

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 356 OF 2021
(ARISING FROM MISCELLANEOUS CIVIL APPLICATION NO. 355
OF 2021)
(ARISING FROM CIVIL APPEAL NO. 05 OF 2011)

1. PHILIP DDUMBA]
2. DAV ID LUZIGE :..... **APPLICANTS**

VERSUS

DAVID ARTHUR BAGAMBE] :..... **RESPONDENT**

RULING OF GASHIRABAKE CHRISTOPHER

This is a ruling for Protective Orders pending the hearing of the application for interim Stay of Execution. Mr. Byamugisha Nester for the applicants and Mr. Munyani for the respondent appeared before me in this application for an interim order of stay of execution, Mr. Byamugisha Nester indicated that he had just filed his written submissions and sought guidance from me whether the parties can proceed by way of written submissions.

Mr. Munyani did not have any objection to the proposed procedure. While I was giving timelines for the filing of submissions in reply and rejoinder, Mr. Byamugisha Nester prayed for protective orders pending the determination of the application for interim order of stay on the ground that a Notice To Show Cause Why Execution particularly by way of eviction and arrest had been issued against the

applicant and is scheduled for hearing before the Registrar of Land Division of High Court tomorrow 28/1/2022 at 9.30 a.m.

Mr. Byamugisha drew my attention to the Notice to Show Cause Why Execution Should not Issue attached to David Luzige's Supplementary Affidavit as Annexure "B".

He submitted that if the protective orders are not granted, execution is likely to proceed thereby rendering this application nugatory.

Mr. Munyani opposed the prayer arguing that the land the subject of the intended appeal is vacant and not occupied by the applicants.

Rule 2(2) of the Judicature (Court of Appeals Rules) Directives

(2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, or the High Court, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent abuse of the process of any court caused by delay

The above provision empowers this court to make protective orders where it is evident that there's imminent danger against the applicant's claim. I have read the Supplementary Affidavit of David Luzige dated 26th January, 2022 and filed on the record of this Court on 27th January, 2022.

a In paragraph 3 he depones that the administrators of the late Charles William Makumbi Ddumba have at all materials been in physical occupation of the land. Per paragraph 4 of the Supplementary Affidavit, the Notice to Show Cause Why Execution Should Not Issue is directed on *interalia* the applicants.

The execution sought in the Notice to Show Cause is by way of eviction from the subject land and arrest. If the applicants were not in occupation the respondent would not seek to evict them from the land.

It appears from paragraph 6 of the Supplementary Affidavit that the respondent has, in anticipation of the results of the Notice To Show Cause already put in place steps to evict the applicants.

I am accordingly satisfied that there is a real threat of execution against the applicant before I determine this application and for this reason I grant the protective order sought. Any form of execution of the decree is hereby stayed until the determination of the application for interim order of stay. I order accordingly. No order as to costs.

Dated at Kampala this.....^{29th} day of ^{January}.....2022

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C. GASHIRABAKE

JUSTICE OF APPEAL