

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APP No.612 OF 2022
[Arising out of Civil App No.95 & 85 of 2021]
5 *[Arising out of Civil App No.83 of 2021 & Civil App No.85 of 2021]*

BETWEEN

APPLICANTS

1. MIWANDA IGNATIUS
- 10 2. KIKABI PAUL
3. KAZIRAKI EDWARD
4. JORAM MUSOKE
5. KAMASHANYU HARRIET
6. CHRISTIAN FAMILY HELPERS LTD
- 15 7. CHRISTIAN WOMEN CONCERN
8. CHRISTIAN FAMILY HELPERS LTD T/A
ST. BARNABAS PRIMARY SCHOOL
9. CHRISTIAN FAMILY HELPERS LTD T/A
MAAMA HELEN WAMALA FUND
- 20 10. CHRISTIAN FAMILY HELPERS LTD T/A
MUYENGA HIGH SCHOOL

VERSUS

RESPONDENTS

1. KALULE HENRY LUCKY
- 25 2. LWANGA CHARLES
3. LILIAN NANFUKA KAGIMU

HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE
SITTING AS A SINGLE JUSTICE

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RULING OF THE COURT

This ruling relates to a Notice of Motion that was filed in this Court on behalf of Miwanda Ignatius and 9 others (the
35 applicants) under Rules 2,6,43(1) & (2) & 44 of the Judicature (Court of Appeal) Rules. The orders sought are that:



1. The time of the operation of the interim order of stay of execution issued in **High Court Civil Application No.107 of 2021** be extended until the hearing and determination of **High Court Civil Application No.95 of 2021**.
- 5 2. The costs of and incidental to this application abide the result of **High Court Civil Application Number 95 and 85 of 2021**.

The grounds of the application are set out in the Notice of Motion and are expounded in the supporting affidavit dated 4th August 10 2022 sworn by Miwanda Ignatius one of the applicants, but in brief are that;

- a) This court issued an interim order to stay execution of the decree and order in **High Court Civil Suit No.573 of 2016**.
- b) This court further ordered that the stay would remain 15 operative for four months from 12th April 2022 and that should the four months expire before the substantive application is determined, then the court shall be moved to extend or order otherwise the operation of the interim order to stay.
- 20 c) That unless this court extends the operation of the interim order of stay of execution of the decree in **High Court Civil Suit No.573 of 2016**, the said interim order of stay of execution shall lapse on 13th August 2022.
- d) That there is eminent danger of execution against the 25 applicants which will render the pending appeal nugatory.
- e) That the respondents already commenced execution proceedings and the High Court issued a Notice to show cause



why execution shouldn't issue against the applicants on 4th February 2022, but execution was only stayed in the interim on the basis of the interim order of stay of execution issued by this court on 16th March 2022, on 6th April 2022 and finally on 12th April 2022.

f) That this application has been brought within time, that is within the stipulated four months period.

g) That it is just and equitable that the orders sought be granted.

The respondent opposed the application orally on a point of law; that the Judge was *functus officio* and could not extend an interim order for stay of execution which had already lapsed.

The brief background to the instant application is that **High Court Civil Application No.107 of 2021** was initially handled by Remmy Kasule, JA Ag, just before he left the service. This application was fixed for ruling on 14th June 2021 at 9:30 AM, in Chambers. Remmy Kasule JA Ag, allowed the interim application for stay of execution of the decree in **High Court Civil Suit No.573 of 2016** and ordered that the stay would remain operative for four months. It was further ordered that if the four months expired before the substantive application was determined, this court could be moved to extend the operation of the interim order of stay execution. This ruling was made at the height of the Covid-19 lockdown. Apparently only counsel for the respondents was able to receive the said ruling. Subsequently, Civil Application No.107 of 2021 was assigned to Hellen Obura JA. In her ruling, again sitting as a single Justice, the justice ordered that



the directive made on 14th June 2021 be resuscitated by the Registrar of this Court and the same be issued to all parties. It was further ordered that the stay of execution would run for four months starting from 12th April 2022. The 4 months are due to
5 expire on 13th August 2022.

When this matter came before me by way of certificate of urgency during the Autumn Civil Recess, the applicants were represented by learned counsel Rashid Kibuuka while the respondents were represented by Counsel Francis Tumwesigye. Both Counsel made
10 oral submissions.

Counsel for the applicants submitted that although the scheduling conference had been held for this appeal and for the temporary applications, there was no hearing date in sight. It was therefore unclear whether the appeal or the temporary
15 applications for stay would be scheduled for hearing without further delay. He submitted that the uncertainty surrounding the hearing dates makes it necessary for this court to hear **Court of Appeal Civil Application No.612**. He prayed that the same be allowed and interim stay of execution be extended for another
20 eight months.

While it is well within the ambit of this court to hear this application under Rule 2(2) of the Judicature Court of Appeal Rules which gives this court wide discretion to make such orders as may be necessary to achieve the ends of Justice, I am
25 concerned though that the continuance of interim stays of execution and the many extensions may have the effect of lulling the party from proceeding with the application for a temporary



stay of execution before three justices or setting down the main appeal for hearing. The critical path for this case is for the parties to follow up and push for hearing dates to the substantive matters and to put an end to interminable litigation and eventually save time and litigation costs.

I noted the concerns of counsel for the respondent. I would if I were him, have proceeded under s. 12(2) of the Judicature Act. It states:

12. Powers of a Single Justice of the Court of Appeal

(1) A single justice of the Court of Appeal may exercise any power vested in the Court of Appeal in any interlocutory cause or matter before the Court of Appeal.

(2) Any person dissatisfied with the decision of a single justice of the Court of Appeal in the exercise of any power under subsection (1) shall be entitled to have the matter determined by a bench of three justices of the Court of Appeal which may confirm, vary or reverse the decision.

The above section is self-explanatory and provides an outlet for a person who is dissatisfied by the decision of a single justice.

The above notwithstanding, I have carefully appraised myself of the circumstances surrounding this application by cautiously studying the record. I considered both Counsel's oral submissions. Counsel for the applicants seeks an extension of interim stay of execution. The law governing application for stay of execution is set out in **Rule 6(2) (b) The Judicature (Court**



of Appeal Rules) Directions, that gives this court power to order a stay of execution.

“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.”

The conditions for grant of an interim order of stay pending the disposal of the substantive application were stated in the Supreme Court decision of **Hwang Sung Industries Ltd v Tajdin and 2 others** “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.”

In **Zubeda Mohammad & Anor v Laila Kaka Wajja & Anor, SC Civil Reference No.07 of 2016**, the Supreme Court summarized the considerations for granting an interim order for stay of execution “In summary, there are three conditions that an applicant must satisfy to Justify the grant of an interim order:

1. A competent Notice of Appeal;
2. A substantive application;
3. A serious threat to execution.”

In the instant application it is established that there is a competent notice of appeal and a pending main application before this Court which is an application for a temporary stay of execution of Civil Application No.85 & 95 of 2021. There is also



eminent danger of execution against the applicants which will render the pending appeal nugatory. Counsel for the applicant submitted that the respondents had already commenced execution proceedings on 4th February 2022 by causing the High Court to issue a Notice to Show Cause Why execution should not issue against the applicants. He concluded that the only reason execution was stayed in the interim was on the basis of an interim order of stay of execution which was earlier issued by this court first on the 14th of June 2021 and then on 12th April 2022. Counsel for the respondent's main dispute was regarding the perpetual continuance of interim orders and the failure by the applicants to prosecute the main appeal and temporary application. He objected to this application stating that it was based on inaccurate facts, the court was *functus officio* when the 12th of April order was made and that a continuance of the orders could lead to an injustice being occasioned on the respondents. Counsel for the respondent relied on the authorities of **Orient Bank Limited v Fredrick Zaabwe Supreme Court Civil Application No.17 of 2007** and **Goodman Agencies Ltd v AG Constitutional Petition No.03 of 2008** both of these authorities emphasized the doctrine of *functus officio* and that a court's jurisdiction ceases after it has finally concluded a matter.

From my understanding, temporary orders are not permanent in nature. They only last until they expire or are replaced by another temporary order. Interim orders can be lawfully granted under Rule 2(2) and Rule 43 of this court.



Consequently, I find that the grant of an interim order of stay of execution is just and equitable. I therefore grant an interim order for stay of execution which shall last for three (3) months. I believe the three months are sufficient and will enable the parties
5 to move the court for a hearing date.

Costs of this application shall abide the outcome of the substantive Civil Applications No. 85 and 95 of 2021 and/ or the main appeal.

I so order.

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Dated this 12th day of August 2022.

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**HON.LADY JUSTICE CATHERINE BAMUGEMEREIRE
JUSTICE OF APPEAL**