

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

CIVIL APPLICATION NO. 59 OF 2015

[Arising from Civil Appeal No. 42 of 2010]

Olok Francis Applicant

VERSUS

Reverend William Pashi Respondent

Before: Hon. Mr. Justice Remmy Kasule, JA, sitting as a single Justice.

RULING

This Ruling is in respect of an application for an Interim Order to Stay Execution of the decree in **High Court at Arua Civil Appeal No. 0005 of 2007** that gave rise to **Court of Appeal Civil Appeal No. 42 of 2010** whose disposal is still pending in this Court.

The application is brought under Rules 2(2), 6(2)(b), 42(2) and 43 of the Rules of this Court.

At the hearing of the application Counsel Henry Rwaganika and Raphael Obudra appeared for the applicant while Guma Byamugisha was for the respondent. Both applicant and respondent were present.

The application arises out of a long history of Court Litigation between the applicant and the respondent. It concerns ownership

of some land at Sarumo village, Adjumani Town Council, Adjumani District. The litigation began in the Land Tribunal, Adjumani, and when the same ceased functioning, the claim was taken over by the Grade I Magistrate, Adjumani Chief Magistrate's Court as **Civil Suit No. 012 of 2005**. This Court delivered Judgment in the Suit in 2007. The applicant was declared the lawful owner of the suit land. The respondent appealed to the High Court, Arua i.e. **Civil Appeal No. 0005 of 2007** and the said **High Court (Kwesiga, J.)** allowed the appeal in a judgment dated 14.11.09. The respondent was held to be the rightful proprietor of the suit land. The applicant was ordered to give vacant possession of the said land to the respondent. The respondent lodged **Civil Appeal No. 42 of 2010** to this Court against the decision of the High Court, Arua.

The present position of the appeal in this Court is that the same was heard on 27.02.2014 before a Coram of three Justices of this Court and Judgment was reserved to be delivered on notice. The same has not yet been delivered as of to-day i.e. 25.03.2015.

In the meantime, according to the affidavit of the applicant in support of this application, on 18.08.2014 the High Court Registrar, Arua, authorized execution of the decree given on appeal by the High Court, Arua, to be commenced. On 19.02.2015 Messrs HYDE PARK ENTERPRISE, Court Bailiffs, communicated in writing to the applicant demanding that, pursuant to the **High Court, Arua**, decree in **Civil Appeal No. 0005 of 2007** he vacates and hands over the suit land to the respondent within one month, otherwise the applicant was to be forcefully evicted therefrom without any further warning. The applicant then lodged this application for an interim stay pending disposal of the substantive **Civil Application NO. 58 of 2015** for stay of execution pending disposal of **Civil Appeal No. 42 of 2010**.

The principle of law is that a party seeking a stay of execution, whether interim or substantive, must satisfy the Court that there is

sufficient cause why the party with the Court judgment in his/her favour should postpone the enjoyment of the benefits of that judgment. It is not sufficient for the judgment debtor to show that he/she is vulnerable because the successful party may take out execution proceedings. The applicant seeking stay of execution must show that if execution proceeds there may be some irreparable loss caused. If the order sought is for an interim stay, such an order is to be granted only in compelling circumstances so as to prevent defeat of justice and strictly when it is ascertained that the hearing of the substantive application for stay by the full Court is almost a certainty: See **WILSON MUKIIBI VS JAMES SSEMUSAMBWA Supreme Court (Uganda) Civil Application No. 9 of 2003.**

An application for an interim order of stay is therefore not to be entertained and allowed by Court as a matter of course. It must be based on compelling reasons geared towards preventing a defeat of justice: See: **HORIZON COACHES LTD VS FRANCIS MUTABAZI AND OTHERS: CIVIL APPLICATION NO. 21 OF 2001, (SC).**

It has been submitted for the respondent that this application ought to have been filed and entertained first in the High Court at Arua pursuant to **Rule 42** of the Rules of this Court. Suffice to state in answer to that submission that **Rule 42(2)** provides that this Court may entertain an application brought under **Rule 6(2)(b)** of the Rules of this Court, in order to safeguard the right of appeal, notwithstanding the fact that no application for that purpose had first been made to the High Court. **Rule 6(2) (b)** provides for an application to stay execution. Further, in my considered view the principle enunciated by the Supreme Court, Uganda, in **Lawrence Musiitwa Kyazze v Eunice Busingye: Civil Application No. 18 of 1990 [1992] KALR 561** equally applies to this Court as the Court of Appeal. The Court held:

“The Supreme Court would prefer the High Court to deal with the application for stay on its merits first, before the application is made to the Supreme Court. However, if the High Court refuses to accept Jurisdiction or refuses Jurisdiction for manifestly wrong reasons, or there is great delay, the Supreme Court may intervene and accept Jurisdiction in the interests of justice.

The Supreme Court may in special and probably rare cases entertain an application for a stay before the High Court has refused a stay, in the interests of Justice to the parties. The Court can act only after it has been appraised of all the facts”.

In the instant case the facts are such that the appeal i.e. **Civil Appeal No. 42 of 2010** against the decision which is now the subject of threatened execution is not only pending in this Court, but is at the stage where the same has been heard with both applicant and respondent having made submissions as to its merits or demerits. All that is pending is a decision of this Court. All the records of the proceedings of both the Magistrate and High Court Courts being now in this Court of Appeal, it is only proper and fitting that this application is lodged and entertained by this Court.

It is also my considered view that to carry out execution now of the decree that is the subject of the pending judgment is likely to cause irreparable damage to the party that may be successful on appeal. It would be irreparable damage to the applicant, for example, if, when execution is carried out now and the ownership of the suit land passes to a third party, not a party to these proceedings, and yet if the judgment of this Court on being delivered holds that the applicant is the lawful owner of such land. In such a case the applicant, in spite of being successful, will have lost the suit land which by now will be owned by a bonafide third party. This would be great injustice.

It is also a fact that pending delivery of judgment in **Civil Appeal No. 42 of 2010** no further delay is likely to happen in this Court before the rights of both the applicant and the respondent as regards the whole dispute and its subject matter, are pronounced upon by this Court. This is a compelling reason to stay execution so as to await the decision of this Court as regards the appeal.

By reason of the above considerations I have come to the conclusion that the applicant is not applying for an interim stay merely as a matter of course. He has a genuine case that if a stay is not granted to him he is likely to suffer great injustice.

This Court is of course also conscious of the right of the respondent to enjoy the fruits of the judgment that was made in his favour by the High Court in Arua in **Civil Appeal No. 0005 of 2007**. It is however not the fault of the applicant that the judgment has not been delivered by this Court since the completion of the hearing of the appeal on 27.02.2014.

Accordingly this application is allowed. The execution of the decree in **High Court, Arua, Civil Appeal No. 0005 of 2007** is hereby stayed for 30 days as from the date of delivery of this Ruling i.e. 25.03.2015 up to 25.04.2015 when the order of stay shall expire, unless renewed by this Court.

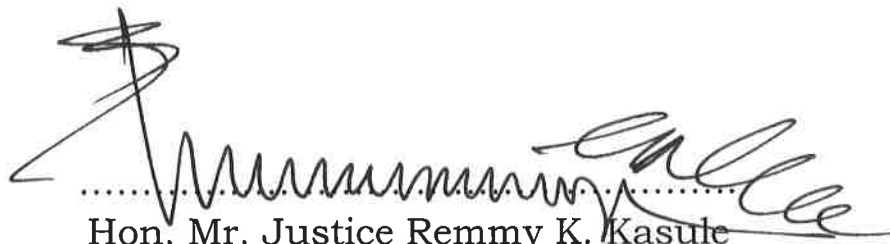
In the meantime, during the said thirty (30) days, the Registrar of this Court is directed to take such steps as will ensure that judgment in **Court of Appeal Civil Appeal No. 42 of 2010** be delivered within those thirty (30) so that both the applicant and the respondent can know the position of each one's claim to the suit land.

As to costs, since the delivery of judgment in **Civil Appeal No. 42 of 2010** is the responsibility of this Court, and it is because of the non delivery of that judgment that, in some ways, is responsible for

taking out these execution proceedings, it is ordered that each party bears the costs of this application.

It is so ordered.

Dated at Kampala this **25th day of March, 2015.**



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Hon. Mr. Justice Remmy K. Kasule
Justice of Appeal