

**SIN THE HIGH COURT OF UGANDA AT SOROTI**

**MISC. APPLICATION 8 OF 2014.**

**ARISING FROM SOROTI CIVIL SUIT 16 OF 2014.**

**SOROTI MUNICIPAL COUNCIL .....APPLICANT**

**V**

**BETTY NALUGWA.....RESPONDENT**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**RULING**

In this application, the applicant , through its advocates, Osilo & co, seek an order for stay of execution of a decree dated 18<sup>th</sup> February, 2014 in CS 16 of 2010 under order 43 r 4 of the CPR and section 98 of the CPA. The grounds of the application are contained in the notice of motion itself and the affidavit in support of Peter Masiko.

The respondent filed an affidavit in reply of Apolot Joy.

At the hearing, Ms Nakanaba appeared for the applicant while Mr. Omongole appeared for the respondent.

Order 43 r 4 (2) gives powers to the court to stay execution on sufficient cause being shown save that the court must satisfy itself of the following circumstances;

1. That substantial loss may result to the party applying for stay of execution unless the order is made.
2. That the application has been made without unreasonable delay

3. That security has been given by the applicant for the due performance of the decree.

However, the order applies to appeals from magistrates courts . This means the enabling law is section 39(2) of the Judicature Act which empowers the High Court to adopt a procedure, justifiable under the circumstances, where none is provided. I accordingly adopt the procedure in order 43 to meet the ends of justice.

The affidavit in support avers that the application has been made without unreasonable delay; that the applicant's appeal will be rendered nugatory if the order for stay is not granted; that the applicant will suffer prejudice, injustice and financial loss.

In the affidavit in reply, the respondent avers that the applicant has not filed an appeal; that the applicant has not demonstrated that it will suffer financial loss, that the respondent does not seek eviction of the applicant's school but rather a planning consent and compensation.

Both counsel made oral submissions and filed authorities that i have given due consideration.

With regard to submission of Mr. Omongole for the respondent hat there is no appeal pending hence there can be no order for stay, i am alive to article 126 (4) to administer justice without undue regard to technicalities. The fact that a notice of appeal is on record is sufficient evidence that the applicant intends to appeal the decision of the High Court and therefore the application for stay is properly before me.

With regard to submission by Ms Nakanaba that the application has been brought without unreasonable delay, this is correct because the decision was rendered on 7<sup>th</sup> February 2014 and the application was filed on 11<sup>th</sup> February 2014. However, i note that the applicant has not placed a formal request for proceedings yet the proceedings are typed and await collection. Counsel for applicant must take remedial action and request for proceedings of the High court without any further delay.

The grant of an order of stay revolves on two main circumstances. The first is whether the applicant will suffer substantial loss if the application is not granted. I agree with the decision in **Commercial Division Misc. Applic. 485 of 2012 Global Capital Save 2004 Ltd & anor v Alice Okiroro and anor** that the applicant must demonstrate how it will suffer substantial loss. Ms Nakanaba submitted from the bar that the respondent has applied for planning consent and filed a bill of costs.

I am in agreement with Mr. Omongole that the applicant has not demonstrated it will suffer substantial loss. Merely asking for planning consent and filing a bill is insufficient to satisfy the requirements of order 43 rule 4 (3) (a).

With regard to the requirement that the applicant must give security for the due performance of the decree, counsel for the applicant submitted that the applicant is not liable to execution until the expiry of six months from the date of the judgment. Under those circumstances, there is no eminent threat of execution until August 2014.

In the premises, i find this application for stay superfluous and it is dismissed with costs.

The typed proceedings are ready for collection. The applicant is directed to formally request for copies of certified proceedings to enable it commence the appeal process well in advance of the execution process.

**DATED AT SOROTI THIS.....06.....DAY OF.....02.....2014.**

**HON. LADY JUSTICE H. WOLAYO**