



**THE COURT OF APPEAL OF UGANDA  
AT KAMPALA**

*(Coram: Monica K. Mugenyi, JA)*

**MISCELLANEOUS APPLICATION NO. 300 OF 2021**

(Arising from Misc. Application No. 274 of 2020 & Civil Appeal No. 204 of 2021)

**ANTHONY ANYALITHO ..... APPLICANT**

**VERSUS**

**ROSE MUTONYI ..... RESPONDENT**

*Recd.*

## RULING OF THE COURT

### A. Introduction

1. This is an Application by Mr. Anthony Anyalitho ('the Applicant') for an interim order of stay of execution of the judgments and decrees in High Court Civil Appeal No. 9 of 2019 and Mbale Chief Magistrates Court Civil Suit No. 89 of 2007 pending the disposal of the substantive application for stay of execution, Miscellaneous Application No. 272 of 2021. The Application is brought under sections 10 and 12 of the Judicature Act, Cap 13 and Rules 2, 6(2)(b), 43, 44 and 53 of the Judicature (Court of Appeal Rules), SI 13-10 ('the Court's Rules'), and is supported by an affidavit deposed by the Applicant and lodged in this Court on 25<sup>th</sup> October 2021.
2. The affidavit in support of the Application attests to an eviction order having issued against the Applicant in respect of land described as Plot 3 Bupoto Close pursuant to a judgment by the Chief Magistrates Court of Mbale in Civil Suit No. 89 of 2007. On appeal to the High Court of Uganda in Mbale, his Appeal was dismissed and the Respondent purportedly re-commenced execution processes. The Applicant has since lodged a Second Appeal in this Court and seeks to have the execution of the lower court(s)'s decision stayed pending the determination thereof.
3. The Application is opposed by the Respondent, who seeks to rely upon her affidavit of reply lodged in the Court on 15<sup>th</sup> November 2021 that basically attests to execution in respect of the orders of the Chief Magistrates Court having been completed on 25<sup>th</sup> October 2021.
4. In an affidavit in rejoinder deposed by the Applicant on 16<sup>th</sup> November 2021, the alleged conclusion of the execution is denied as is the contention that the Applicant had withdrawn his suit before the Chief Magistrates Court of Mbale. It is averred, on the contrary, that the purported execution was interrupted by police intervention and the Applicant is still in possession of the disputed premises, while the dismissal of his suit by the Chief Magistrates Court is a matter of contention before this Court.

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## B. Applicant's Submissions

5. Learned Counsel for the Applicant sought highlighted the considerations governing the grant of an interim order of stay of execution as espoused in the case of **Hwang Sung Industries Limited v Tajdin Hussein & Others, Civil Application No. 19 of 2008** (Supreme Court), where Okello JSC held:

For an application for interim stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before hearing the substantive application. It is not necessary to pre-empt the consideration of matters necessary in deciding whether or not to grant the substantive application for stay.

6. It was argued that a case had been made out for the grant of interim orders for stay of execution given that there was an Appeal and substantive application pending determination by the Court, and there was imminent threat of execution given that an order of eviction had been issued against the Applicant.

## C. Respondent's Submissions

7. On his part, learned Counsel for the Respondent opposed the Application on the premise that the execution having ensued, the Application had been overtaken by events. Counsel argued that to grant this Application would be to reverse rather than to maintain the status quo. Though conceding that a Notice of Appeal had been lodged in the matter, he nonetheless contended that stay of execution could only be granted against proof of a valid Memorandum of Appeal, which proof was not forthcoming in this case. He did also challenge the existence of a substantive application for stay of execution in the matter since he had not been served with any. Finally, it was proposed that the Applicant had not furnished proof of any impending serious threat to justify the grant of the Application.

## D. Submissions in Reply

8. By way of reply, it was argued for the Applicant, on the authority of **Zubeda Mohammed & Another v Laila Kaka Wallia & Another, Civil Appeal Reference No. 07 of 2016** (Supreme Court), that in applications of this nature this Court was only required to satisfy itself of the existence of a Notice of Appeal and not necessarily a Memorandum of Appeal. with regard to the existence of a substantive application for stay of execution, learned Counsel advanced the practice that such application could not be served upon opposite



Counsel until it had been allotted a hearing date. He reiterated his earlier assertions that there was indeed an impending threat of execution of the lower court's orders.

#### E. Court's Determination

9. The grant of interim orders of stay of execution by this Court is governed by Rule 2(2) of the Court's Rules. That legal provision acknowledges the inherent power of the 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 shall be exercised to prevent abuse of the process of any court caused by delay.'**
10. In the case of **Theodore Ssekikubo & 2 Others vs. The Attorney General & 4 Others, Constitutional Application No. 4 of 2014**,<sup>1</sup> the existence of a valid Notice of Appeal was adjudged to be an essential prerequisite to the grant of an interim order of stay of execution, in addition to considerations as to **'whether there is a substantive application pending and whether there is a serious threat of execution before the hearing of the substantive application.'** Thus, the legal position is that a Notice of Appeal is sufficient for purposes of applications for interim stay of execution pending the determination of the substantive application.
11. In the same case – **Theodore Ssekikubo & 2 Others vs. The Attorney General & 4 Others** (supra), the Supreme Court observed that Rule 2(2) (the equivalent of the same Rule in the Court of Appeal Rules) gave it very wide discretion to make such orders as may be necessary to achieve the ends of justice, one of the ends of justice being the preservation of the right of appeal.
12. Given the circumstances of this case where the Applicant is reckoning with both an order of eviction by the lower court and a disingenuous attempt to execute the same, I am of the decided view that there is indeed imminent danger of execution that would render the pending Appeal superfluous.
13. I would therefore allow this Application. Costs to abide the outcome of the substantive application.

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<sup>1</sup> At p.12.

It is so ordered.

Dated and delivered this <sup>23<sup>rd</sup></sup> Day of February, 2022.



Hon. Lady Justice Monica K. Mugenyi

JUSTICE OF APPEAL