

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA
CIVIL APPLICATION No.960 of 2023
(ARISING FROM CIVIL APPEAL No.36 of 2023)**

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1. ORUTE ALOYSIUS
2. OKONO SIMON
3. IMUYAT ISAIAH ::: APPLICANTS
4. OSENYI SAM
- 10 5. OKELLO NAKALET

VERSUS

ALUPO ESTHER
(Administrator of the estate of
the late Seno Aaron) ::: RESPONDENT

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**RULING OF CATHERINE BAMUGEMEREIRE, JA
(SITTING AS A SINGLE JUSTICE)**

Introduction

20 The applicants brought this application by way of notice of motion under *rule 6(2) (b) and 43 of the Judicature Court of Appeal Rules* seeking orders that;

1. Execution of Judgment/Decree in **High Court Civil Suit No.0003 of 2017** be stayed pending determination of the applicants' appeal.
- 25 2. Costs of this application be provided for.

Background

The respondent filed **High Court Civil Suit No. 003 of 2017**, as an administrator and beneficiary of the estate of the Late Seno Aaron, claiming that the applicants trespassed on the disputed land. She sought orders for a

permanent injunction, general damages and costs against the applicants herein. Judgment was entered in favour of the respondent prompting the applicants to file Civil Appeal No. 36 of 2023 in this court against the decision of the High Court. The applicants also filed this substantive
5 application for stay of execution of the orders of the High Court in Civil Suit No. 003 of 2017.

Representation

At the hearing of this application, Samuel Nsubuga represented the applicants while Daniel Okalebo represented the respondent.

10 The parties agreed to canvass the application by way of written submissions.

Submissions of Counsel

Samuel Nsubuga, Counsel for the applicant relied on **rule 6(2) (b) of the Judicature Court of Appeal Rules (Directions) SI 13-10** to submit that this court can stay the execution of a judgment where a notice of appeal has been
15 filed in accordance with **rule 76** of the rules of this court.

Counsel outlined the conditions which must be met before court can issue an order to stay execution which include the existence of a valid notice of appeal, substantial loss, unreasonable delay and payment of security. Counsel submitted that the applicants attached a notice of appeal to the
20 affidavit of Sam Osenyi. He implored this court to find that the above conditions have been satisfied. It was counsel's submission that the 1st, 3rd and 4th applicants are presently in occupation of the suit land which they use for cultivation of crops, the 2nd applicant has a family home on the suit land

and that the respondent is threatening to evict them from the land. Counsel contended that substantial loss does not represent any amount or size, and it cannot be quantified by any particular mathematical formula but rather, it is a qualitative concept. Counsel invited court to find that the applicants are likely to suffer substantial loss if execution of the decree is not stayed. Counsel submitted that the High Court delivered its ruling dismissing the application for stay of execution on 16th August 2023 and the applicants filed the instant application on 25th August 2023. He averred that this application was been filed without unreasonable delay and that although the applicants have not furnished any security for due performance of the decree, they undertake to if imposed as a condition for the grant of stay of execution. Counsel urged this court to be pleased to allow the applicants' application for stay of execution pending the determination of the appeal.

Counsel for the Respondent's submission was a restatement of the conditions to be fulfilled for a grant of stay of execution. He commenced with whether the applicant had made a case that his appeal had a likelihood of success. He submitted that the applicant ought to have demonstrated that the appeal is not frivolous or vexatious. He made the case that an appeal ought to be seen to present grievous issues which merit consideration by the court. Counsel contended that the applicants in their affidavits in support made no mention of any likelihood of success of the intended appeal. Instead but they only managed to make a vague statement that the appeal would be rendered nugatory if the application is not granted.