

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA
CIVIL APPLICATION NO. 1021 OF 2023
(ARISING FROM CIVIL APPEAL NO. 182 OF 2023)

- 5 1. NAHURIRA HAAM AKA KASHABA
 2. MAJ. KANDUHO GORGEIOUS :::::::::::::::::::: APPLICANTS
 3. KEMPAKA JAMES

VERSUS

10 LWANGA MIKE :::::::::::::::::::: RESPONDENT

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

Introduction

15 The applicants brought this application by way of notice of motion
under *section 34(1), 98 of the Civil Procedure Act, rule 6(1) (b) of*
the Judicature (Court of Appeal Rules) Directions, seeking orders
that;

- 20 1. Execution of the ruling and orders in High Court Misc.
Application *No.1874 of 2021* be stayed pending determination of
the applicants' appeal lodged before this court.
2. Costs of this application be provided for.

This application is based on the the affidavit deponed by **Nahurira Haam** , who's main grounds are that:

- 25 1. The applicants filed an application stay of execution in Misc.
Application No. 1874 of 2021 before the High Court it was
denied and as result may render his intended appeal before
this court nugatory.
2. That there is *prima facie* merit in the appeal as it raises serious
questions of law that need to be determined and as such, has

a high likelihood of success and that the applicants are not guilty of dilatory conduct in pursuing this application and that the balance of convenience lies with the applicants.

5 In reply the respondent contends that

1. The application is incompetent and an abuse of court process.
2. That Civil Appeal No. 182 of 2023 is improperly before this court.
3. The applicants are guilty of dilatory conduct since they could have filed this application about the time the respondent extracted an order in Misc. Application No. 1874 of 2021, filed the bill of costs and had the same taxed on 10th November 2022. or 10th November 2022.

Brief Background

The respondent (then applicant) filed Civil Application No. 1874 of 2021 seeking orders that the applicants (then respondents) are in breach of a court order in Civil Suit No. 578 of 2021. The ruling was delivered in favour of the respondent and court ordered the applicants to pay a fine of UGX 10,000,000/= for being in contempt of a court order, punitive damages of UGX 3,000,000/= and costs of the suit. The applicants being dissatisfied with the said ruling filed Civil Appeal No. 182 of 2023. The applicants also brought this application staying execution of the orders in Misc. Application No. 1874 of 2021.

Representation

At the hearing of this application, Mr Julius Muhumuza represented the applicants while Mssrs Kitimbo Associated Advocates represented the respondent.

- 5 The parties had filed written submissions and the court adopted the same in writing this ruling.

Submissions for the Applicants

Counsel cited **Hon. Theodore Ssekikubo & Ors v the Attorney General & Ors Constitutional Application No. 03 of 2014** and other
10 authorities for the established principles for grant of stay of execution.

On whether a notice of appeal was filed, counsel submitted that it is not in dispute that there is an appeal pending before this honourable court. Counsel submitted that Civil Appeal No. 182 of 2023 is the appeal pending in court thus the applicants have a valid appeal.

15 **Regarding the likelihood of success of the appeal**, counsel cited **American Cynamid Co. Ltd v Ethicon (1975) ALLER 504** which defined likelihood of success as the existence of serious questions to be tried and that the action is not frivolous and vexatious.

Counsel submitted that the applicants raise serious questions to be
20 determined in the appeal warranting the stay of execution. Counsel contended that the applicants' appeal is founded on a plea that they (the applicants) had no knowledge of the contempt of court order thus they are appealing against the trial Judge's evaluation of evidence