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**THE REPUBLIC OF UGANDA**

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

**MISCELLANEOUS APPLICATION NO. 380 of 2018**

**(ARISING FROM CIVIL APPLICATION NO. 379 OF 2018)**

**NATIONAL FORESTRY AUTHORITY:.....:APPLICANT**

10

**VERSUS**

**MUHEREZA BASALIZA WILLIAM**

**KANYABUZANA PAULINE**

**BURIKARARA JOSEPH**

**BAHEMUKA PAUL AND 35 ORS:.....:RESPONDENTS**

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**CORAM: HON. MR. JUSTICE BARISHAKI CHEBORION, JA**

**(SINGLE JUSTICE)**

**RULING**

This application was brought under the provisions of section 33 of the Judicature  
20 Act, Rules 2(2), 6(2) (b), 41(2), 42(1), 43(2) and 44 of the Rules of this Court,  
Section 98 of the Civil Procedure Act and Order 52 Rules 1, 2 and 3 of the CPR.

It is for orders that:-

- a. *An interim order doth issue staying execution of the decree and orders in High Court Civil Suit No.25 of 2013 from the High Court of Uganda at Fort  
25 Portal until the determination of the applicant’s appeal to this Court.*

- 5        *b. An order to freeze the garnished funds from the applicant's accounts arising from High Court Miscellaneous Application No.046 of 2018.*
- c. Costs of this application be provided for.*

The background to the application is that the respondents claimed to be lawful customary owners of the suit land having inherited the same from their  
10 grandparents way back in the 1940s. It was alleged that the applicant in conjunction with the Police unlawfully evicted them, destroyed their properties, crops, animals and caused arrest and prosecution of some of them. The respondents also contended that they had never been presented with proof by the applicant showing that the suit land belonged to the applicant.

15 On the other hand, the applicant averred that the respondents were not the owners of the suit land because it is a gazetted forest reserve which was done in 1932, 1965, 1968 and 1998. According to the applicant, when the boundaries of Buhungiro Central Forest Reserve were opened on the 26<sup>th</sup> and 27<sup>th</sup> day of August 2013, all the occupants of the forest reserve voluntarily vacated the  
20 reserve and a Police Post was established at Buhungiro Central Forest Reserve to protect the same.

Judgment was entered in favor of the respondents on 15<sup>th</sup> May, 2018, among other reliefs, the respondent sought to recover a sum of 3,312,637,700/= (Three Billion Three Hundred Twelve Million Six Hundred Thirty Seven Thousand Seven  
25 Hundred Shillings Only) as special, general and exemplary damages plus interest. The respondents filed Miscellaneous Application No.46 of 2018 against

5 the applicant and Stanbic Bank under which the applicant's accounts  
(9030005951983 and 9030005954559) were attached and only shs.  
1,571,250,000/= (One Billion Five Hundred Seventy One Million Two Hundred  
Fifty Thousand Shillings) was recovered leaving a balance of shs. 1,741,387,700  
(One Billion Seven Hundred Forty One Million Three Hundred Eighty Seven  
10 Thousand Seven Hundred Shillings) as unrecovered.

The respondents then filed Miscellaneous Application No.0003 of 2019 in the  
High Court of Uganda at Fort Portal to recover the said balance of shs  
1,741,387,700/= (One Billion Seven Hundred Forty One Million Three Hundred  
Eighty Seven Thousand Seven Shillings). They sought to attach the applicant's  
15 account with Bank of Uganda No. 003570088400006. A Garnishee Order Nisi  
was issued by the High Court of Uganda on 14<sup>th</sup> January 2019.

Because there had been execution of the decree, the applicant now seeks an  
interim order staying further execution of the Decree and orders in High Court  
Civil Suit No.25 of 2013 hence this application.

20 The grounds of the application are contained in the Notice of Motion and affidavit  
in support of the application sworn by **Mr. KWESIGA JOSEPH**, an advocate of  
the applicant's Institution and dated the 20th day of August 2018. He also swore  
a supplementary affidavit on 18<sup>th</sup> January, 2019. Briefly, the grounds are that;

1. *The applicant being dissatisfied with the decision of the presiding Judge in  
25 HCCS No.25 of 2013 filed a Notice of Appeal in the High Court and served  
the same on this Court.*

- 5           2. *The applicant filed a letter requesting for the typed copy of the record of proceedings and a notice of appeal on the 22<sup>nd</sup> day of May 2018 and served the same on this Court.*
3. *The applicant filed Miscellaneous Application No.35 of 2018 to stay execution of the judgment and orders of the High Court in Civil Suit No.25 of*  
10           *2013 which was dismissed on the 20<sup>th</sup> day of August 2018.*
4. *Upon dismissal of Miscellaneous Application No.35 of 2018, the respondents obtained a decree Nisi in execution of the orders of the Court in Civil Suit No.25 of 2018 for payment of Ug shs.3,166,506,929/=.*
5. *There is a real threat of execution of the decree in Civil Suit No.25 of 2013*  
15           *by the respondents which shall render the appeal nugatory.*
6. *The applicant will suffer substantial loss if this application is not granted.*
7. *This application has been made without unreasonable delay.*
8. *The applicant is interested in prosecuting the appeal and has fulfilled the requirements without delay.*
- 20           9. *The application is intended to protect the status quo which is the subject of the appeal.*
10.       *The applicant is willing to abide by the conditions this Honorable Court may lay down for grant of the orders sought.*
11.       *The justice of the matter requires that the matter be finally decided*  
25           *upon on the appeal.*
12.       *The applicant has a substantive application pending in this Honorable Court.*

5 13. *The applicant's appeal will be rendered nugatory if the application is not granted.*

14. *It is just fair and equitable that an application for an order of stay of execution of the decree in HCCS No.25 of 2013 is issued pending the determination of the appeal before this Court.*

10 The applicant further filed a supplementary affidavit sworn by Kwesiga Joseph, an advocate of the applicant's Institution on 18<sup>th</sup> January, 2019. The relevant paragraphs in the supplementary affidavit are briefly that:-

I. *The applicant is facing an eminent threat of execution by way of garnishee of its Account Number 003570088400006 in Bank of Uganda*

15 II. *The account holds government funds from the consolidated fund for the running of its mandate country wide to protect and manage over 506 Central Forest Reserves.*

20 III. *If the garnishee Nisi is made absolute, it will totally cripple the operations of the applicant institution with no recourse exposing the 506 Central Forest Reserves to depletion, encroachment as the applicant will have no capacity to perform its functions.*

IV. *The respondents are peasant's citizens of Uganda who once have taken away the applicants funds cannot easily be traced if the applicant succeeds on appeal.*

25 V. *If the respondents fully execute the orders of the lower Court, they will have no interest in pursuing the appeal.*

5 VI. *It is in the interest of justice that this Application be granted.*

VII. *If this application is not granted, it will render the main application for an injunction nugatory and subsequently the entire appeal.*

The respondent did not file an affidavit in reply.

At the hearing of the application, the applicant was represented by Mr. Moses  
10 Muhumuza while the respondent was unrepresented since they were not served  
because of the urgency of the matter as the application for garnishee order  
absolute was coming up today in the High Court of Uganda at Fort Portal. It is  
against that background that counsel for the applicant prayed to proceed ex  
parte. Owing to the urgency of the matter, Court granted the applicant's prayer.  
15 Counsel submitted that the application sought for an interim stay of further  
execution of the orders and decree arising from the judgment in civil suit No.25  
of 2013, High Court Of Uganda at Fort Portal until the determination of the main  
application vide Civil application No.379 of 2018. He further submitted that the  
applicant filed a Notice of Appeal On 29<sup>th</sup> May 2018 and wrote a letter requesting  
20 for typed proceedings on 22<sup>nd</sup> May 2018 and the same were served on the  
respondent on 29<sup>th</sup> May 2018.

Counsel further submitted that the respondent obtained a garnishee order Nisi  
on 11<sup>th</sup> July 2018 to attach 3,166,506,919/= from the applicant's account  
numbers 9030005951983 and 9030005954559 in Stanbic Bank. He added that  
25 the applicant sought stay of execution in Miscellaneous Application No.35 of  
2018 which was dismissed and the decree Nisi was made absolute. As a result

5 1,571,250,000/= was recovered from the applicant's said accounts leaving a balance of shs 1,741,387,700/=.

Counsel submitted that the applicant was facing an eminent threat of further execution for the balance by way of garnishee of its Account Number 003570088400006 in Bank of Uganda which holds Government releases to run  
10 the Institution such as Operational expenses and salaries for support staff. He added that if the garnishee order is made absolute, it will cripple the operations of the institution and lead to the depletion of the forest reserves and encroachment.

Counsel further submitted that in applications of this nature, the applicant must  
15 show that he lodged a notice of appeal, there is an eminent threat of execution, the application has been made without unreasonable delay and the applicant has given security for due performance of the decree. He further submitted that if the application is not granted, the funds will be taken and difficult to recover rendering the appeal nugatory and secondly the forest reserve is under damage  
20 and being a natural forest reserve, it will be difficult to restore it. Counsel added that the balance of convenience lies with the applicant and the funds to be garnisheed are still with the applicant in Bank of Uganda pending issuance of an order of garnishee absolute. According to him, the appeal has high chances of success.

5 I have carefully considered the Notice of Motion, the affidavit in support, the annexures thereto as well as the law and authorities relied upon. I have also considered the submissions of counsel for the applicant.

In the instant application, paragraph 10 of the Kwesiga Joseph's affidavit in support of the Notice of Motion states that the applicant filed **Miscellaneous**  
10 **Application Number 35 of 2018** in the High Court of Uganda at Fort Portal seeking stay of execution which was dismissed on the 20<sup>th</sup> day of August 2018 and pursuant to the dismissal, the applicant filed both the main application vide Civil Application No.379 of 2018 and the interim stay of execution vide Miscellaneous Application No.380 of 2018 in this Court. The applicant therefore  
15 complied with Rule 42 of the Rules of this Court.

**Rules 6 (2), 42 (2) and 43** of the rules of this court give wide discretion to this Court to grant interim or substantive orders of stay of execution for purposes of preserving the right of appeal, but this should be where special circumstances exist. **See: Lawrence Musitwa Kyazze V Eunice, Supreme Court Civil**  
20 **Appeal No. 018 of 1990.**

In **Civil Application No. 019 of 2008: Hwang Sung Industries Ltd V Tajdin Hussein and 2 Others (SC)**, Okello, JSC held that:-

“For an application for an interim stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before  
25 the hearing of the pending substantive application. It is not necessary to pre-



5        *empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.*

*Suffice to add that the burden lies upon the applicant to prove to Court on a balance of probabilities the requisite conditions that must be satisfied before an interim order is granted.” Emphasis added.*

10 Further, in ***Wilson Mikiibi vs James Ssemusambwa, Civil Application No. 009 of 2003 (SC)***, Mulenga, JSC, held with regard to an application for an interim order that:-

15        *“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...*

20        *The Interim Order ought to be made only in compelling circumstances, to prevent defeat of justice, and strictly pending ascertained hearing of a substantive application by the full Court.”*

This Court has power in its discretion to grant stay of execution where it appears to be equitable to do so with view of temporarily preserving the status quo. See ***National Enterprise Corporation versus Mukisa Foods, Miscellaneous***  
25 ***Application No. 007 of 1998.***

5 In the present application, I note that the interim order being sought is to stay further execution of the judgment, decree and orders in High Court Civil Suit No.25 of 2013 from the High Court of Uganda at Fort Portal until the determination of the main application for stay.

This being an application for interim orders, the only issue to be resolved is  
10 whether the applicant has established that there is a substantive application for stay, and sufficient cause as well as imminent threat of execution in order for court to consider granting this application.

The applicant filed **Civil Application No. 379 of 2018** for stay of execution which is pending hearing and determination in this court. Secondly, I find from  
15 the evidence on record that there is an eminent threat of execution before the main application is heard because upon the dismissal of the applicant's application for stay of execution in the High Court that is Miscellaneous Application No.35 of 18, the Garnishee Order Nisi that had been granted by the trial Court became absolute. This can be evidenced from the fact that the  
20 applicant's accounts in Stanbic Bank that is Account numbers 9030005951983 and 9030005954559 in the names of the applicant had been attached by the respondent and a sum of 1,571,250,000/= had been recovered leaving a balance of shs 1,741,387,700/= that is still unrecovered. The respondent filed  
Miscellaneous Application No.0003 of 2019 in the High Court of Uganda at Fort  
25 Portal to recover the said balance of shs 1,741,387,700/=. In the said application, the respondents stated that the applicant owned an account with

5 Bank of Uganda (003570088400006) which the respondents believed had enough funds to satisfy the balance due on the decree. A Garnishee Order Nisi marked as annexure NFA 1 was issued on 14<sup>th</sup> January 2019.

I therefore find that the applicant is facing an eminent threat of execution by way of garnishee of its Account Number 003570088400006 in Bank of Uganda to  
10 attach the 1,741,387,700/=.

I also accept counsel for the applicant's submission that unless the orders sought are granted, the Appeal and the applications before this Court shall be rendered nugatory because if the natural forest is destroyed, it will be very difficult to restore it.

15 I am satisfied that the tests which this Court must consider in order to determine an application of this kind as spelt out in Rule 42 of the Rules of the Court and in **Civil Application No. 019 of 2008: Hwang Sung Industries Ltd V Tajdin Hussein and 2 Others (SC)** have been met.

I accordingly allow the application and make the following orders:-

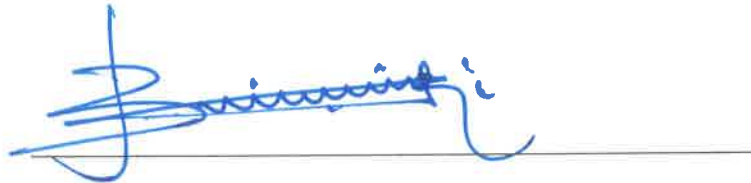
- 20 1. An interim order is hereby issued staying the further execution of the decree and orders of Court in **High Court Civil Suit No. 025 of 2013** pending the final disposal of the main application for stay of execution.
2. The costs of this application shall abide the outcome of the substantive application for stay of execution.
- 25 3. The Registrar of this Court is hereby directed to cause list **Civil Application No. 379 of 2018** for hearing in the next 14 days.

5 4. This order shall lapse on 5<sup>th</sup> February 2018 if Civil Application No.379 of  
2018 is not heard within 14 days.

**I so order.**

Dated at Kampala this 23<sup>rd</sup> day of January 2019.

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**HON. MR. JUSTICE CHEBORION BARISHAKI**

**JUSTICE OF APPEAL**

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