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Српска

5 c. Civil suit No.04 of 2018 is frivolous and vexatious and an abuse of court.

When **Miscellaneous Application 215 of 2019**, came up for hearing the trial judge summarily dismissed the application on ground that the letters of Administration held by the Applicant were null and void. Dissatisfied with the dismissal the Applicant filed **Miscellaneous Application No. 369 of 2020**, arising from
10 **Miscellaneous Application No. 215 of 2019** and **Civil Suit No. 04 of 2018** for leave to appeal against the ruling in **Miscellaneous Application No. 215 of 2019**, but the Application was granted with a condition to deposit security for costs of UGX 70,000,000/= within two months. This was done without hearing the merits of the application.

15 Upon failure to get leave to appeal in the High Court before Justice Batema N.D.A the Applicant filed **Civil Appeal No. 325 of 2021**, in the Court of appeal arising from **Misc. Application No. 369 of 2020**, **Misc. Application No. 215 of 2019** and **Civil Suit No. 04 of 2018**, for leave to appeal the ruling and orders of the High Court Judge in **Miscellaneous Application No. 215 of 2019**, issued on the 27th
20 November 2020.

The High Court Judge proceeded with the hearing of the **Civil Suit No. 04 of 2018**, which compelled the Applicant to **file Miscellaneous application No 122 of 2021** in the High court for stay of proceedings pending the application for leave to appeal in the court of appeal.

25 The Applicant moved this court by Notice of Motion under **Rules 2(2), 6(2)(b),42(1),44,50 of the Judicature (Court of Appeal Rules S.I 13-10)** for Orders that:

1. An interim order doth issue staying the proceedings in High Court Civil Suit No.4 of 2018 pending the hearing and determination of

- 5 Miscellaneous Application No. 325 of 2021 for leave to appeal and the subsequent Appeal in the court of appeal.
2. Costs of the application be provided for.

The grounds in support of the application were laid down in the affidavit of **Mr. Kelspo Sekandi Lusangwa**. He averred that;

- 10 1. The Applicant is a Defendant in **Civil suit No.4 of 2018**, which is pending hearing on the 16th May 2022 at 9.00am.
2. The Applicant filed **Miscellaneous Application No. 215 of 2019**, raising several preliminary points of law.
- 15 3. The Applicant being dissatisfied with the Ruling of Justice David Batema delivered on 27th November 2020 in **Misc. Application No. 215 of 2019** filed an application seeking leave of court to appeal the decision of the trial Judge.
- 20 4. The application for leave to appeal **Misc. Application No. 369 of 2020** was not granted which forced the Applicant to file an application for leave to appeal in the court of appeal vide **Civil Appeal No. 325 of 2021** which is pending hearing.
- 25 5. The Applicant filed **Miscellaneous Application No.325 of 2021**, seeking leave of court to Appeal.
6. The Applicant filed an application for stay of proceedings in the High Court in **Miscellaneous Application No. 122 of 2022**, pending the hearing and determination of **Miscellaneous Application No.325 of 2021**, in the Court of Appeal.
- 30 7. The applicant served the Respondent with the application for stay of proceedings on the 21st December, 2021 but no reply opposing the said application was filed in court.
8. The High Court scheduled the hearing of the application for stay of proceedings on the 1st March 2022 and submissions were filed on the 21st February 2022.
- 35 9. The day the Applicant filed the submissions for leave, it was discovered that the trial Judge had called the application for stay of proceedings on the 15th February 2022 a day which was never scheduled by court for hearing and none of the parties was present in court and dismissed the application for stay of proceedings which is against the principle of natural justice.
- 40 10. The trial Judge David Batema, J dismissed the application for stay of proceedings and while dismissing the application held that ‘ since the Applicant was granted leave to appeal but failed to deposit UGX 70,000,000/= (Seventy Million shillings only) as security for costs, this application for stay fails too’
- 45 11. The Applicant filed a Notice of Appeal and letter requesting for the typed record of the proceedings in the High Court.
12. The Applicant received the proceedings and the order dismissing the application for stay of proceedings on the 14th March 2022 when his counsel was appearing in **Miscellaneous Application No. 589 of 2021**,

5 **Rosette Zawede Mutesasira and others vs. Van Rooyen Elizabeth Huibrecht.**

13. On the 17th March 2022, the Applicant's lawyer was served with a Hearing Notice scheduled for 16th May 2022, whereas there is a pending application for leave to appeal pending in the Court of Appeal.

10 14. That the Applicant has filed Miscellaneous **Application No..... of 2022** of stay of proceedings pending the hearing of **Civil appeal No. 325 of 2021 for leave** to appeal a decision made in **Miscellaneous Application No. 215 of 2019**.

15 15. The balance of convenience lies in staying proceedings in the High Court until the application for leave to appeal is heard and disposed of

16. The application has been brought without undue delay.

17. It is only fair, just, equitable and in the interest of justice that this application be allowed and the Applicant's appeal be safeguarded.

The Respondent opposed this application through the Affidavit of **Ms. Nakimuli**

20 **Isabella Janet** on grounds that, the High court at Mukono granted the Applicant leave to appeal but with a requirement that he deposits security for costs to a tune of Shs.70,000,000/=. The Applicant instead chose to appeal against the orders on ground that the order was unfair to him. However, the Applicant does not demonstrate the unfairness. The High court was justified to refuse to stay
25 proceedings of a case that has stayed for 11 years in court. That **Civil Suit no 04 of 2018** was first registered as **Civil Suit 036 of 2011** before Jinja High Court but was transferred to Mukono after the High Court in Mukono became operational and it was re-numbered **No. 04 of 2018**. The Respondent argued that a stay of proceedings on a case that has stayed 11 years will occasion a miscarriage of
30 justice to the Respondent and beneficiaries of the estate.

Representation.

The applicant was represented by Mr. Solomon Ssebowa and Mr. Samuel Ssemwogerere. The Respondent was represented by Mr. Robert Bogere.

5 **Submissions of counsel for the Applicant.**

Counsel for the Applicant submitted that the Applicant seeks the intervention of this court to stay all proceedings in High Court vide **Civil Suit No. 04 of 2018** pending the hearing of **Miscellaneous Application No. 325 of 2021**. Counsel argued that **Rule 2(2) and 6 (2)(b)** of the Court of Appeal Rules gives this
10 honourable Court powers to make orders for attaining the ends of justice or to prevent abuse of the process of any such court. See **Theodore Ssekikubo and others vs. The Attorney General and another Constitutional Application No. 06 of 2013**, where the Supreme Court held that Rule 2(2) of the Judicature Supreme Court Rules give court very wide discretion to make such orders as may
15 be necessary to achieve the ends of justice.

Counsel cited **Wilson vs. Church (No.2) (1879)12 CH.D.454** and **Somali Democratic Republic vs. Anoop S. Sunderlal Tran Civil Application No.11 of 1988(SC)** which was cited with approval in **National housing and Construction Corporation Civil Appeal No.06 of 2002**. Where it was held that:

20 “ where an unsuccessful party is exercising an unrestrained right of appeal , it is the duty of the Court in ordinary cases to make such orders for staying proceedings under the judgment appealed from as will prevent , if successful, from being nugatory”

Counsel further submitted that the Applicant has to satisfy court that there is a;

- 25 1. Competent notice of appeal
 2. Substantive application of stay and;
 3. Serious threat of execution.

Counsel submitted that the Applicant had adduced evidence in paragraph 4 of the affidavit in support of the application to show that he filed a Notice of Appeal. In
30 paragraph 8 and 17 of the affidavit in support he demonstrates that there is a

5 pending substantive application. In paragraph 15 the applicant averred that the proceedings are ongoing in high court at Mukono.

Counsel additionally submitted that the Applicant has fulfilled all the requirements for grant of an interim Order.

Submissions of Counsel for the Respondent.

10 It is the submission of counsel for the Respondent that the applicant has shown that there are two applications in the court of appeal that are both ready for this type of application for stay of proceedings. That court should not entertain such endless litigation. Counsel averred that courts have objected to appeals during hearings. Counsel cited **Sanyu Lwanga Musoke vs. Sam Galiwaango [1997] KALR 47.**
15 and **DFCU LTD vs. Begmohamed Ltd , Court of Appeal, Miscellaneous Application No. 65 of 2005**, where this court held that ;

“We are uncomfortable to stay the proceedings, as that would increase backlog of cases in this Court.

This kind of endless litigation, in our view, is an abuse of court process”

20 Counsel submitted that in the affidavit in reply that the Respondent demonstrated that the Applicant was being monstrous, immoral and outrageous in suggesting that he will be inconvenienced if the application is not granted. The Applicant has not demonstrated how he would be inconvenienced. Counsel further submitted that the Respondents and the Beneficiaries would be inconvenienced by staying a case that
25 is already long overdue since it has been in court for 11 years. Counsel cited **Commodity Export International and Anor vs. MKM Trading Company Ltd and Anor Civil Application No. 96 of 2005**. Where court refused staying proceedings because it found it unnecessary considering the backlog at High Court.

5 Counsel prayed that this application to be dismissed with costs.

The Applicant did not file rejoinder to the submissions.

Consideration of Court.

I have carefully perused the record and considered the submissions by both learned counsel. I have also read a number of authorities from this Court and Supreme
10 Court on interim orders. This Court may in exercise of its discretion grant an interim stay of proceedings whenever it considers it equitable to do so. Under **Rules 6(2) (b) of the Judicature (Court of Appeal Rules) Directions**, provides that:

15 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.*

In **Hwan Sung Industries ltd vs Tajdin Hussein and 2 others Civil Application No. 19 of 2008**, Okello JSC, stated some of the principles to be considered in
20 granting interim orders of stay of execution, thus:

“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.

25 It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.”

Rule 2(2) of the Judicature (Court of Appeal Rules) Directions grants this court powers to make such orders *inter alia* as may be necessary for achieving the ends of justice.

5 (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
10 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.

In **National Enterprise Corporation Vs Mukisa Foods Miscellaneous
Application No. 7 of 1998**, this court held that;

15 “The court has power in its discretion to grant stay of execution where it
appears to be equitable with a view to temporarily preserve the status

The first requirement for grant of an interim stay of execution is the existence /
pendency of a Notice of Appeal. The Supreme Court in the case of **Dr. Ahmed
Muhammed Kisuule vs. Greenland Bank (In liquidation) Miscellaneous
20 Application no. 7 of 2010** stated that;

“For an application in this Court for a stay of execution to succeed the
applicant must first show subject to other facts in a given case, that
he/she has lodged a notice of appeal in accordance with Rule 72 of Rules
of this Court...”

25 According to paragraph 4 of the affidavit in support of the application, the
Applicant filed a Notice of Appeal on the 11th December 2020. I take cognizance
of the fact that this application raises from an appeal which is not of right.
However, According to **Rule 41(1)** of the Court of Appeal Rules, it is not
necessary for the Applicant to first obtain leave before lodging a Notice of Appeal.
30 Accordingly the Applicant has satisfied this requirement.

The second condition that needs to be satisfied is the existence of a substantive
Application. In the Submissions of the Applicant, it was submitted that under

5 paragraph 8 there is evidence of a substantive application. The application that is required is a substantive application for stay. The one referred to in paragraph 8 is **Miscellaneous Application No.325 of 2021**, seeking leave to appeal. **Miscellaneous Application No. 325 of 2021**, does not qualify as a substantive application for stay. The Applicant referred to **Miscellaneous Application 60 of**
10 **2022** for stay of proceedings. However the application before this court is **Miscellaneous Application No. 60 of 2022** in the names of **Beyendeza Edward vs. Abdul Rajab Kalule**. The Applicant did not attach any documentary evidence to prove that there is a substantive application before this court. The Applicant has therefore failed to satisfy this condition.

15 Lastly, the Applicant has to satisfy court that there is imminent threat. Counsel submitted that under paragraph 15 of the affidavit in support, the Applicant's counsel was served with a **Hearing Notice** scheduled for **16th May 2022**, whereas there is a pending Application for leave before this court. This posed as a threat to the Applicant. It is true that the ongoing hearing poses a threat to the purpose of
20 the appeal before this court. This is because as the proceedings are ongoing, they may be concluded before the Appeal is heard. This defeats the purpose of the Appeal.

It has to be noted that for this court to grant an interim stay of proceedings the three conditions must be fulfilled to the satisfaction of court. In this case the Applicant has
25 not proved the existence of a substantive application.

In conclusion, I find that the Applicant has not met the conditions for the grant of an interim stay of proceedings. I am fully aware that Rule 2 (2) of the Rules of this Court confers on the Court discretionary powers in the pursuit and fulfillment of the exercise

5 of the substantive justice and avoidance of abuse of court process. However the discretion is exercised within the ambits of the law.

This is a case that has stayed in court for 10 years now because of unending Applications; it would be unfair for this court to stay such a case. The multiplicity of applications could be a deliberate attempt to delay and deny Justice to the other party.

10 I do not see any inconvenience that the Applicant would suffer if the matter is heard on its merits.

This application is dismissed with costs to the Respondent.

I so order

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Dated at Kampala this..... day of2022

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C. GASHIRABAKE

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JUSTICE OF APPEAL