

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-MA-0010-2011
(Arising from HCCA No. 5 A of 2011)
(From Land Civil Suit No. TOR-01-0038 of 2007)**

**1. WANYAMA B. WILLIAM
2. MASIWO WABWIRE PAUL.....APPLICANTS
VERSUS
REV- STEVEN WERERESPONDENT**

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for stay of execution brought under S.98 CPA O.22 rr 55, 56 and 57 CPR as well as O.52 rr 1 & 2 CPR.

Order 22 provides for execution of Decrees and orders. Rule 55 thereof provides for “Investigation of claims to and objections to attachment of, attached property!”

Rule 56 provides for “Evidence to be adduced by claimant.” And

Rule 57 thereof provides for release of property from attachment.

Obviously the application before me is misguided for being brought under a law which does not provide for stay of execution.

In such circumstances, this court cannot invoke its inherent powers to grant the application.

Applications for stay of execution are governed by O.43 r.4 CPR. Under this provision, where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing from the decree, the court which passed the decree may on sufficient cause being shown order execution to be stayed. The applicant has a duty to satisfy either the High Court or the Court which passed the decree that sufficient cause exists for the grant of the stay.

It must be shown that:-

- (i) Substantial loss may result if no order for stay is made under O.43 rr 1 and 2 CPR.
- (ii) The application has been made without unreasonable delay and
- (iii) Security has been given by the applicant for the due performance of the decree or order as may ultimately be binding on the applicant.

Relating the above provisions of the law to the instant application I wish to note that none of the said provisions are alluded to by the applicant. No grounds of application are outlined in the notice of motion or the supporting affidavit. It is not refuted that the respondent has neither applied for execution nor threatened to

demolish the applicant's homes and properties as alleged. Further that the 1st applicant has neither a home nor property on the suit land.

In addition the homes allegedly demolished vide HCCS No. 4 of 2004 have no connection with the applicants herein. No proof has been provided of any threat to execute. The applicants have not deposited any security or promised to furnish security for the due performance of this court's decree or order as may be binding after determination of the appeal.

Consequently I will hold that not only does this application lack merit, it has been brought under the wrong law and does not fulfill the legal requirements for stay of execution.

I will dismiss it with costs.

Stephen Musota

JUDGE

22.2.2012

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Mangeni on brief for **Ngobi Balidawa**

Respondent absent.

Kanagwa Interpreter.

Mangeni: Matter for Ruling.

Court: Ruling delivered.

Stephen Musota

JUDGE

22.2.2012