

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

Civil Application No. 266 of 2019

(Arising from Miscellaneous Application No. 265 of 2019)

BETWEEN

National Forestry Authority ===== Applicant

AND

1. The Omukama of Bunyoro- Kitara
2. Hoima Sugar Limited ===== Respondents
3. Uganda Land Commission

RULING OF THE COURT

[1] This is an application by way of motion brought under section 12(1) of the Judicature Act, Rules 2(2), 6(2)(b), 42(1), (2), 43 and Rule 44(1) of the Judicature (Court of Appeal Rules) Directions S.I 13-10. The applicant seeks an interim order to restrain the respondents from alienating, selling, transferring, developing, excavating or in any way dealing with or interfering with the status *qou* of the suit land until the determination of the substantive application for a temporary injunction pending before this court. In the alternative the applicant seeks an interim order for stay of execution and recovery of costs until the main application for stay of execution filed in this court has been heard and determined.

[2] The brief of facts of this case are that the applicant instituted High Court Civil Suit No. 0031 of 2016 against the respondents for fraudulent acquisition of the suit land that was purportedly part of Bugoma central forest reserve. The learned trial judge entered judgment in favour of the respondents and found that the land in question forms part of the properties that were returned to the

Omukama of Bunyoro-Kitara kingdom and therefore the first respondent acquired a freehold interest in the land which was leased to the second respondent. The applicant filed High Court Miscellaneous Application No. 35 of 2019 for stay of execution which was dismissed. The applicant filed a notice of appeal in this court against the decision of the court below as well as Court of Appeal Civil Application No. 265 of 2019 from which this application arises.

- [3] The grounds in support of this application are set out in the motion which is supported by the affidavit of Michael Collins Mugisha. The main thrust of the grounds is contained in grounds f), g) and h) in the application and in paragraph 19 of the applicant's affidavit. The applicant basically seeks to preserve the status quo of the land in dispute pending the disposal of the substantive application for stay of execution pending in this court as Court of Appeal Civil Application No. 265 of 2019. The applicant alleges that there is imminent threat of execution of the decree before the disposal of the main application for stay of execution and the appeal, since the respondents have made attempts to take possession of the suit land and change the land use at the risk of grave environmental repercussions.
- [4] The first respondent filed an affidavit in reply sworn by Andrew Byakutaga, the Prime Minister to the first respondent and the second respondent filed an affidavit in reply supported by Rajasekaran Ramadoss, the agricultural manager to the second respondent. The respondent generally stated that the application lacks merit because the applicant failed to meet the conditions for grant for an order for interim stay of execution and that the requisite steps are being taken to ensure the activities of the second respondents have no adverse effect on the environment.
- [5] At the hearing of this application the applicant was represented by Mr. Tuhumuza Moses and Mr. Kwesiga Joseph while Mr. Irumba Robert represented the first respondent and Mr. Bwayo Richard represented the second respondent. Counsel for the applicant reiterated the grounds contained

in the application and emphasized that there is an imminent threat to the change of the land use that could lead to irreparable damage. This was denied by counsel for the respondents who argued that the applicant had failed to adduce evidence to show that the possession of the suit property by the second respondent will destroy the Bugoma forest ecosystem consequently affecting the local farmers, the tourism industry and the environment at large.

- [6] Counsel for the second respondent submitted that the second respondent conducted a study on the environmental impact of its sugarcane growing project on the suit land and submitted the report to the National Management Authority for consideration. Therefore this court should not disrupt an ongoing legal process by issuing the orders sought by the applicant.
- [7] Counsel for the respondents also submitted that the applicant had failed to prove the grounds to warrant the grant for an application for interim stay. They relied on the case of Stanbic Bank Uganda Limited v Atabya Agencies Limited [2004] UGSC 37 for their submissions.
- [8] Regarding the grant of an interim order for stay of execution, the applicant must show by evidence that there is a pending substantive application for stay of execution and that there is a serious threat of execution of the decree before the hearing of the substantive application for an interim order to issue. In Hwan Sung Industries Ltd v Tajdin Hussein & Ors [2008] UGSC 17, Okello JSC (as he then was) stated:

‘For an application for an interim order of stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before the hearing of the pending substantive application. It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.’

- [9] Also in Stanbic Bank Uganda Ltd v Atabya Agencies Ltd [2004] UGSC 37, Mulenga, JSC, while reiterating his position in Wilson Mukiibi Vs. James Semusambwa Civil Application No. 9 of 2003 (unreported) stated:

‘It is trite that an intention to appeal *per se* is not a ground for stay of execution and instituting an appeal does not operate as a stay of execution. A party seeking a stay of execution must satisfy the court that there is sufficient cause why the party with judgment should postpone the enjoyment of its benefits. It is not sufficient for the judgment - debtor to say that he is vulnerable, because the successful party may take out execution proceedings. It must be shown that if execution proceeds there may be some irreparable loss caused...’

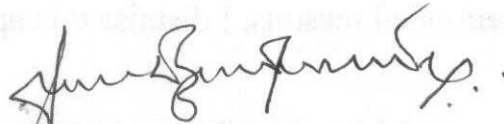
- [10] The applicant has proved that there is a pending appeal and a pending application for stay of execution before this court. However, in my opinion, the applicant has failed to prove the imminent threat to the status quo of the land. There must be convincing evidence before this court that there is imminent danger that the subject matter of the dispute might suffer irreparable harm or damage in the period before the main application for stay is heard by the court. The court must be convinced that such harm or damage would render the main application or indeed the appeal itself nugatory.
- [11] The interim orders sought by the applicant seek to maintain the land use as is. This is a process that is under the jurisdiction of the National Environment Management Authority that is charged with the duty of environmental management. The environmental laws especially the National Environment Act set out the process to address the issues raised by the applicant in this petition. In its affidavit, the applicant stated that it has raised its concerns to NEMA which in turn required the second respondent to carry out an environmental impact assessment before commencement of any activities on the subject land. This is evidenced by the letter dated 3rd May 2019 from the Executive Director of the National Environment Management Authority

addressed to the general manager to the second respondent. This process is still on going. I find no reason to interfere with that process.

- [12] From the evidence before me the applicant has failed to demonstrate that there is an imminent threat of alienating, selling, transferring, developing, excavating or in any way dealing with or interfering with the status *qou* of the suit land before the substantive application is dealt with.
- [13] Neither has the applicant, in the alternative, established that there is an imminent threat of execution.
- [14] For the aforementioned reasons, I dismiss this application with costs.
- [15] Before I take leave of this matter I would like to decry the practice of filing in this court both an application for an interim order for either an injunction or stay of execution together with the substantive application when it is possible to file a single application for the substantive order which can be heard by a single justice of this court pursuant to section 12 (1) of the Judicature Act. If the single justice has the time to hear the interim application, he or she would obviously use the same time to hear the substantive application once and determine the same. It could also have been possible to file one application that seeks both orders.
- [16] I am aware that under the Rules of this court that were inherited from the old rules for the East African Court of Appeal, and in particular rule 53 (2) (a), applications for stay of execution, temporary injunction or stay of proceedings would only be entertained by a panel of 3 judges. However, in light of the clear provisions of section 12 of the Judicature Act, those rules cannot override a latter statute.
- [17] This practice is not directly provided for by the rules of court for the High Court and or this court. The practice was invented by the profession once the

Civil Procedure Rules were amended in 1997 barring grant of injunctions without notice to the other party. It is time for the profession to give up this practice of filing twin applications that is clearly unnecessary and so wasteful of our meagre resources. It leaves this court inundated with unnecessary causes and must come to an end.

Signed, dated and delivered at Kampala this 3rd day of December 2019



Fredrick Egonda-Ntende
Justice of Appeal