

5 THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA

MISCELLANEOUS APPLICATION NO. 185 OF 2021

(Arising from Misc. App. No. 184 of 2021)

10 (Arising from Civil Appeal No. 73 of 2020)

BUSIA PRODUCE DEALERS MULTI-PURPOSE

CO-OPERATIVE SOCIETYAPPLICANT

VERSUS

15 STANBIC BANK (U) LTDRESPONDENT

RULING OF HELLEN OBURA, JA

Introduction

20 The applicant brought this application by way of Notice of Motion under **Section 98** of the **Civil Procedure Act, Section 33** of the **Judicature Act and Rules 6(2) (b), 43 and 44 of the Judicature (Court of Appeal Rules) Directions S.I 13-10** for an order of an interim injunction pending the determination of the main application, and cost of the application.

The grounds of the application are stated in the Affidavit in Support dated 17th June, 2021 sworn by Wabwire John and in the Affidavit in Rejoinder dated 26th August 2021 sworn by
25 Mr. Brian Othieno.

Representation


When this application came up for hearing, Mr. Omondi Machel Nyambok appeared for the applicant together with Mr. Richard Okalany while Mr. Isaac Walukagga appeared for the respondent. Mr. Walukagga informed Court that he intended to raise three preliminary points
30 of law before the application could be heard. This Court advised him to raise those preliminary

5 points of law in reply to the applicant's submissions on the merits of application so that they could be handled together in the ruling.

Mr. Okalany then informed Court that he had received the affidavit in reply in Court that afternoon and prayed that he be allowed to file the rejoinder together with the written submissions. There being no objection from Mr. Walukagga who only cautioned that the
10 applicant should not use the opportunity to cure the anomalies in the application, the prayer was granted. Both parties were then given directions to file their respective written submissions and they have accordingly complied. Meanwhile the parties were directed to maintain the status quo pending the delivery of this ruling. The submissions of both parties have been considered in this ruling.

15 **Applicant's Case**

The background of this application as stated in the applicant's written submissions is that the applicant filed **Civil Appeal No. 73 of 2020** against the whole judgment and Orders of **Hon. Justice Anna B. Mugenyi** delivered on the 13th December, 2019 at Commercial Division of the **High Court vide H.C.C.S No. 452 of 2012**. The appeal raises serious questions of law
20 and fact and is pending before this Court and whose subject matter involves a challenge on the lending transaction where land comprised in FVR 606, Folio 10 Plot 222, and Block 8 at Namaubi in Busia was pledged as part of the securities for the said lending transaction. A Notice of Appeal was attached to the affidavit of John Wabwire as proof of this.

Further, that the applicant also filed **Miscellaneous Application No. 184 of 2021** for an order
25 of temporary injunction restraining the respondent from selling or interfering with the applicant's use and possession of the land pending determination of the appeal. The same is also pending hearing and determination by this Court. However, the respondent has issued the applicant with a notice of default under the Mortgage Act dated 29th April, 2021, a copy whereof was attached to the affidavit of John Wabwire. The respondent subsequently through 

5 its agents has threatened to dispose of the said property as per an advertisement of the notice
of sale in the Daily Monitor Newspaper dated the 30th July, 2020. A copy of the Daily Monitor
Newspaper page bearing the notice which indicates that the intended sale would take place
after 30 days was attached to the affidavit of John Wabwire. It was submitted that this implies
10 from the date this application was heard. Further that, this Court by its Order issued on the
26th day of August 2021 in **Misc. Application No. 220 of 2021**, certified the matter as being
urgent and gave directions on the hearing of this application.

Counsel submitted that the principles governing the grant of Interim Orders such as the one
sought in this application are fairly settled. All the applicant has to show is that:

- 15 (i) There is a competent notice of appeal.
(ii) A substantive application has been filed.
(iii) There is a serious threat of execution.

He supported his submission with the decision in **Zubeda Mohamed & Another vs Laila
Wallia & Another; Civil Application No. 07 of 2016** where the court stated that;

20 *“Considerations for the grant of an Interim Order of Stay of Execution or Interim
Injunction are whether there is a substantive application pending and whether there is
a serious threat of execution before hearing of the Substantive application. Needless
to say, there must be Notice of Appeal. See **Hwang Sung Industries Ltd Vs Tajdin
Hussein and 2 others SCCA No. 19 of 2008.**”*

25 Counsel also relied on the decision in **Supreme Court Civil Application No. 2 of 2018:
Patrick Kaumba Witshire vs Ismail Dabule** where the application was granted after the
Court had satisfied itself that the above three conditions were met by the applicant. He then
submitted that in the instant case, there is no doubt that the respondent issued a Default
Notice and has advertised the property for sale by Monday 30th August, 2021. According to



5 counsel, this is a very clear threat which if not stopped will lead to the sale of the said property; thus, rendering both the main application for a temporary injunction and the appeal nugatory.

In response to the first preliminary point of law raised by counsel for the respondent, counsel contended that this is not an application for stay of execution envisaged under **Rule 42(2) of the Rules of this Court**. He pointed out that the record of appeal shows that the High Court
10 had issued an injunction restraining the sale pending disposal of the matter before it and the injunction lapsed with the disposal of the case in the High Court.

He submitted that the present action of the respondent in attempting to sell the suit property pursuant to its powers under the Mortgage Act can only be stopped by way of injunction since
15 an order for stay would not be strictly speaking applicable in view of the fact that there is no application for execution of the decree of the High Court. It was the view of counsel that an order for injunction would be appropriate in the instant scenario. He argued that an application for injunction could not be first filed in the High Court again after the lapse of an order of the same which was obtained at the commencement of proceedings in the High Court. Counsel
20 added that, in any event, an application for an order of a temporary injunction in the High Court would require a pending suit with a high likelihood of success, which suit is not there. On the basis of this submission, counsel urged this Court to find that this application is properly before it and disallow the objection.

As regards the 2nd preliminary point of law on the validity of the appeal, counsel referred this
25 Court to the affidavit in rejoinder sworn by Mr. Brian Othieno which indicates the steps taken to lodge the appeal, namely that; the Notice of Appeal together with the letter requesting for proceedings was dully filed and served as can be deduced from Annexure "A" and "B" to the said affidavit. He explained that the appeal was lodged out of time because of the national lockdown announced by the President in March, 2020, and the applicant has taken steps to



5 regularize or validate the late filing through Miscellaneous Application No. 363 of 2020 which is Annexure "C" to the Affidavit in Rejoinder.

On this point, counsel concluded that the contention that the appeal is bad in law is untenable at this stage as, in their view, this Court will validate the appeal filed out of time because there is sufficient reason as indicated in Annexure "C" to the affidavit in rejoinder. Counsel
10 submitted that on that basis, this objection should equally fail.

On the 3rd and last preliminary point of law as relates to the application of regulation 13 of the Mortgage Regulations, counsel submitted in response that the said regulation does not fetter the inherent powers of this Court to issue such orders as would meet the ends of justice. He argued that regulation 13 is not a provision in a statute which this Court must apply without
15 question. He pointed out that the constitutionality of the said regulation is being challenged before the Constitutional Court. According to counsel, courts have been wary about a wholesale application of this regulation especially where the validity of the mortgage is the subject of a legal challenge in the court proceedings. He referred to the case of *Mutegeki John vs Mutabazi Joseph & others HCMA 109 of 2016* in which this view was expressed.

20 Counsel submitted that once the applicant comes with clean hands in pursuit of an equitable remedy in order to preserve his right to be heard in his appeal before this Court, it would be retrogressive for this Honorable Court to turn away a litigant pursuing his rights to challenge the validity of a Mortgage by first requiring it to deposit 30% of the sum claimed from an impugned mortgage. He argued that it would clearly run contrary to the right to a fair hearing
25 enshrined in **Article 28 of the Constitution**. Counsel prayed that this Court adopts the reasoning of the High Court in *Mutegeki John (supra)*, which is persuasive to disallow the objection on this point and find that there is a proper case made out for the grant of an interim injunction.



5 It was also the contention of counsel that the respondent shall suffer no injustice since the current application only seeks an order to bar it from disposing of the suit property pending the disposal of the main application and the appeal. He concluded that this is a good case that warrants grant of an interim order of injunction with costs against the respondent.

Respondent's Case

10 Counsel also gave a background that the applicant filed a suit against the respondent, inter-alia, seeking realization of security comprised in FRV 606 Folio 10 Plot 222 Block 8 Land at Namaubi ("suit Property"). The applicant's suit was dismissed with costs by the High Court whereupon the applicant filed a Notice of Appeal and a letter requesting for proceedings. The proceedings were supplied to the applicant on the 17th day of February 2020 with the last day
15 of filing the record of appeal being 17th April 2020. The record was not filed till 12th June 2020 way out of the mandatory 60 day period.

Furthermore, that following the judgment, the respondent issued a Default Notice to the applicant which was not responded to. The suit property was thereafter advertised for sale. The applicant has now filed this application for an interim injunction restraining the respondent
20 from selling the suit property. Counsel raised three issues which, according to him, arise from this application, namely;

1. *Whether the application is properly before this Court.*
2. *If so, whether an interim injunction should have been issued in favour of the applicant (sic).*
- 25 3. *What remedies are available to the parties?*

On Issue 1, counsel alluded to the affidavit in reply to this application in which it is averred in paragraph 2 thereof that the application is not properly before this Court and that the respondent shall raise preliminary points of law on; (1) the jurisdiction of this Court to handle



5 this application; (2) validity of the appeal to which this application anchors; and (3) stoppage of a sale of mortgaged property.

On the jurisdiction of this Court to handle this application, counsel referred to the averment in paragraph 2.1 of the Affidavit in Reply that this application ought to have been filed at the High Court before filing the same in this Court. He contended that the applicant's affidavits
10 do not give any reasons why the application was not filed at the High Court first but directly in this Court.

Counsel argued that pursuant to rule 42 (1) of the Judicature (Court of Appeal Rules) Directions SI 13-10 (Rules), the applicant is enjoined to make this application first to the High Court and its only after this option has been exhausted that a party may make an application
15 to this Court. He contended that rule 42(2) of the Rules gives an exception to the requirement to first make this application before the High Court only if there is valid reason why such an application was not first made to the High Court.

Counsel buttressed his submission on this point with the decision in ***Augustine Makumbi vs Hosanna Evangelist Mission & Others; Court of Appeal Civil Application No. 295 of***
20 ***2017*** where the applicant filed an application for an interim stay of execution/injunction against the respondent. The respondent opposed the application and raised a preliminary objection that the application ought to have been filed at the High Court first and this Court (Musoke, JA Single Justice) held thus;

25 *"Having failed to demonstrate any rare or special circumstances for not making this Application in the High Court first, the applicant has failed to show sufficient cause to justify grant of an interim order of stay of execution in this case under Rule 42 (2) of the Rules of this Court. I, therefore, allow the preliminary objection by counsel for the respondent and hereby dismiss Civil Application No. 295 of 2017 with no orders as to costs".*



5 Counsel also relied on the decision of this court in ***P.K Sengendo vs Busuluwa Lawrence & another; Court of Appeal Civil Application No. 207 of 2014*** where the applicant filed an application in this Court for an order of stay of execution of the judgment and orders by way of preserving the status quo of a property that had been the subject of a trial pending disposal of the appeal by the applicant. In denying the orders sought, this Court (Kakuru, JA Single
10 Justice) stated as follows;

*"In any case Rule 42 (i) of the rules of this Court clearly stipulates that whenever an application may be made either in this Court or in the High Court, it shall be first made in the High Court. This application therefore must fail on that ground alone. There is no evidence that this application was first made in the High Court and rejected. I found no special or rare circumstances to exist, that would
15 compel this Court to hear this application first".*

Counsel further alluded to the decision of this Court in ***Ganafa Peter Kisawuzi vs DFC Bank Ltd; Civil Application No. 0064 of 2016***, which he opined is quite instructive on the propriety of this application. In that case, the applicant filed a suit against the respondent in the High Court which was dismissed. The respondent proceeded and advertised the suit property for
20 sale. The applicant filed a Notice of Appeal and an application for an injunction in this Court without filing any application in the High Court. It was held as follows;

*"Having found so, the applicant was required under Rule 42 of the rules of this Court to have filed the application for a stay of execution in the High Court first and file it in this court if special circumstances existed. According to counsel for the applicant, the special circumstance was
25 limitation in time especially in light of the fact that the suit property was due to be sold the following day. He further submitted that it would be an uphill task for the applicant to convince the trial judge to overturn a decision he had pronounced himself on. However, we are not satisfied that time factor constituted a special circumstance in this application. The applicant did not adduce any evidence to prove that the High Court refused to hear the application for stay of execution as soon as possible
30 or that a much later date was fixed to hear the same. It was mere speculation that the High Court would not have heard the applicant in time which is untenable. We therefore, find that the application*



5 *for stay of execution is incompetent before this Court. On that ground alone, we would dismiss the application".*

On the basis of the above decisions, counsel submitted that there is no evidence that this application was made at the High Court and rejected or that there are any special circumstances to justify filing it in this Court. He concluded that this application should fail on
10 that account alone.

On the 2nd preliminary point of law, counsel submitted that there is no valid appeal to support this application. He pointed out that it is conceded in paragraph 7 of the Affidavit in Rejoinder that the time to file the Record of Appeal lapsed on the 17th April 2020 before the applicant could file it for reason that the nationwide lockdown announced by the President on 21st March
15 2020 due to Covid-19 pandemic affected normal work and this prevented the applicant's lawyers from finalising the preparation of the Record of Appeal for filing. Counsel referred to the case of ***P.K Sengendo vs Busulwa Lawrence & another (supra)*** where the application had been filed on the basis of an appeal that was filed out of time and the application was dismissed on the ground that the time within which the applicant was required to have filed
20 the appeal had lapsed and as such there was no appeal.

Counsel submitted that in the instant application no interim injunction should issue in the absence of a valid appeal on record. His submission is based on the fact that the Notice of Appeal was filed on 19th December 2019. Proceedings were, according to the Registrar's Certificate, availed to the applicant on the 17th February 2020 and the Record of Appeal was
25 filed on the 12th June 2020. He also pointed out that the application to extend time has not been fixed for hearing and served on the respondent. It was his view that it is speculative to think the application will succeed. Counsel therefore prayed that the application be dismissed on the basis that there is no valid appeal on record.

As regards the 3rd preliminary point of law that relates to stoppage of a sale of mortgaged
30 property, counsel submitted that the injunctive order sought by the applicant must be on the



5 basis of a pending substantive proceeding which is lacking as there is no valid appeal on the court record.

Counsel further submitted that the respondent is not executing a Decree but realising a security to recover its dues and pursuant to regulation 13 of the Mortgage Regulation SI No. 2 of 2012, such a sale can only be stopped upon depositing 30% of the forced sale value of the property or the sums due which the applicant has not done. He contended that while the applicant concedes to this requirement in paragraph 13 of the Affidavit in Rejoinder, it goes ahead to add a rider, on no legal basis, that this provision does not limit the powers of Court to make orders as it deems. It was counsel's contention that Court should not stop a sale in these circumstances unless the Mortgagor has complied with regulation 13. He supported this view with the decision in ***Ganafa Peter Kisawuzi vs DFC Bank Ltd (supra)***, where this Court considered the question whether an applicant would be entitled to an injunction without meeting the requirements of regulation 13 and held that the applicant was in breach of that provision of the law and as such, grant of an order of a temporary injunction stopping the intended sale was not available to him. Counsel prayed that the application should not be granted since the applicant did not comply with the provisions of regulation 13 of the Mortgage Regulations.

On issue 2, counsel alluded to his earlier submissions on the validity of the appeal and contended that there is no valid application before Court. He did not contest the conditions for grant of an injunction but he emphasized that the applicant must demonstrate that there is a valid Notice of Appeal which the applicant has failed to do and as such the application must fail.

On issue 3, counsel prayed that on the basis of the above submissions the application be dismissed.



5 **Application for Recusal**

As I was preparing this ruling my attention was drawn to a letter dated 30th August 2021 from M/S MMAKS Advocates the respondent's advocates by which I was asked to recuse myself from handling this application because I had earlier presided over the same matter at the High Court. A copy of a ruling I made in application for a temporary injunction was attached for my
10 ease of reference. It is noteworthy that counsel who argued the respondent's case appeared before me in court on 26th August 2021 and he never raised any objection to my presiding over this application. It would therefore appear that the decision to ask me to recuse myself was an afterthought. Be that as it may, I will still determine it before I consider the application.

Paragraph 5 of the Constitution (Recusal of Judicial Officers) (Practice) Directions, 2019
15 (hereinafter called Directions) provides that;

"A judicial officer may, on application by any of the parties or on his or her own motion, recuse himself or herself from any proceedings in which his or her impartiality will reasonably be in question."

Paragraph 6 of the Directions provides for some circumstances for recusal by a Judicial Officer on his or her own motion and paragraph 7 provides for circumstances for recusal at
20 the instance of the parties which include: having interest in the subject matter or having a relationship with any party who is interested in the matter; having background information or experience; having personal knowledge about the parties or the facts of the case; having ex-parte communication with lawyers or parties to the case; where a Judicial Officer makes inappropriate comments or exhibits unacceptable conduct in the course of the hearing or
25 where the judicial officer exhibited actual, imputed or apparent bias. The mode of application for recusal as provided under paragraph 8 of the Directions can either be by letter copied to all the parties and the Registrar of the court or orally in open court in the presence of the parties. It is the Judicial Officer being requested to recuse himself or herself who responds to the application by deciding whether or not to recuse himself or herself.



5 The principles that should guide a Judicial Officer in determining whether or not he or she should recuse himself or herself from handling a matter when called upon to do so have been discussed in a number of cases. In the Kenyan case of **Attorney General vs Anyang' Nyog'o & Others [2007] 1 EA 12** where the Court considered the two categories of scenarios that call for recusal of a judge; the first one being where a judge is a party to the cause or has
10 a relevant interest in its subject matter and outcome, thereby requiring automatic disqualification from the hearing and the second one where the judge is not a party and does not have a relevant interest in the subject matter or outcome of the suit. The Court then observed as follows regarding the second scenario which I believe is more relevant to instant application:

15 *"In the second category, where the judge is not a party and does not have a relevant interest in the subject matter or outcome of the suit, a judge is only disqualified if there is likelihood or apprehension of bias arising from such circumstances as relationship with one party or preconceived views on the subject matter in dispute. The disqualification is not presumed like in the case of automatic disqualification. The applicant must establish that bias is not a mere*
20 *figment of his imagination."* [Emphasis mine].

My appreciation of the grounds being advanced for the request for my recusal from hearing this application is that, as a High Court Judge at the Commercial Division of the High Court, I partially handled a suit from which this application also arises and in that regard, I heard an application for a temporary injunction that had been filed by the applicant. A copy of the ruling
25 in which I granted the orders sought in the application was availed to me. I was therefore asked to recuse myself from handling this application for reason that I had presided over the same matter at the High Court. The phrase; *'having presided over the same matter at the High Court'* as it appears in the letter of the applicant's counsel would cause me to automatically recuse myself on my own motion if it were true.



5 However, I need to set the distorted facts right from the outset. It is not true that this application
for an interim order of injunction is the same matter I handled at the High Court or that I
handled the suit from which the appeal to which this application anchors arises. It is true that
the main file for **Civil Suit No. 452 of 2012: Busia Produce Dealers Multi-Purpose
Cooperative Society Ltd vs Stanbic Bank Ltd** was assigned to me together with a file for
10 Miscellaneous Application No. 605 of 2012 by which the applicant sought for an order of a
temporary injunction. I heard the application and granted it pending the hearing and
determination of the main suit which due to the backlog challenge and the policy of hearing
older cases first, I did not have opportunity, to the best of my recollection, to hear even for a
single day or make directions for any steps to be taken in preparation for the hearing before
15 my elevation to this Court in 2015.

In the circumstances, my knowledge of the substantive matter in dispute is limited to what
was presented in the application for a temporary injunction and the supporting affidavit and
what was presented by the respondent in opposition to that application. I have no clue of what
the witnesses testified about. The application for a temporary injunction pending the hearing
20 and determination of Civil Suit No. 452 of 2012 which I handled at the High Court cannot,
therefore, by any stretch of imagination be said to be the same matter as this application
which is for an interim order of injunction pending the determination of a substantive
application for injunction. It was therefore untruthful and misleading for the respondent's
counsel to assert that I presided over the same matter in the High Court.

25 The Judicial Oath I took, with a Bible in my right hand, enjoins me to administer justice to all
manner of people impartially without fear, favor, affection or ill will and in accordance with the
Constitution and the law. The Uganda Code of Judicial Conduct which regulates my conduct
as a Judicial Officer also puts on me a responsibility to act in an independent and impartial
manner not only in my judicial decisions but also in the process by which the decision is made.



5 I see nothing in the circumstances of this application that would cause me to deviate from that Judicial Oath and the Code of Judicial Conduct.

The letter from the respondent's counsel is clearly based on the misconception that I handled the same matter at the High Court but as explained above, I am clear in my mind that what I handled in the High Court, though it arose from the same suit from which the appeal from
10 which this application also arises, is different from this application. I have capacity to determine this application impartially and without taking into account any other consideration other than the facts presented before me and the applicable laws and principles. It is also pertinent to note that this an application for an interim order of injunction which has well settled conditions for its grant. Besides, the order if granted, has a short lifespan since it acts as a
15 stop gap before the main application is heard and determined.

In the result, I find that counsel for the respondent has not advanced any satisfactory reason that would cause me to recuse myself from hearing and determining this application No. 185 of 2021. I therefore decline to do so.

Resolution of the Application

20 I have perused the pleadings and the respective submissions for both parties. I will first of all consider the preliminary points of law raised by counsel for the respondent. The arguments of counsel on the first preliminary point is law is that the applicant should have first filed this application at the High Court as stipulated under rule 42 (1) of the Rules of this Court which provides thus;

25 *"Whenever an application may be made either in the court or in the High Court, it shall be made first in the High Court."*

The pertinent question to consider is whether this application for an interim order of injunction may be made in this Court and in the High Court, in which case the applicant would have been required to make it first to the High Court. In ***Ganafa Peter Kisawuzi vs DFC Bank Ltd***



5 **(supra)** this Court reproduced the provisions of Order 41 rule 1 of the Civil Procedure Rules (CPR) and succinctly stated what I will adopt as the answer to this question. They stated as follows:

10 *"The CPR is applicable to the High Court and the subordinate courts thereto. From the above provision, one can apply for a temporary injunction only when there is a pending suit before the court which has not been disposed of. In the present application, the Applicant could not apply for a temporary injunction in the High Court because the suit was disposed of when judgment was delivered. There is no requirement for an application for a temporary injunction to first be filed in the High Court. The application for a temporary injunction is properly before this Court under Rules 6 92) (b) of the Rules of the Court which provides thus:*

15 *"Subject to sub rule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 76 of these Rules, order a stay of execution, an injunction, or a stay of proceedings on such terms as the court may think just."*

20 This is a very correct statement of the law which equally applies to an application for an interim order of injunction like this one. I must also point out that the applicant in **Ganafa Peter Kisawuzi vs DFC Bank Ltd (supra)** had applied for both a temporary injunction and a stay of execution. The portion of the decision in that case which counsel for the respondent relied upon to support his argument that this application should have been made first to the High Court relates to stay of execution which is inapplicable in this case. Similarly, the applicants
25 in **Augustine Makumbi vs Hosanna Evangelistic Mission & Others (supra)** and **P.K Sengendo vs Busulwa Lawrence & another (supra)** were also seeking an order for stay of execution so the decisions in those cases as quoted by counsel for the respondent are neither relevant nor applicable to the facts of the instant application.

30 I therefore find that this application is properly before this Court and as such there is no merit in the first preliminary point of law raised by counsel for the respondent. It is accordingly disallowed.



5 On the 2nd preliminary point of law raised by counsel for the respondent, it was contended that the appeal to which this application anchors is not valid because it was filed outside the time stipulated under the Rules of this Court. It is not disputed that the Record of Appeal was filed out of time. The applicant explained that the failure to file the appeal in time was due to sufficient cause, namely; that the process of preparing the Record and Memorandum of
10 Appeal for filing was interrupted by the lockdown that was announced by HE the President of Uganda. It was contended for the applicant that there is a pending application for extension of time to file the Record and Memorandum of Appeal and or validate the late filing.

One of the 3 conditions for grant of an interim order of injunction is that there must be a competent Notice of Appeal. I suppose the authorities that state the 3 conditions for grant of
15 an interim order referred to a competent Notice of Appeal because it was presumed that the application would be brought immediately after the judgment is delivered in which case that would be what is immediately required at that stage as the Record and Memorandum of Appeal are being prepared for filing.

However, in the instant case the application was brought after the expiry of the statutory
20 period for filing the appeal itself counting the date the certified record of proceedings was availed to the applicant. I believe the Court considering an application for an interim order filed after the expiration of the time stipulated for filing an appeal would have to look beyond the competency of the Notice of Appeal and consider the validity of the appeal itself. I am therefore inclined to do so in this application.

25 I have noted the fact that the late filing of the Record and Memorandum of Appeal is conceded by the applicant who argues that there is sufficient cause for the failure to file the appeal in time and that an application has since been filed for either extension of time, and or validation of the appeal that was filed out of time. This leaves me with no doubt in my mind that, as it stands now, there is no valid appeal in this Court. The validity of the appeal is hinged on the



5 success of the application for extension of time, and or validation of the appeal. It would therefore be speculative to say, because there is sufficient cause in the applicant's view, the application will be successful and the appeal will be validated. Even if the application is heard and granted, it would be a future event that supersedes this ruling and so it cannot be a basis for this Court to determine whether currently there is a valid appeal.

10 In the circumstances, I find that there is currently no valid appeal and the next question is whether an interim order of injunction can be granted where there is no valid appeal from which the application arises? I would say no. The applicant should have had the application for extension of time, and or validation of the appeal fixed and heard first so that there is a valid appeal then it would have this application fixed for hearing.

15 For this reason alone, I decline to grant the orders sought in this application. Since my finding on the validity of the appeal disposes of this application, I find no reason to consider the 3rd preliminary point of law on stoppage of sale of mortgaged property and the other conditions for grant of an interim order. Counsel is advised to advance his arguments on regulation 13 of the Mortgaged Regulations when the substantive application for a temporary injunction
20 comes up for hearing.

In the result, this application is dismissed with costs and the direction that the status quo be maintained until the delivery of this ruling automatically lapses.

Dated at **Kampala** this.....^{12th}.....day of.....^{Oct}.....2021.

25



Hellen Obura

JUSTICE OF APPEAL