. Justice Geoffrey Kiryabwire (J)** (as he was then) and dismissed it.

However, he did not just dismiss the application. During the hearing of the applications many issues had arisen, which he had to resolve.

5 As we have already stated above since this is not an appeal we will not dwell on the details of that application.

Suffice it to say that the learned Judge dismissed that application after he had made a number of findings including allegations of fraud.

10 He also, in addition to the order dismissing the application, made a number of other orders. Some of the orders he made determined the ownership of the property that the application sought to be released from the 'attachment'.

The applicant then made an application for leave to appeal the said order which as already stated the Judge rejected. As a result the applicant then  
15 filed this application.

We agree with Mr. Kateeba learned counsel for the applicant, that this Court while exercising its discretion to grant or not to grant leave to appeal, will first determine whether or not *prima facie* there appears to be grounds of appeal requiring serious consideration by this court.

5 This was the holding in the case of **Sango Bay Estates and Others versus Dresner Bank A. G [1971] EA 17.**

The judgment of the Court of Appeal for East Africa by **SPRY (V.P)** is still very good law. He put the position of the law as follows:-

10 *“As I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious consideration”*

15 All that this court is thus required to do is to determine whether or not *prima facie* there are grounds of appeal that merit serious consideration. (See also **G.M Combined (U) LTD vs. A.K Detergents (U) LTD: Supreme Court Civil Appeal No. 23 of 1994** where the

Supreme Court followed the holding in **Sango bay Estates case (Supra)**

5 This task is not as easy as it seems. This is because on one hand this Court is not required to inquire into the merits of the case from which this application arose, since this is not an appeal. On the other hand, it is required to determine whether *prima facie* there exist grounds of appeal that merit serious consideration. It is a balancing act.

10 We have heard the lengthy submissions of both counsel. We have also read the ruling, the findings and orders made by the learned Judge in **High Court Miscellaneous Application No. 435 of 2011**.

The findings and orders of the learned Judge (as he was then) in our view have far reaching consequences. They go as far as determining the issue of ownership of the suit property.

15 They involve multiple parties some of whom were not parties to the original suit. We are therefore of the considered view that *prima facie* grounds of appeal exist which require serious consideration by this court.

The authorities submitted by both counsel and their lengthy arguments seemed to have been intended to lead us to a direction in which the issues of the appeal itself would have been addressed. We shall not go into that direction. Clearly their lengthy arguments point to the fact that, *prima facie* there exist grounds of appeal.

Accordingly leave to appeal is hereby granted to the applicant.

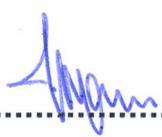
The applicant shall file the appeal within 30 days from date hereof.

The costs of this application will abide the result of the intended appeal. It is so ordered.

Dated this 21 day of October 2013 at Kampala.

.....  
HON. REMMY KASULE  
JUSTICE OF APPEAL.

.....  
HON. FAITH E. MWONDHA  
JUSTICE OF APPEAL.

  
.....  
HON. KENNETH KAKURU  
JUSTICE OF APPEAL.