

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**  
**CIVIL APPEAL NO. 0053 OF 2021**  
**ARISING FROM NAKAWA MAGISTRATE’S COURT**  
**ARISING FROM MISCELLANEOUS APPLICATION NO. 0069**  
**OF 2021**  
**AND CIVIL SUIT NO. 182 OF 2018**

**1. ETERNITY GROUP INTERNATIONAL LTD**  
**2. AIDAH NAKANJAKO:::APPELLANTS**

**VERSUS**

**KATO MOSES::: RESPONDENT**

**Before Hon. Lady Justice Patricia Kahigi Asimwe**

**Judgment**

Introduction

1. This appeal seeks to set aside the stay of execution of the Judgment and decree in Civil Suit No. 182 of 2018 granted by Her Worship Immaculate Nyamurenge, the Magistrate Grade One at Nakawa Chief Magistrates Court.
2. The Appellants filed a suit in Nakawa Magistrate Court seeking to recover the sum of UGX 10,640,084, general damages interest on a loan after failure to pay the said loan by the Respondent, and costs of the suit.

3. The matter was heard by Her Worship Angura Sheila Fiona, Magistrate Grade One who entered Judgment for the Appellants against the Respondent for the principal sum of UGX 4,000,000, interest of UGX 600,000, general damages of UGX 5,000,000, Interest of 20% per annum and costs of the suit.
4. Before the Appellants could tax the bill of costs, the Respondent applied for stay of execution of the decree. The Application was heard by Her Worship Nyamurenge Immaculate the Magistrate Grade One at Nakawa Chief Magistrates Court since the trial Magistrate had been transferred. She granted the stay of execution.

#### The Appeal

5. The Appellants appealed on the following grounds:
  - a) The Learned Magistrate erred in law and fact when she failed to examine and evaluate the evidence on record thoroughly, apply the law to the facts, and exercise her discretion judicially.
  - b) The Learned Magistrate erred in law and fact in granting an order of stay of execution pending appeal when the Respondent had not satisfied the requirements for stay of execution.
  - c) The Learned Magistrate did not properly and exhaustively evaluate and weigh the evidence in accordance with the parties' pleadings and hence erred in arriving at a decision to grant a stay of execution pending appeal to a party who had never preferred an appeal of the high court.

6. The Appellant prayed that the Appeal be allowed and the Ruling and orders of the Learned Magistrate be set aside and Costs of this Appeal be awarded to the Appellant.

#### Ruling of the Learned Magistrate

7. In her ruling, the Learned Magistrate considered the grounds that have to be fulfilled before a stay of execution is granted which were that the Applicant (now Respondent in the current appeal) had lodged a notice of appeal, that substantial loss may result to the applicant unless the stay of execution is granted; that the application has been made without unreasonable delay; that the applicant has given security for due performance of the decree.
8. The Learned Magistrate in assessing the said grounds noted that Eternity Group International Limited had raised an objection that there was no appeal lodged to the high court however she stated that she had satisfied herself that a notice of appeal had been lodged on the 10<sup>th</sup> December 2020 indicating that the applicant intended to appeal against the said Judgment.
9. With respect to the ground of substantial loss, the Learned Magistrate referred to the case of **Tropical commodities supplies LTD & 2 Others Versus International Credit Bank Limited (in liquidation) (2004)2 EA 331, Ogoola J** where it was held that the phrase substantial loss doesn't represent any particular amount or size, it cannot be qualified by any particular mathematical formula. It refers to any loss great or small: of real worth or value as distinguished from a loss that is merely nominal. She concluded that the applicant would suffer substantial loss if the execution is not stayed.



10. On the ground of security being given for the due performance of the decree, the Learned magistrate held that Courts have however held that each case must be looked at according to its merits. She explained that the requirement for payment of security for costs is to ensure that a losing party does not intentionally delay execution while hiding under unnecessary applications. She referred to the case of *Amuanaum Sam Versus Opolot David Misc. Application. No. 3/2014* where it was held that the status of the applicant should be put into consideration in order to decide whether security should be ordered or not. Based on that holding the learned magistrate did not order security of costs.
11. The learned Magistrate decided all the grounds in favor of the applicant and granted orders to stay the execution of the Judgment and orders of the trial magistrate in Civil Suit No. 182/2018 be stayed until the final disposal of the appeal

#### Representation

12. When the matter came up for hearing neither the Respondent nor his lawyers attended court. The Appellant was represented by Andrew Wamina of Stratten Advocates. This Court issued directions for filing written submissions.

#### Submissions

13. The Appellants filed their submissions on ECCMIS and served a hard copy on the Respondent's lawyers Pruden Law Advocates. The forwarding letter from the Appellant's lawyers indicated to the Respondent the timelines that court had issued for responding to the submissions. The forwarding letter from the Appellants shows an acknowledgment of receipt of the said communication by Pruden Law Advocates. Despite being aware of the Appeal and the timelines to file submissions, the Respondent did not file submissions.

### Appellants' submissions

14. Counsel for the Appellants submitted that in the first place there was no appeal hence there was no need to entertain the application for stay of execution by the Learned Magistrate. The Appellant submitted that the overriding object of an order of stay is to preserve the subject matter pending appeal however in the instant matter there was no appeal.
15. Counsel stated that at the time the Application for stay was filed, time had already lapsed for lodging an appeal and the appeal even if it was now filed, would be incompetent and liable to be struck out. Counsel referred to Section 79(1) of the Civil Procedure Act which stipulates that an appeal shall be lodged within thirty days from the date of the decree.
16. It was further argued that the Respondent did not show the court that he will suffer substantial loss. The Appellant submitted that the essence of stay of execution is to prevent a party from suffering substantial loss however the Respondent did not demonstrate or provide evidence to Court that if the monies were paid to the Appellants, there was no possibility of recovery in the event of a successful appeal.
17. Counsel referred to the case of **Andrew Kisawuzi versus Dan Oundo Malingu, HCT-OO-CC-MA-467I2OL3**, Obura J as she then was held that: "It is not merely enough to repeat the words of the code and state that substantial loss will result, the kind of loss must be given and the conscience of court must be satisfied that such loss will really ensure."
18. Counsel submitted that the Respondent did not meet any of the grounds for grant of stay of execution and prayed that the stay of execution be set aside.



## Resolution

19. Court will first address ground III which is as follows:

Ground III: The Learned Magistrate did not properly and exhaustively evaluate and weigh the evidence in accordance with the parties' pleadings and hence erred in arriving at a decision to grant a stay of execution pending appeal to a party who had never preferred an appeal of the high court.

20. Counsel for the Appellant submitted that in the first place, there was no appeal hence no need to entertain the application for a stay of execution by the Learned Magistrate. It was further submitted that the overriding object of an order of stay is to preserve the subject matter pending appeal however in the instant matter there was no appeal.

21. In the present case the Applicant filed a Notice of Appeal at the Chief Magistrate's Court of Nakawa on 10<sup>th</sup> December 2020. The law regulating the commencement of appeals to the High Court is clearly stated under *Order 43 (1) of the Civil Procedure Rules, Statutory Instrument 71-1* where it is provided that:

*Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose.*

22. In the case of **Maria Onyango Ochola and others versus J. Hannington Wasswa [1996] HCB 43**, court noted that a notice of appeal does not commence an appeal in the High Court from the judgment of the Magistrate's Court.

23. Further in **Lawino Christine Kijange versus Akuru David Miscellaneous Application No. 141 of 2021 at the High Court of Gulu, Okello J**, where an appeal from the decision of

a Magistrate Grade One to the High Court was lodged by Notice of Appeal. The Judge held that appeals from magistrates courts to the High Court must be preferred by way of a memorandum of appeal. In the case of **China Civil Engineering Construction Corporation Limited Versus Bubera General Construction Limited, Civil Appeal No. 23 Of 2020[Arising out of Civil Suit No. 497 Of 2018]**, the court struck out an appeal that had been lodged from the Magistrate Court to the High Court by way of a Notice of Appeal.

24. Therefore, an appeal against the decision of the Magistrate Grade I to the High Court is by way of a memorandum of appeal. In this case, there is no memorandum before the High Court. Therefore, there is no appeal from the orders of Magistrate Grade I at Nakawa Chief Magistrate's Court.
25. Ground III is therefore upheld. This court finds that the resolution of ground III wholly disposes of the appeal and therefore there is no need to delve into the other grounds of appeal.
26. In the final result, this appeal succeeds. The order for stay of execution is hereby set aside and costs are awarded to the Appellants.

**Dated this 29<sup>th</sup> day of November 2023**



.....  
**Patricia Kahigi Asiimwe**  
**Judge**  
**Delivered on ECCMIS**

