

THE REPUBLIC OF UGANDA

**IN THE COURT OF APPEAL OF UGANDA HOLDEN
AT KAMPALA**

5

MISCELLANEOUS APPLICATION NO 93 OF 2014

(Arising from Civil Appeal No. 243 of 2013)

10 E.B NYAKAANA & SONS LTDAPPLICANT

VERSUS

- 15 1) MRS. BEATRICE KOBUSINGE NYAKAANA
2) MR. KIIZA SAMUEL
3) MRS ROSEMARY BALINDA
4) MS. TEREZA KAAHWA
5) SAM IRUMBA
6) MRS BEATRICE SAGORO NYAKAANA
20 7) NORAH NYINDOMBI NYAKAANA
8) KUGONZA JENNIFER
9) APOLLO NYAKAANA
10) BOB KAGABA
11) EDITH BYANJERU LUCY
25 12) BEATRICE MUGISHA NYAKAANA
13) KENNETH KABISWA
14) LYDIA NYAKAANA
15) DOROTHY NYAKAANA
16) JOYCE NYAKAANA
30 17) THE OFFICIAL RECEIVER /



CORAM: HON. MR. JUSTICE KENNETH KAKURU

[Single Justice]

5

RULING

This is an application for stay of execution pending appeal.

I have listened carefully to the submissions of all counsel in this matter. I have also carefully perused the court record and the authorities cited to me.

10

This application has a very long and checked history which do not find necessary to reproduce here.

Suffice it to say that, it concerns dispute over diverse properties and property interests. The litigants are related to each other closely and many of them are beneficiates of the Estate of the Late Kagoro of Fort portal.

15

It appears that upon his death most of his estate was transferred to a limited liability company the applicant herein. That company is not under liquidation by an order of the High Court. Some of the beneficiaries of the estate appear to be in favour of the company being liquidated and its assets or proceeds therefrom be distributed to the share holders. The other beneficiaries appear to be opposed to liquidation.

20

This application is therefore intended to stay the order of the High Court until hearing and determination of the appeal.

The appeal has already been filed in this court and is pending hearing.

When this application was called for hearing counsel for the respondents raised a number of preliminary objections. The objections raised seems issues of law that have the capacity not only of disposing of this application but also of disposing of the whole appeal.

25

I have declined to determine this application based on those objections, as doing so may amount to determining issues that are subject matter of the appeal itself.

I cannot as a single Justice of appeal determine in such an application substantive matters relating to the validity or competence of the appeal in the specific circumstances of this application.

5 I will therefore restrict my ruling to the issues raised in this application that relate only to the stay of order of High Court pending appeal.

I agree with counsel for the respondent that the applicant has failed to show that special grounds exist for grant of this application.

10 However, the peculiar facts giving raise to this appeal require that the dispute between the parties be determined by this court on appeal. If the liquidator of the applicant company continues with his work of liquidating the company the appeal will certainly be rendered nugatory.

Once the liquidation is over or in advanced stage the subject matter of appeal will no longer exist. The appeal would be moot.

15 This court has a duty to protect parties' right of appeal. Granting the order sought in this application will protect the interests of all parties and will not in my view prejudice the respondents.

I find that it is in the interest of justice that this application be allowed. And I hereby allow it.

I would like to clarify that since this is an interlocutory application, I have involved the powers granted to me under section 11 of the Judicature Act to grant a substitutive order of stay of the order of the High Court. This is therefore not an interim order.

20 It is hereby ordered as follow:-

(1) That the order of the High Court of Fort portal in Miscellaneous Application No. 0058 of 2013 dated 20th December 2013 is hereby stayed pending the hearing and determination of Civil Appeal No. 243 of 2013 how pending in this court.

25 ***(2) That all the parties to this application and those parties with interest in this application are hereby ordered to mention the status quo as at the date of this order. No party to***

this application shall evict or re-occupy any of the properties the subject of the pending appeal until the hearing and determination of the appeal.

5 *(3) The liquidator (respondent No. 17) shall remain in place but shall not exercise any of his powers until the hearing and determination of the appeal. Save for the collection of rent.*

(4) The Registrar of this court is hereby ordered to have the main appeal conferenced and herein fixed for hearing at the earliest date possible.

(5) Costs will abide the results of the appeal.

10 Dated at Kampala this 2nd day of May 2014.

HON. MR. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL

15