THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HCT-04-CV-MA-146-2011

(Arising from Civil Appeal No.0039 of 2011)

(Arising from Civil Suit No. 135 of 2009)

BOARD OF GOVERNORS OF

ST. JOHN'S COLLEGE MAGALE…….APPLICANT

VERSUS

ROBERT WAPAKALA…….RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for stay of execution.

Stay of execution may be granted under O.43 r.4 (3) CPR if court is satisfied that:

(a) A substantial loss may result to the party applying for stay of execution unless the order is made.

(b) The application has been made without undue delay.

(c) Security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her. It may also be granted when sufficient cause is shown.

I have considered the application as a whole and the submissions by both **Mr. Mangeni** for the applicant and **Mr. Piwang** for the respondent. **Mr. Piwang** did not expressly challenge the application by the applicant but raised what appeared a preliminary point of law in objection that the application is untenable because security for costs was not given by the applicant at the time of filing the application.
Secondly that grounds to warrant stay of execution were not pleaded by the applicant. He prayed that the application be struck out with costs.

When I perused the Notice of Motion filed by the applicant, I found no ambiguity about what was sought from court and that is "stay of execution". The law applicable was cited and the Motion is supported by the requisite affidavit. An affidavit in reply to the application was filed by the respondent on 21 February 2012.

The grounds of application are contained in the Notice of Motion and the respondent was made aware of the relief being sought by the applicant hence his reply.

I will therefore not strike the application out. The application is proper.

Regarding security for costs, I hold the view that this should be determined by court before the order if granted is enforced. It is unfair to the respondent to leave determination of the value of the security to the applicant. The applicant may decide to put a valueless chattel as security. He/she may put a needle as security.

In my view if the applicant undertakes to provide security then court will determine the nature of security to be put. This is just to both sides. The applicant has not prejudiced the respondent in anyway by expressing willingness to put security as required.

Further to the above, court has discretion to grant a stay if sufficient cause is shown.

In this case, I will find that sufficient cause is shown because triable issues have been raised by the applicant. These include:

(i) Whether the trial court had jurisdiction to try the issues in question.

(ii) Whether the respondent had a cause of action against the applicant.

(iii) Being a public institution irreparable damage may be occasioned if a garnishee order is granted against it.

Consequently, I will allow this application.

The applicant shall deposit security for the due performance of the decree of 10,000,000/= not cash to be guaranteed by the Headmaster to the applicant.

Stephen Musota

JUDGE

11.7.2012