THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 381 OF 2021

(Arising from Miscellaneous Application No. 380 of 2021)

1. KATO MOSES
2. WASSWA MAGUNDA ::::::::::::::::::::**APPLICANTS**
3. KIMULI SAMUELAPPLICANTS

VERSUS

NALUBEGA PAULINE ::RESPONDENT

RULING

The Applicants brought this application under rules 2(2) (b), 42 and 43 of the Judicature (Court of Appeal Rules) Directions S.I 13-10. They sought for an interim order for stay of execution of an order issued in the High Court at Mukono in Miscellaneous Application No. 20 of 2019 and for the costs of the application.

The grounds of the application were briefly stated in the application and set out at length in the affidavits in support of the application sworn by Kato Moses and Kimuli Samuel, the 1st and 3rd applicants, respectively, on 1st December 2021.

The grounds stated in the application were that the applicants filed an application for stay of execution as Court of Appeal Miscellaneous Application No. 380 of 2021 and an appeal registered as Court of Appeal Civil Appeal No. 383 of 2021.

The applicants further stated that there is a serious threat of execution of the order issued in Mukono HCMA 20 of 2019 against the applicants.

Copies of the Application for Execution and a Notice to Show Cause Why Execution should not issue were attached to their affidavits as **Annexure B1 and B2.** The applicants further averred that they filed an application for stay of execution in Mukono HCMA No. 28 of 2021 and the same was dismissed by, Batema, J. They contended that the said trial Judge visited the *locus in quo* and incited *"mob justice"* upon them to demolish their home and destroy their food crops without according them the right to be heard.

They further averred that the statement by the Judge that they used an Interim Order in Jinja HCMA No. 156 of 2016 to gain possession of the land in question was baseless since they were born and raised on the said land. Further that they were not in contempt of court when they gained possession of the land because the order in HCMA 156 of 2016 was to the effect that the status quo on the land ought to be maintained. They contended that they were already on the land so that is what was maintained by the said order.

The applicants contended that the ruling in HCMA No. 20 of 2021 was never read in open court; that they only came to know about it when the 1st and 2nd applicants visited the court on 21st January 2021 to check on the progress of the matter. That as a result, the issue of execution proceedings before receiving a judgment notice from the court was premature.

The applicants claim that the land in dispute which is comprised in Kyaggwe Block 101 Plot 219 at Misindye is their home where they live and derive their subsistence. That they will suffer irreparable loss if this application is not granted. Further, that HCCS No. 505 of 2018 was dismissed on technicalities of procedure and as such, HCCS No. 200 of 2019 which was filed instead of the former suit has a high likelihood of success. And that the said suit together with the main application for

stay of execution in this court, Application No. 380 of 2021, will be rendered nugatory if this order is not granted. And that HCMA No. 379 of 2012, HCCS No. 264 of 2018 and HCCS No. 200 of 2019, pertaining to the land in dispute pending before the High Court at Mukono will also be rendered nugatory. Further that the applicants will be denied a chance to be heard to defend their claim of ownership of the land if this application is not granted. That it is in the interests of justice that execution of the order in Miscellaneous Application No. 20 of 2019 be stayed pending the determination of the main application in this court for stay of execution.

The respondent opposed the application in an affidavit in reply sworn on 20th January 2022 and filed in this court on the same day. She stated that the application filed by the applicants does not satisfy the conditions for grant of the order sought because it is full of falsehoods, incurably defective, misconceived and bad in law.

The respondent further averred that the Notice of Appeal (Annexure A to the affidavits in support) filed by the applicants in this court on 29th January 2021 is incurably defective because it shows that it was filed in respect of a ruling dated 21st January 2021, which is a day before the ruling of court it seeks to appeal against which was pronounced on 22nd January 2021. That the Notice of Appeal attached bears no signature of the Registrar and the seal of the Court to show that it was duly received by the court.

The respondent further contended that upon a visit to the *locus in quo*, it was established by Batema, J who heard the applicant's HCMA No 28 of 2021, as he stated in his ruling, that the applicants were never resident on the suit land and did not have a family home thereon as alleged. That it was further stated in the ruling that the applicants erected a small room on the land in an attempt to misguide court that

it was their family home. That the applicants therefore do not come to this court with clean hands.

She further contended that on 1st March, 2021, the applicants, well aware of the orders issued in HCMA No 20 of 2019 began to dig a foundation on the land in dispute in an attempt to expand the one-roomed house that they had recently constructed on the land. That in total disregard of the orders issued in Miscellaneous Cause No. 20 of 2019, the construction ensued after the applicants filed HCMA No. 28 of 2021 for stay of execution of the said orders. That the attempts by the applicants to commence construction was reported to the District Police Commander, Mukono District who deployed police officers to stop any further construction on the suit land.

The respondent further averred that contrary to the assertions of the applicant that it was not, the ruling in HCMA No. 20 of 2019 was read in open court by the Chief Magistrate at Mukono on the orders of the Deputy Registrar of the High Court, after issuing a ruling notice dated 17th December, 2020. Further that execution proceedings in Misc. Application No. 20 of 2019 are long overdue and are further being delayed by the applicants' filing multiple applications, including the one now before court, in the hope that the respondent will give up or pass on before the matter is concluded.

She further averred that she is informed by her advocates that the filing of High Court Civil Suit 200 of 2019 was in violation of the *lis pendens rule* since it was filed in the pendency of Miscellaneous Cause No. 20 of 2019, which properly canvassed all issues in the said civil suit. Further that she committed no fraud when the land in dispute was transferred and the allegations of the applicants in that regard are baseless and without proof. She added that she cultivated and utilized the suit land

since 1984 when her late husband purchased it from the late William Maganda, till 2016 when she was evicted using an interim order to maintain the status quo issued by the High Court at Jinja.

The respondent further averred that the allegations that the applicants will lose their home if this application is not granted are meant to totally mislead this Court. That instead it is she that has been denied her livelihood and sustenance from using the suit land. She thus prayed that this application be dismissed for being grossly marred with lies and falsehoods.

At the hearing of the application, the applicants were represented by Ms Judith Tumusiime from Katende Ssempbwa & Co Advocates. Mr Muhammed Imran of Imran Advocates & Solicitors represented the respondent. The advocates addressed court briefly to clarify on the contents of the affidavits filed by the parties. The application was therefore disposed of on the basis of their brief submissions and known legal principles relating to disposal of such applications.

Submissions of counsel

Counsel for the applicant was put to task as to why she filed an application for stay of execution in this court when there were still suits in the High Court at Mukono. She explained that they lodged Civil Appeal No. 283 of 2021 in this court in which they seek to set aside the orders in Mukono HCMA No 20 of 2019. That the orders that they seek to appeal against are in respect of the dismissal of HCCS No 264 of 2018 between the parties to this application. That the suit was dismissed on a technicality that it did not disclose a cause of action. Further that HCCS No 505 of 2018 was similarly dismissed.

Counsel explained that the applicants also filed HCCS No 200 of 2019. She said that the applicants were unable to get an order to stay

execution of the orders in HCMA No 20 of 2021 because the Judge, Batema, J. ordered that all applications pending hearing in the High Court at Mukono would be stayed until the final disposal of the appeal pending before this court as Civil Appeal No. 283 of 2021.

Counsel further explained that by the order referred to above, issued in HCMC No 28 of 2021, Judge Batema also stayed the hearing of HCCS No 200 of 2019. That this order was contained in the ruling of the Judge, **Annexure "C"** to the affidavit in support, in which the judge dismissed the applicant's application for stay of execution. She referred me to the last page of that order where it was stated that *"until a fresh suit is brought before this court there is no substantive suit because we shall not reinstate a suit struck out for disclosing no cause of action."*

When Ms Tumusiime was put to task about the fact that it was inconceivable that the judge could refuse to hear a suit before him, HCCS No 200 of 2019, she said she would produce the order to prove that to court. She undertook to produce a copy of the order on the 24th January 2022.

Ms Tumusiime further explained that HCCS No 200 of 2019 was different from the other two suits that were dismissed in that the causes of action were trespass and fraud. That the element of fraud made Civil Suit No 200 of 2019 different from the two suits that were dismissed earlier by the court.

In reply, Mr Imran explained that HCCS No 264 of 2018 was allotted that number in Mukono when it was made a High Court circuit, the suit having been transferred from the High Court sitting at Jinja. That the suit was dismissed upon an application filed by the respondent, HCMC No 20 of 2019. That before this application was determined by the court, the applicants filed HCCS 200 of 2019. He argued that the filing of the

latter was contrary to the *lis pendens* rule. He explained that there was already a suit in the same court yet to be decided in HCMC No 20 of 2019, whose ruling was delivered on 22nd January 2021. That therefore, no suit could be filed where there was still a pending matter before the court on the same subject.

He argued that what this court ought to consider in this application is whether the dismissal of HCMA No 20 of 2019 has a bearing on the application now before court. In as far as the previous suits were concerned, he submitted that Batema, J. was correct when he ruled that until a fresh suit is filed before court, the court could not dwell on matters that had already been disposed of because the suits filed by the applicant were a replica of those that had already been dismissed by the court. He affirmed that what the applicants seek from this court is for the property in dispute to be saved from execution pending the disposal of Civil Appeal No 380 of 2021, now pending before this court.

Determination

The principles to be considered by this court before granting of an interim order for stay of execution were re-stated in **Kyambogo University v. Professor Isaiah Omolo Ndiege, Civil Application No. 34 of 2013** where Kakuru, JA, stated (7) conditions that must be satisfied before an (interim) order is granted by the court as follows:

i. The applicant has lodged a notice of appeal in accordance with rule 76 of the Rules of this court;
ii. There is a substantive application for stay of execution filed and pending hearing in this court
iii. The substantive application and the appeal are not frivolous and they have a likelihood of success;

iv. There is a serious imminent threat of execution of the decree or order and that if the application is not granted the main application and the appeal will be rendered nugatory;

v. The application was made without unreasonable delay;

vi. The applicant is prepared to grant security for due performance of the decree, and

vii. The refusal to grant the stay would inflict greater hardship than it would avoid.

The evidence on record shows that the first and second requirements above have been satisfied by the applicants. They lodged an appeal in this court as Civil Appeal No 383 of 2021, which is pending hearing. They also lodged Civil Application No. 380 of 2021, which too is pending hearing before this court.

With regard to the third principle, whether the appeal before this court has a likelihood of success and is not merely frivolous and vexation, counsel for the applicant explained that the appeal is against the order of the High Court at Mukono in HCMC No 20 of 2019, in which two suits in respect of the land in dispute were dismissed on preliminary points of law. In their affidavits in support of the application, the applicants assert that the appeal has a strong likelihood of success. The applicant's claim that HCMC No 20 of 2019 was never heard by the court so raising a ground of appeal and evidence that the main application in this court should succeed.

However, there is evidence on the record that the High Court at Mukono, on the 17th December 2020, issued a ruling notice to all counsel in the matter, including M/s Katende, Ssempebwa & Co. Advocates. And according to the order under appeal, the ruling was delivered by the Assistant Registrar, Mary Ikit, in the presence of the advocates for the respondent, though Ms Tumusiime for the

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applicants was absent. Nonetheless, the applicants came to know about the ruling and filed the appeal now pending hearing in this court.

The applicants do not vouch for the likelihood of success of their appeal before this court. However, in paragraph 13 of their similar affidavits in support of their application they averred as follows:

> *"That I have been informed by my lawyers Ms Katende, Ssempebwa & Co Advocates, which information I believe to be true and correct that HCMC No 20 of 2019 dismissed the Applicants' suit HCCS No 505 of 2018 on technicalities of procedure and the 3rd applicant filed HCCS No 200 of 2019 pending before the Mukono High Court with a likelihood of success. (A copy of the Plaint in Mukono HCCS No 200 of 2019 is attached marked D)."*

In HCMC No 20 of 2019, Mutonyi, J, the trial judge, deemed it fit to dismiss HCCS No 505 of 2018 and in doing so, she pointed out that the applicants brought the suit as beneficiaries to the estate of the deceased under whom they claimed title or an interest in the land. She referred to the mandatory requirements of Order 6 rule 1 of the Civil Procedure Rules (CPR) that every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defence, as the case may be. Further that the applicants omitted to indicate how they came to sue as beneficiaries to the land in dispute. She pointed out that Part V of the Succession Act gives an elaborate description of the persons entitled to a deceased's estate as beneficiaries and the respondents, now the applicants, did not give any particulars about their entitlement to sue as beneficiaries. She then ruled as follows:

> *"I agree with the submissions of counsel for the applicant that the respondents ought to have given material particulars to help this court understand their capacity to bring HCCS No 505 of 2018. Mere mention that they are beneficiaries of the estate of the late William Magunda without giving further particulars as to what makes/entitles them as beneficiaries is not enough.*

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...

I thus find that the failure by the respondents to give material facts of their beneficial capacity in the estate of the late William Magunda renders their plaint defective as they lack the requisite capacity/locus standi to file this suit.

The trial judge relied on the decision of Bashiaja Andrew, J. in **Fakrudin Vallihai Kapasi & Another v. Kampala District Land Board & Another, HCCS No 570 of 2015,** where it was held that *locus standi* whether in the capacity of beneficiary, administrators or executors, must be expressly established at the time when the plaint is filed by attaching proof of it thereto. That the requirement is meant to enable court and the defendant to know with clarity the basis of the plaintiff's claim. (See also **Israel Kabwa v. Martin Banoba, SCCA No. 52 of 1995**).

It is indeed important that the source of the plaintiff's right to sue be clearly shown in the plaint. In this case, it was not and the suit was dismissed for that reason. The applicants thus brought another suit against the respondent with similar claims in HCCS 200 of 2019. In that suit, the 1st applicant claims to be one of the administrators of the estate of the deceased, while the 3rd applicant is stated to be a beneficiary, but with specific details as to how he is entitled to be one.

While the filing of HCCS No 200 of 2019 attempts to cure the defect in the dismissed HCCS 505 of 2018, it does not contribute to making a finding that the appeal pending before this court has a strong likelihood of success. Instead it is an admission that HCCS No 505 of 2018 was properly dismissed by the trial judge in HCMC 20 of 2018, for failure to disclose the standing of the plaintiff therein to file the suit.

The trial judge in HCMC No. 20 of 2018 did advance another reason for the dismissal of the suit. She found that it was filed in 2018, 20 years

after the land in dispute was transferred to the late Kawadwa, the husband of the respondent from who she derived her interest. In conclusion of this point she held as follows:

> *"As stated above the cause of action arose in 1998 when the late Andrew Kawadwa was registered on the certificate of title and the plaint in HCCS No 505 of 2018 was filed in 2018, 20 years later. The plaintiff did not plead any grounds for exemption from limitation. I thus find that HCCS No 505 of 2018 is time barred and dismiss the same."*

My quick analysis of the facts upon which the appeal is based shows that it has limited chances of success, especially because the applicants tried to remedy the lapses or shortcomings in HCCS 505 of 2018 by filing a new suit in the same court. Indeed, it is this suit that they claim has a strong likelihood of success, not the appeal pending before this court. They then aver that if this application for stay of execution is not granted, HCCS 200 of 2019 will be rendered nugatory.

In HCCS 200 of 2019, the applicants contend that the transfer of the land in dispute to the late Kawadwa was effected fraudulently. That seems to be the new claim which was not in the suits that were dismissed, the subject of the appeal pending before this court. The issue has not been decided and so this court cannot make a determination as to whether it will be successful or not.

Nonetheless, during the hearing of this application, Counsel for the applicants brought it to the attention of court that in the process of dismissing the application for stay of execution in **HCMC No 28 of 2019**, the trial judge stayed all proceedings in the High Court at Mukono, including **HCCS No 200 of 2019**, which they claim has a high likelihood of success. The allegation that the trial judge stayed a suit which was pending hearing till the conclusion of an appeal in this court, though relating to the same property to me sounded incredible.

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The appeal in this court is against an order issued by Mutonyi, J. dismissing Mukono **HCCS No 505 of 2018**, brought by the applicant against the respondent in this application, because she found that it was barred by limitation, as well as the applicants having no locus to bring the suit.

After she asserted that Batema, J. stayed the hearing of **HCCS 200 of 2019**, which was filed after the dismissal of **HCCS No. 505 of 2018** to replace the suit that was dismissed by Mutonyi, J., (**HCCS 505 of 2018**) I requested Ms Tumusiime to produce the order to prove that the judge indeed stayed all proceedings in that court relating to the same dispute as she alleged. This was particularly so because the ruling from which she alleged the order arose in fact recommended that the parties had the option of filing a fresh suit to show that they had the *locus standi* to do so.

Ms Tumusiime undertook to produce the order by Monday, 24th January 2022. She accordingly produced an order attached to a letter to the Registrar, said to have been issued on 2nd November 2021, and signed by Batema, J., in **Miscellaneous Application No 28 of 2021**, arising from among others, **HCCS No 200 of 2019**. Following that, the Registrar drew my attention to a letter addressed to her dated 25th January 2022 from counsel for the respondent challenging the order that was proffered by Ms Tumussime. In the letter, Imran Advocates & Solicitors stated that the order that was presented to court by Ms Tumusiime was a forgery. That it was altered in its heading to refer to **HCCS 200 of 2019**, but was actually an order that was issued in respect of **HCCS No 505 of 2019**. Copies of the two conflicting orders were attached to the letter.

I carefully examined the two copies of the orders in issue. I observed that the order attached to the letter from counsel for the applicants, Ms

Tumusiime, showed that it was issued by Batema, J on 2nd November 2021, in Misc. Application No 28 of 2021, arising from Misc Cause No 20 of 2019, HCCS No 200 of 2019 and HCCS No 264 of 2018, formerly Jinja HCCS No 92 of 2016. It was stated therein that it was issued in the presence of Ms Judith Tumusiime, counsel for the applicants and Mr Imran Muhamed, counsel for the respondent. It read as follows:

> *"All pending Applications, Suits and matters pending* ***before this court*** *are stayed until final disposal of* ***the appeal before the Court of Appeal in Kampala in HCMC No. 20 of 2019****."*

On the other hand, Imran Advocates & Solicitors drew it to the attention of court, through the Registrar, that the order that was issued by the trial judge on 2nd November 2021 was in of Misc Application 28 of 2021, arising from Misc. Cause 20 of 2019, HCCS No 505 of 2018, arising from HCCS No 264 of 2018, formerly Jinja HCCS No 92 of 2016. It was also stated therein that the order was issued in the presence of Ms Tumusiime and Mr Imaran. It read as follows:

> *"All pending Applications, Suits and matters* ***before the Deputy Registrar*** *be stayed until the* ***final disposal and ruling in Miscellaneous Application No. 28 of 2021."***

The major differences in the two orders therefore were that while the order submitted to the court by Ms Tumusiime included HCCS 200 of 2019, the order that was presented by Mr Imaran referred to HCCS No 505 of 128 *(sic)*. The error in the year of registration seems to have been a computerised typographic error in the order. It was carried into the ruling of the judge which too referred to "HCCS No 505 of 128". From the records on file, it seems this was meant to be HCCS No 505 of 2018.

Secondly, while the order presented by Ms Tumusiime referred to a stay of proceedings till hearing and final disposal of an appeal before this

court in HCMC No 20 of 2019, the order that was drawn to the attention of court by counsel for the respondent referred to a stay of all proceedings before the Registrar till final disposal of and delivery of a ruling in HCMC No 28 of 2019, pending in the same court.

I observed that both copies of orders were not certified by the court said to have issued them. However, both counsel having been present when the order in dispute was issued by the court had access to the correct order, since they represented the parties to the dispute. I therefore have no doubt that the order drawn to the attention of court by counsel for the respondent was a genuine order, though not cetified by the registrar. Moreover, rule 17 (1) of the Advocates (Professional Conduct) Regulations (SI 267-2) provides for the duty of an advocate to advise the court on matters within his or her knowledge in the following terms:

> **"(1) An advocate conducting a case or matter shall not allow a court to be misled by remaining silent about a matter within his or her knowledge which a reasonable person would realise, if made known to the court, would affect its proceedings, decision or judgment."**

It was therefore incumbent upon Mr Muhamad Imran to inform court that the order that Ms Tumusimme produced in these proceeding in which they both appeared as learned counsel for each of the parties, appeared to be a forgery.

I observed that the order presented by Ms Tumusiime appeared to have alterations in its material particulars, represented by black lines above and below the words and figures which could have been altered. This was clearly evident in the heading were the numerals *"200"* and *"2019"* appear to have been inserted. It was also evident in the body of the order where the words *"pending before this court"* and *"Appeal before the Court of Appeal Kampala in HCMS No. 20 of 2019"*, appeared to have been inserted to replace other words. The order that was produced by Ms

Tumusiime indeed looked suspicious, both on the face of it and within the context of the litigation in the High Court and this court.

The ruling of Batema, J. in **HCMA No 28 of 2019** was already on file in this application. It showed that it was in respect of an application to stay execution of the orders of Mutonyi, J. in **HCMC No 20 of 2019**. The ruling detailed a visit to the *locus in quo* by the judge to establish whether the allegations made by the applicants in the application to stay execution that they were resident on the land in dispute were true. This would necessitate the issue of an order to stay execution of the orders of Mutonyi, J. to reinstate the respondent on the land as beneficiary to the estate of the registered proprietor thereof, and so maintain the status quo before the applicants are evicted from the land. In his ruling dated 23rd November 2021, Batema, J. found and held as follows:

> *"My visit to the locus in quo confirmed to this court that the applicants applied for an injunction and got it vide Misc. Application 218 of 2016 at Jinja.*
>
> *The applicants used this injunction as an eviction order and threw Paulina Nalubega out of the suit land since then. In that abuse of court process, the applicants argue that they have lived here for decades.*
>
> *No. The injunction was not an eviction order. The injunction in fact maintains Paulina Nalubega on the suit land until the case is disposed of. But now this court struck out the suit by the applicants for disclosing no cause of action, the applicants have no basis at all for being on the suit land and constructing kiosks for rent.*
>
> *Until the land title is cancelled, the suit land remains the property of the respondent who is the recognised widow administering the estate of the late Andrew Kawadwa Kaggwa.*
>
> ***Until a fresh suit is brought to this court, there is no valid substantive suit because we shall not reinstate a suit struck out for disclosing no cause of action.***
>
> *The applicants have no cause of action and therefore are not entitled to any stay of execution.*

The application for stay of execution is dismissed with costs."

{My Emphasis}

After he dismissed the application on the 23rd of November 2021, the judge ordered that execution of the orders of the court (in HCMC No 20 of 2021) do commence and that all developments on the land by anyone deriving title from the applicants here should be demolished *forthwith,* and the suit land handed over to the respondent.

In view of the fact that the judge encouraged the applicants to file a suit that disclosed a cause of action in respect of the land in dispute, to replace the two that were dismissed, it was inconceivable that he would in the knowledge that they did so in **HCCS No 200 of 2019**, stay the hearing of that same suit he advised them to file.

In addition, I did not see any order staying the hearing of **HCCS No. 200 of 2019** in the ruling in **HCMA No 28 of 2021**, as Ms Tumusiime asserted before me. In view of these inconsistencies and contradictions, I requested the Registrar of this court to establish from the trial court from the files in **HCCS 200 of 2019, Kizza David & Kimuli Samuel v Nalubega Pauline & Administrator General,** and **HCMA No 20 of 2019**, the subject of the appeal in this court registered as **Civil Appeal No. 383 of 2021**, as well as **HCMA 28 of 2021**, whether there was indeed an order issued in the terms alleged by Ms Tumusiime, by any of the judges in the proceedings in issue.

In a letter dated the 8th February 2022, the Registrar of this court requested the Registrar at Mukono to verify whether the suspicious order was issued by Batema NDA, J, on the 2nd November 2021 as it was stated therein. The Registrar at Mukono responded to the inquiry in a letter dated 10th February 2022. She informed the Registrar of this

court that the learned trial judge denied that he issued the contentious order. On the copy of the order that was shown to him he stated thus:

"DR

1. *This is not my signature. It is forged.*
2. *The content is contrary to my ruling on record.*

Signed,

Judge 10.02.22"

Attached to the letter was a certified copy of the judge's National Identity Card which has a specimen of his correct signature.

It is therefore clear from the letter from the Deputy Registrar of the High Court at Mukono that Ms Tumusiime produced a forged order before this court. This was done in a bid to persuade me to issue an interim order for stay of execution in order to protect the property in dispute in HCCS No 200 of 2019 in the High Court at Mukono till that suit is disposed of by that court. All the facts averred to by the applicants in their affidavits in paragraphs 13 to 22 were meant to persuade this court to issue the order, but they referred to the likelihood of success of the suit pending in Mukono, not the appeal pending before this court.

For her unmitigated temerity to produce a forged order before this court, Ms Tumusiime ought to face the consequences of her actions. Whether she participated in forging the order or procured her clients to do so, the production of a forged document is an offence. Forgery of a judicial or official document is proscribed by section 349 of the Penal Code Act. *"Any person who forges any judicial or official document is liable to imprisonment for ten years."*

It is also an offence to utter a false document and in that regard, section 351 of the Penal Code Act provides that:

"Any person who knowingly and fraudulently utters a false document commits an offence of the same kind and is liable to the same punishment as if he or she had forged the thing in question."

It is therefore befitting that the Registrar of this Court informs the Secretary of the Law Council about the conduct of Ms Tumusiime in this matter, which shall take the necessary disciplinary action against her.

And in the end result, the applicants have not satisfied the requirement that before an order to stay execution is granted by this court, the substantive application pending before it, and the appeal should have a likelihood of success.

As to whether there is a serious imminent threat of execution of the decree or order against the applicants, the evidence on record from **HCMA No 28 of 2021**, in which their application for stay of execution was denied by Batema, J on 23rd November 2021, is that the eviction order was issued because the applicants were proved not to be resident on or in possession of the land in dispute. They had gained control thereof by unlawfully evicting the respondent from it. The Judge established at the *locus in quo* that their known residence was a distance away from the land, but they made efforts after the order was issued in **HCMC No 20 0f 2018**, the subject of the appeal in this court, to take possession of the land by constructing a building thereon and letting out space to other persons to construct *kiosks*. Photographs of the structures were produced in evidence before this court and marked **"E"** and **"F,"** attached to the affidavit of the respondent opposing the application.

I therefore came to the conclusion that the order of Batema, J. in HCMA No 28 of 2021 was directed at demolition of such developments by the applicants and other persons that they brought onto the land after the

order that is under appeal in this court was issued. I am therefore unable to conclude that there is a serious and imminent threat of eviction against the applicants from their known home, as they allege.

And much as the application was made without unreasonable delay, there is no evidence on record that the applicants are willing to guarantee security for the performance of the orders issued in HCMC No 20 of 2019. Indeed, the appeal before this court is not their reason for seeking an interim order for stay of execution. Rather, it is the pending suit in the High Court at Mukono, No 200 of 2019. In view of that suit, the applicants believe they have a right to an order from this court to stay execution pending the appeal, which is a fallacy.

Finally, as to whether refusal to grant the order to stay execution would inflict greater hardship than it would avoid, I am of the view that it would not inflict any hardship at all on the applicants, save for possible refunds of monies taken from unlawful tenants on the land. But so be it, because the applicants' actions are in blatant abuse of the processes of this court and the trial court.

In conclusion, it is clear that the applicants seek an interim order for stay of execution from this court because they have a pending suit in the High Court at Mukono, connected to an appeal pending before this court. The correct court to issue such an order would be the court before which the suit is pending hearing, not this court. The applicants are therefore advised to pursue their cause in the High Court at Mukono in HCCS No 200 or 2019.

This application is therefore dismissed with costs to the respondent.

It is further ordered that the Deputy Registrar of this court sends a copy of this ruling to the Secretary to the Uganda Law Council. She should also lodge a complaint with the Council about the unprofessional and

possible criminal conduct of Ms Tumusiime in these proceedings, with a view to the Council taking disciplinary action against her.

Dated at Kampala this 10th Day of Aug 2022.

Irene Esther Mulyagonja

JUSTICE OF APPEAL