

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
5 **CIVIL APPLICATION NO. 184 OF 2014**
FULUMERA BABWEKYEKA.....APPLICANT
VERSUS
MUSIIMENTA
LYDIA.....RESPONDENT

10 **CORAM: HON. MR. JUSTICE KENNETH KAKURU, JA**
SINGLE JUSTICE

RULING

15 This is an application for an interim order of stay of the
execution of a High Court decree in Kabale High Court Civil
Appeal No. 2 of 2011 delivered by The Hon. Mr. Justice J.W
Kwesiga J, on 18th October 2012 in which the learned
Judge dismissed the applicant's appeal following a preliminary
20 objection that had been raised by the respondent.

The brief background to this application is as follows:-

The applicant filed a suit No. 172 of 2009 at the Chief Magistrate's
Court in Kabale in which she sought a number of orders and
declarations. The suit was in respect of a claim for recovery of
25 land. It was also in respect of other matters related to the estate
of one Bernadette Baruhirabusha.

That suit was dismissed by her worship Deborah Wanume, on 9th
February 2011.

The applicant herein being dissatisfied with the Judgment and decree of the Magistrate appealed to the High Court, at Kabale,
5 *vide* High Court Civil Appeal No. 2 of 2011.

It appears that, at the High Court the parties were ordered to file written submissions after which Judgment would be delivered on notice. The applicant did file written submissions. The respondent too filed written submissions but the applicant claims that neither
10 she nor her counsel was served.

The court went on to deliver its Judgment on 18th October 2013. The applicant also claims she was never served with Judgment notice and as such she was not aware that the Judgment had been delivered until the time for filing an appeal had lapsed.

15 The applicant then filed an application in this court for leave to file a notice of appeal out of time. The same was granted by the Registrar of this court. She also filed this application.

In the meantime on 30th January 2014 the respondent through a court bailiff one Richard Muhanguzi issued to the applicant a
20 notice of eviction apparently in execution of the decree of the Chief Magistrate's Court . The notice required the applicant to vacate the suit land within 7 (seven) days.

On 13th November 2013 the Chief Magistrate had issued to the applicant a notice to show cause why a warrant of arrest
25 should not issue in execution of the Chief Magistrate's court's decree in Civil Suit No. 172 of 2009.

The notice required the applicant to appear in court on 16th January 2014.

- 5 The applicant then filed this application in this court seeking an interim order of stay of execution together with Court of Appeal Civil Application No. 183 of 2014 for a substantive order of stay of execution.

10 When this application came up for herring, the applicant was represented by Ms. Kasande-Murangira. Neither the respondent nor her counsel was in Court. This court allowed the applicant's counsel to proceed in the absence of the respondent as it was satisfied that the respondent had been duly served.

15 In the notice of motion herein the applicant seeks the following orders:-

20 ***“ a. Interim Stay of Execution of the Ruling / Decree in Civil Appeal no. 2 of 2011 be granted pending the hearing of the main application for stay of execution. Hereto attached is the copy of the Ruling /decree marked "JD".***

b. Costs of this application be in the Cause.”

25 The grounds upon which this application is based are also set out in the notice of motion as follows;-

30 ***I That the Magistrate's Court of Kabale Grade I delivered Judgment in Civil Suit No. 172 of 2009 against the applicant on the 9th day of***

February 2011.

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The Judgment and the uncertified decree are hereto attached and marked "JJ".

10 **II Uganda** **The applicant appealed to the High Court of**

at Kabale against the entire decision in civil appeal no. 2 of 2011. The said Court passed the judgment against the applicant without her knowledge. Hereto attached is the memorandum of appeal marked "MA".

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III Substantial loss shall occur to the applicant if this application is not granted.

20 **IV The applicant's miscellaneous application no 183 of 2014 for stay of execution which is hereto attached and marked "ME" filed in this Honourable Court has a high chance of success**

25 **V It is fair and in the interest of justice that this application be granted.**

30 In her affidavit in support of the notice of motion. The applicant deponed in paragraph 7 thereof as follows

35 **7 "THAT I will suffer Substantial loss if this application is not granted as the bailiffs are threatening to evict me and my relatives from the suit land where we derive our livelihood. A copy of the letter from the bailiffs is hereto attached and marked "C". That my above stated lawyers wrote the Ag. Deputy Registrar, High Court of Uganda**

at Kabale and the said Court bailiff warning them of unlawful execution, in vain. Hereto attached is the letter from my lawyers marked "FL".

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It appears clearly that the applicant herein by this application seeks to stay the decree of the High Court in Kabale Court Civil Appeal No. 2 of 2011 as set out in the notice of motion.

10 However, that decree simply dismissed the appeal. No other order was made in the result that, it left the decree of the Magistrate's Court standing.

The respondent then sought to execute the decree of the Magistrate's Court. Paragraph 7 of the affidavit the applicant set out above clearly indicates that the threatened execution is in
15 respect of Magistrate's Court's decree and not in respect of the decree of the High Court.

On the other hand this application is for stay of execution of the High Court decree. The respondent has not sought to execute this decree. In any event it is not a decree capable of being executed
20 as the High Court simply dismissed the appeal. Therefore, if this application is granted the threatened execution would still go ahead as there is no application before this court for stay of execution of the Magistrate's Court's decree.

I find that this application therefore is misconceived and without
25 merit.

This application therefore fails and is hereby dismissed.

5 Since neither the respondent nor her counsel appeared before me
and since no reply to this application is on record I make order as
to costs.

I must clarify that I have entertained this application as a single
Justice of this court under **Section 12** of the judicature Act. Under
10 that law a single Justice of this Court has jurisdiction to hear and
determine any interlocutory matter before this court.

An application for a substantive order of stay of execution is an
interlocutory matter.

Accordingly I also make an order dismissing the substantive
15 application for stay of execution herein Court of Appeal **Civil**
Application No. 183 of 2014 filed by the applicant seeking
similar orders and based on the same facts for the reasons I
have given in this application.

I also make no order as to costs in respect of that application.

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Dated at Kampala this 30th day of June 2014.

HON. MR. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL