

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION No. 930 OF 2007
(Arising from Civil Appeal No. 10 of 2005)

1. BALAMU MWETEGAINI KIIZA }
2. ISMA RUBON } APPLICANTS

- VERSUS -

ZEPHANIA KADOOBA KIIZA RESPONDENT

BEFORE: HON. MR. JUSTICE RUBBY AWERI OPIO

RULING:-

This is an application for stay of execution. The application was brought by Notice of Motion under Order 51 rule 1 of the Civil Procedure Rules. The main grounds of the application were that:-

- (a) The applicant had filed a notice of appeal.
- (b) If stay was not granted a miscarriage of justice would be occasioned.

The application was supported by an affidavit of Balamu Kiiza, the 1st Applicant

When the application was served on the Respondent, he never made any reply to the application by filing affidavit in reply as required by law.

Again when the application was fixed and called for hearing counsel for the respondent was not in attendance and yet he had been notified. The application was accordingly prosecuted ex-parte.

Mr. Mugenyi who appeared for the applicants made a very humble submission in which he contended that the applicants had filed notice of appeal and so it was necessary that stay of execution be allowed otherwise, the applicants would suffer miscarriage of justice.

In application of this nature, the applicant(s) should prove the following conditions:-

- (1) The substantial loss may result unless the order of stay is granted;

- (2) That the application was made without undue delay; and
- (3) That security has been given for the due performance of the decree or order as may ultimately be binding.

See: *DFCU Bank Ltd Vs Dr. Ann Persis Nakate Lusejjere; Court of Appeal Civil Application No. 29 of 2003 (unreported).*

In this matter the Respondent is in possession of the disputed property. He would not in any way be prejudiced by the stay of execution apart from missing the costs of the appeal. Moreover the bill of costs was taxed at shs.5,504,700/= which is substantial amount of money for a local peasant like the applicants. If stay is not allowed, therefore, they would incur substantial loss. Since the application was filed without undue delay, it is in the interest of justice that stay be granted without payment of security, as payment of the same would mean granting stay of execution with one hand and denying it with another hand. In any case, payment of security is discretion of court. For the above reasons this application is granted. I make no orders as to costs.

RUBBY AWERI OPIO

JUDGE

18/3/2008.

18/3/2008:-

3.00p.m.:-

Parties absent.

Magala Court Clerk present.

Court:-

This matter was caused listed for ruling this afternoon. I do not know why applicants are absent. Ruling is therefore delivered in absentia.

RUBBY AWERI OPIO

JUDGE

18/3/2008.