

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION No.798 OF 2022
(Arising from Civil Application No.799 of 2022)
(Arising from Civil Appeal No. 108 of 2021)

1. SULAITI BAKULUMPAGI
2. MIVULE IBRAHIM

=====APPLICANTS

VERSUS

KASOZI LEORNARD =====RESPONDENT

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

EX-TEMPO RULING

This is my Ex-Tempo Ruling in this matter.

The Facts.

The facts of this Application are detailed in the Notice of Motion and the Affidavits filed for and against the Motion.

A summary of the facts are as follows: -

1. The dispute involves Kibanja land at Buddu Block 147 Plot 32 approximately 3.1 Acres being land situated at Lutente and



Lubamba in Kalungu District (hereinafter referred to as “suit land”)

2. It is the case for the first Applicant that he acquired suit land from his grandmother the late Ziyada Aiya Nakyanzi by way of a gift intervivos on the 7th June 2002. He has since been staying on the suit land without interference from the Respondent.
3. That the Respondent obtained letters of administration for the suit land for the Registered Proprietor the late Teleza Talida sometime in 2006.
4. That as a result of Suit No 00187 of 2014 at the Chief Magistrates Court at Masaka filed by the Applicants, the trial Court found that the suit property belonged to the Applicants
5. On Appeal to the High Court by the Respondent in Civil Appeal No 96 of 2017, the first Appellant Court found for the Respondent and reversed the decision of the trial Court.
6. Being dissatisfied with the decision of the first Appellant Court, the Applicants have filed an Appeal in this Court.

Counsel for the Applicants has argued that this Application is for the grant an Interim stay against the Decision and Orders of the First Appellant Court.

Counsel argued that a Notice of Appeal has been filed on time and so there is a compliance with the Court Rules. He further argued that there is a substantive Application in this Court and it has been served on Counsel opposite.

As to threat of execution he relies on Para 15 and 17 of the Affidavit in Support by the first Applicant and the further Affidavit of the Kasozi Leonard the LC 1 Chairman of the area. The evidence in the affidavits alleges that the Respondent tried to illegally evict the Applicants from the suit land but were stopped by the LC 1 chairman and other people in the area. That this constitutes a serious threat.

He further submitted that some of the Orders of the first Appellate Court were self-executing like the permanent injunction to keep away from the suit land which may be seen as an act of contempt of Court. This is evidence of imminent threat.

He also argued that once a judgment is handed down it means that execution will follow. I was referred to *Abid Alam V Windriver Logistic Ltd Misc No 219 of 2021* where the Principal Judge held imminent threat can arise from enforcement of the Court Order. He asked that I find this authority persuasive. The idea is to preserve the status quo.

Counsel for the Respondent has opposed the Application.

As to imminent threat of execution Counsel for the Respondent submitted that the Applicants have failed to prove this ingredient and yet the onus lies on them.

Counsel further argued the Applicants have no interest in the suit land so will not suffer any irreparable loss as result. Further that the Applicants do not even stay on the land.

Should the Court be inclined to grant the Application counsel for the Respondents argued that the Applicants should provide security for costs.

I have also taken into consideration the submissions of both Counsels for which I am grateful.

Consideration of the Application.

The Principles

The first principle that is to be taken on board is that the grant of an interim stay is one that requires the application of judicial discretion. The main purpose of the grant of an interim stay is to preserve the status quo until the substantive application is heard.

In the case of **Patrick Kaumba Wiltshire v. Ismail Dabule, Supreme Court Civil** Application No. 03 of 2018 the Supreme Court relied on

its earlier decision in **Zubeda Mohamed & Anor v. Laila Walia & Anor**, Civil Reference No. 07 of 2016 where it laid down the conditions to be satisfied by an Applicant to justify the grant of an interim order, namely the presence of;

- i) A competent notice of Appeal
- ii) A substantive application for stay of execution; and
- iii) A serious imminent threat of execution

It is clear from the authorities that the merits of the substantive application for stay is not delved into at this stage. The threshold to be met at this level of grant of an interim Stay is much lower and must point to the existence of a credible threat of execution or other detrimental action in that regard.

I have addressed my mind to the arguments of both counsel and the supporting documents as to the legal tests required. It is clear from the evidence before me that all alleged threats as cited by counsel for the Applicants are not recent. There are no incident cited that is imminent.

That notwithstanding this is a land dispute which requires consideration with caution. It is said that the land has crops and some buildings in place. It is also alleged that the Applicant stay at the suit land though this is contested. I am alive to the Judgement of the first Appellate Court that found the suit land to belongs to the Respondent thus reversing the findings of the trial Court. The overall purpose of an application of this nature is to preserve the status quo.

I am therefore inclined to exercise my discretion in favour of the Applicants to maintain what appears to be the current status quo on the land but with strict conditions as to the use of the land until the main Application and Appeal have been disposed with.

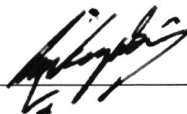
DECISION

Given my findings above I hereby Order and Direct as follows: -

1. An interim Order is hereby issued staying the execution of the Judgment and Decree in HCCS No 096 of 2017 pending the hearing and determination of the substantive Application or the main Appeal.
2. That the Applicants are further ordered not to:
 - a. Effect any further developments on the suit land.
 - b. Transfer, sale or otherwise deal with the suit land that will result in a change of possession of it.
 - c. Use the suit land for agricultural purposes only with seasonal crops for sustenance. However, no further trees or like agricultural activities shall be permitted.
3. This Order is given for an initial period of 180 days.
4. The Registrar of this Court is directed to see that the substantive Application is fixed as soon as possible.
5. Cost shall be in the cause.

I so Order.

Dated at Kampala this **11th** day of **November**, 2023.



JUSTICE GEOFFREY KIRYABWIRE, J.A.