

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION**

MISC. APPLIC. NO. 396 OF 2009
(Arising from Misc. Applic. No. 991 of 2008)
[Itself arising from HCCS No.89 of 2006]

FREDRICK KABUGO SEBUGULU ::::::::::::::::::::::::::: APPLICANT
(ADMINISTRATOR OF THE ESTATE
OF THE LATE FREDRICK SEBUGULU)

VERSUS

THE ADMINISTRATOR GENERAL ::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE RUBBY AWERI OPIO

RULING

This application was brought by notice of motion under Section 98 of the Civil Procedure Act and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules. The application was for orders:

- (1) That execution of judgment and decree in HCCS No. 89 of 2006 be stayed pending the hearing and disposal of the Applicant's intended appeal to the court of Appeal.
- (2) That the costs of this application be provided for.

The grounds of the application were contained in the Applicant's affidavit as summarized below:-

- (1) That the Applicant was sued by the Respondent and the head suit was heard and determined in the absence of the Applicant.

- (2) That the Applicant was never at any material time served with summons to file a defence or any other court documents.
- (3) That the main suit proceeded ex parte and the alleged service on the Applicant was false.
- (4) That the Applicant duly lodged an application to set aside the ex parte judgment in the main suit.
- (5) That the Honourable Court held in favour of the Respondent by dismissing the Applicant's application on the 19th day of May 2009.
- (6) That the Applicant being dissatisfied with the above ruling of this Honourable Court duly lodged a notice of appeal and applied for a copy of the typed proceedings.
- (7) That the Respondent filed a bill of costs on 22nd May 2009 and had the same taxed ex parte on the 5th day of June 2009 and allowed at 15,632,000/=.
- (8) That the Respondent filed a warrant to the bailiff for vacant possession and a notice to show cause why Execution should not issue on 28th May 2009 and 1st June 2009 respectively in readiness for execution of the decree in HCCS No. 89 of 2006.
- (9) That the Applicant's intended Appeal has a great probability of success and may be rendered nugatory if the Respondent is not restrained from executing the decree in HCCS 89 of 2006 which will cripple the Applicant's father's estate.
- (10) That the Applicant has made an undertaking to indemnify the Respondent for the due performance of the decree or order as may ultimately be binding upon the Respondent.
- (11) That it is in the interest of Justice that this Honourable Court be pleased to invoke its inherent powers to relieve the Applicant from execution and enforcement of the

exparte judgment obtained against him in HCCS No.89 of 2006 until final disposal of the Applicant's intended appeal.

The Respondent opposed the application relying on affidavit filed by Mr. Ekirita and that of John Odwe. The said affidavits raised the following grounds of objection:-

- (a) That the decree had to a large extent been executed in that all the land titles had been transferred and property sold.
- (b) The application failed to demonstrate to court that the impending appeal had likelihood of success.
- (c) The application failed to show that there was a substantial loss that may result against the Applicant.
- (d) The application was not brought promptly and without unreasonable delay.
- (e) The application did not provide for security of costs and performance of the decree.

During the hearing of this application the Applicant was represented by Mr. J. M. Mugisha while Mr. Wagabi represented the Respondent.

The law gives court very wide **discretion** to order stay of execution on such terms as it thinks just. However, there are guiding principles to be followed before stay of execution is granted or denied:-

- (1) The Applicant must establish that substantial loss may result if stay of execution is not granted.
- (2) The application must be made without unreasonable delay; and
- (3) The Applicant should provide that security for costs and due performance of the decree as may be ultimately be binding upon him:-

See: **ABUNDANT LIFE FAITH CHURCH OF UGANDA v J. B. WALUSIMBI; Court of Appeal Civil Application No. 38 of 2004** (unreported).

As far as substantial loss is concerned, this goes to the root of the dispute. What is the litigation all about? Here the parties are litigating over real property, an estate. From the evidence available, it is not in dispute that the dispute is over ownership of property and that the Applicant is partly in occupation. In circumstances if he is dispossessed by way of execution he will no doubt suffer substantial loss as he is likely to be deprived of accommodation which is a basic entitlement for all human beings, and that may not only affect the Applicant, but his immediate family. Moreover there is likelihood of the property changing hands if execution is not stayed in which case, the rights of third parties would be brought on board involving legal technicalities. All these would subject the Applicant to substantial loss in terms of inconvenience and cumbersome judicial processes.

As far as unreasonable delay is concerned, Judgment was got on 15/5/2009 and the application for stay was filed on 15/6/2009. In the circumstances I do not see any dilatory conduct on the side of the Applicant.

Moreover the Applicant has made an undertaking to indemnify the Respondent for the due performance of the decree or order as may ultimately be binding upon him. For the above reasons I do find that the Applicant has established all the conditions/principles which court should consider in an application for stay of execution. The application is accordingly granted cost to be in the cause.

HON. JUSTICE RUBBY AWERI OPIO

JUDGE

26/10/2009

27/10/2009

Mr. J. M. Mugisha present for Applicant.

Mr. Ekirita present for Respondent.

All parties present.

Ruling read in Chambers.

**HON. JUSTICE RUBBY AWERI OPIO
JUDGE**

27/10/2009