

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPLICATION NO. 693 OF 2022**

*(Arising out of Civil Application No. 677 of 2022)*

**1. ALBERT GEORGE GITTA**  
**2. ROSE NALUNGA** ..... **APPLICANTS**  
**3. SEKAJJA MUKASA**

**VS**

**1. LILIAN NANYONGA**  
**2. J. M KATEREGGA**  
**3. RICHARD KAVUMA** ..... **RESPONDENTS**  
**4. EDITH NABATANZI** *alias* **EDITH**  
**NORAH NABATANZI**  
**5. HARRIET DIANA MUSOKE**

**BEFORE: HON. JUSTICE STEPHEN MUSOTA, JA**

*(Sitting as a single Judge)*

**RULING OF COURT**

The applicant filed this application by Notice of Motion under Rules 6(2) (b) of the Judicature Court of Appeal Rules. It seeks for orders that;

- a) Interim stay of execution pending disposal of Civil Application - COA-00-CV-CL-0677-2022 and Civil Appeal COA-00-CV-CA-0340-2022.
- b) Costs of this Application be provided for.

The Application is supported by the affidavit of the 1<sup>st</sup> applicant, Albert George Gitta, in which he stated the grounds upon which this application is premised. The grounds are briefly that;

1. The applicants filed Civil Application –COA-00-CV-CL-0677-2022 which is yet to be allocated a hearing date for final adjudication and determination.
2. Civil Application-COA-00-CV-CL-O677-2022 arising from Civil Appeal No. COA-00-CV-CA-0340-2022, which is yet to be allocated a hearing date for final adjudication and determination.
3. In H.C.C.S No. 233 of 2010, the trial Judge ordered that vacant possession be granted against the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> applicants and they were ordered to vacate the land within 60 days, an eviction order was issued against the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> applicants, a permanent injunction, caveats lodged by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> applicants be removed, general damages and costs of the suit.
4. The applicants were dissatisfied with the decision of the High Court and filed a Notice of Appeal and a letter requesting for the typed proceedings.
5. That the appeal raises important questions regarding determination of a bequest granted to the applicants and other siblings by their late father.
6. The appeal will be rendered nugatory if this application is not granted.



The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents each filed an affidavit in reply to the Notice of Motion.

In the 1<sup>st</sup> respondent's affidavit, she raised a preliminary objection to the effect that the instant application is premature and incompetent as there is no execution that has been initiated by her.

That the application is academic, theoretical and has no profound legal basis whatsoever. That she will suffer irreparable damage since the applicants have been benefiting from her land since 2005 and there is no hope of her getting mesne profits.

The 2<sup>nd</sup> respondent filed an affidavit in reply and also stated that this application is premature and prayed that the same be dismissed.

The 3<sup>rd</sup> respondent, who is in possession of the suit land, filed an affidavit in reply and argued that he derives his interest from his deceased father, Anthony Mukasa Gitta, and was also dissatisfied with the decision of the High Court in Civil Suit No. 233 of 2010 and also filed a notice of cross appeal. That he has no objection to the application intended to maintain the status quo of the suit land pending the disposal of the appeal in the Court of Appeal.

### **Background**

The facts that give rise to this application are briefly that the 1<sup>st</sup> respondent sued the Applicants together with the 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> respondents respectively vide Civil Suit No. 233 of 2010 seeking for orders of vacant possession; mesne profits and a permanent injunction against further trespass. The suit was determined in

favour of the 1<sup>st</sup> respondent and the applicants filed an appeal against the decision of the High Court.

### **Representation**

At the hearing of the application, Counsel Enoth Mugabi appeared for the applicants while Counsel Collins Kyeyune appeared for the 1<sup>st</sup> respondent and Counsel Robert Mugeru appeared for the 2<sup>nd</sup> respondent.

### **Applicant's submissions**

Counsel submitted that the considerations for grant of an interim stay of execution are that there must be a pending substantive application for stay of execution, there is a serious threat of execution and a Notice of Appeal should have been filed. Counsel argued that it is not necessary to preempt consideration of matters in deciding whether or not to grant an application for stay of execution. Counsel argued that a competent Notice of Appeal has been filed in this court together with a substantive application for stay of execution.

Counsel submitted that there is a serious threat of execution because the 60 days eviction period has lapsed and anytime from now, the respondents shall evict the applicants. In addition, that this application was made without unreasonable delay and refusal to grant it would enable the respondents evict the applicants.

### **1<sup>st</sup> and 2<sup>nd</sup> respondent's submissions**

Counsel submitted that the conditions for grant of an order of stay of execution were laid out in **Gashumba Maniraguha vs Sam Nkundiye**



**S.C.C.A No. 24 of 2015.** That the applicant must show that his appeal has a likelihood of success, the applicant will suffer irreparable damage and the appeal will be rendered nugatory. Likewise, that the application has been made without unreasonable delay. Counsel argued that the applicant's appeal stands no chance to succeed, the trial court having found that the suit land was not fraudulently conveyed to the 1<sup>st</sup> respondent.

Counsel argued that the applicants will not suffer irreparable damage since they took possession of the suit land by use of force and dispossessed the 1<sup>st</sup> Respondent in 2005. That the application was an afterthought and was not made without unreasonable delay.

### **3<sup>rd</sup> Respondent's submissions**

Counsel submitted that the 3<sup>rd</sup> respondent concedes to the application and prayed that an interim order of stay of execution be granted pending the disposal of the applicant's appeal in this court. Counsel submitted that the 3<sup>rd</sup> Respondent was dissatisfied with the decision of the lower court and also filed a cross appeal pending before this court.

### **Applicant's submissions in rejoinder**

Counsel submitted that execution is a process and not an event and one of the processes is taxation of costs. That the present case is unique since the High Court issued an order of vacant possession lapsing in sixty days and an eviction order. In addition, the 1<sup>st</sup> respondent filed a bill of costs under HCT-00-LD-TA-0165-2022,

which forms part of the execution process resulting into an imminent threat of execution. Further, that the 1<sup>st</sup> respondent cannot delve into the merits of the appeal while arguing this application.

### **Consideration of the application**

I have read the pleadings and the submissions of both counsel. Rule 2(2) of the rules of this Court provides for inherent powers of this Court to make such orders as maybe necessary for attaining the ends of justice.

In ***Zubeda Mohamed & Sadru Mohamed V Laila Kaka Wallia & Anor, Supreme Court Civil Reference No.07 of 2016*** which cited with approval ***Hwan Sung Industries Ltd vs. Tajdin Hussien and 2 others SCMA No. 19 of 2008***, the Supreme Court stated as follows;

*“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 a Notice of Appeal. See ***Hwan Sung Industries Ltd vs. Tajdin Hussien and 2 others SCMA No. 19 of 2008***.*

*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; and*
- 3. A serious threat of execution.”*



It suffices to note that before court can consider grant of an interim application for stay of execution, the applicant must prove that a Notice of Appeal has been filed in this court and a substantive application for stay of execution. The applicant in this case filed a Notice of Appeal on 4<sup>th</sup> May 2022.

The applicant also filed Civil Application No. 677 of 2022 for substantive stay of execution.

Whereas the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents argue that the applicants' appeal has no merit, this court held in **Krone Uganda Limited Vs Kerilee Investment Limited Civil Application No. 63 of 2020** that;

*"The underlying principle is that Court is not required to inquire into the merits of the case from which this application arose, since this is not an appeal, however it is required to determine whether prima facie, there exist grounds of appeal that merit serious consideration. It is a balancing act."*

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondent's arguments are elements court considers before granting a substantive application of stay of execution. In **Mugenyi vs National Insurance Corporation SCCA No. 13 of 1984, Wambuzi CJ** (as he was then) had this to say, "An order for stay of execution must be intended to serve a purpose."

The evidence on record is that the learned trial Judge ordered that the applicants vacate the suit land within 60 days. The 3<sup>rd</sup> respondent is in possession of the suit land with a workshop thereon from which he derives sustenance. The 1<sup>st</sup> respondent has already

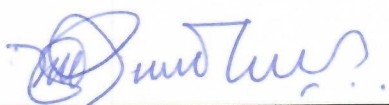
extracted a decree and filed the bill of costs and the peculiarity of this matter is that an eviction order was already given within the judgment after 60 days, from paragraph 5 of the affidavit of Albert George Gitta.

I therefore, find that the applicant has satisfied the conditions for the grant of an interim order of stay of execution by this Court.

This application is allowed and an interim order of stay of execution is hereby granted with the following Orders:

- a) An interim stay of execution is hereby granted, staying the orders of the High Court in Civil Suit No. 233 of 2010, pending the disposal of Civil Application No. 0677 of 2022 and Civil Appeal No. 340 of 2022.
- b) Costs of this Application shall abide the main cause.

Dated this 26<sup>th</sup> day of Oct 2022



**Stephen Musota**

**JUSTICE OF APPEAL**