

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CV – MA – 065 OF 2019

(ARISING FROM HCT – 01 – CV – LD – CA – 045 OF 2016)

(ARISING FROM FPT – 00 – CV – LD – 026 OF 2011)

KWESIGA JAMES :::::::::::::::::::: APPLICANT

VERSUS

MUGISHA ROBERT :::::::::::::::::::: RESPONDENT

BEFORE HON: JUSTICE VINCENT WAGONA

RULING

The applicant brought this application under Section 98 of the Civil Procedure Act and Section 33 of the Judicature Act and Order 43 r 4(10 and Order 52 of the Civil Procedure Rules for orders that:

15 ***(a) The execution of the decree in High Court Civil Appeal No. 043 of 2016***
 be stayed.

(b) That costs of taking out the application be provided to the applicant.

The application is supported by an affidavit deposed by Kwesiga James the applicant in which he averred as follows:

20 1. That he filed Civil Suit NO. 26 OF 2015 against the respondent before the Grade I Magistrate under the Chief Magistrate's Court of Fort Portal. That the suit was determined in his favour and a judgment was delivered to that

effect on the 20th of September 2016. That the Respondent lodged an appeal in the High Court and the High Court on appeal reversed the decision of the trial court and entered judgment in favour of the Respondent.

2. That the Respondent has commenced execution to enforce the judgment of court and he has since filed a bill of costs.

3. That being dissatisfied, the applicant filed an appeal in the Court of Appeal which is pending determination by the Court of Appeal. That if the execution by the respondent/judgment creditor is not stayed, the applicant's appeal shall be rendered nugatory.

4. That he will suffer irreparable damage if this application is not granted and that he has paid security for costs being a mandatory requirement.

5. That the appeal in the Court of Appeal has high chances of success and that this application has been presented without unreasonable delay.

The application was opposed by the Respondent who contended:

1. That he filed a case against the applicant for recovery of land in the Chief Magistrate's Court of Fort Portal and judgment was entered against him. That he appealed against the said judgment to the High Court under Civil Appeal No. 043 of 2016 and judgment was delivered in his favour by the high court on the 7th of December 2017.

2. That the applicant has never appealed against the decision of the High Court in the Court of Appeal; that the bill of costs attached to the applicant's affidavit in support of the application were not filed by the Respondent since he has never filed an appeal in this regard.

3. That he has never commenced execution of the decree and thus this application is premature.

4. That he will suffer serious prejudice if this application is allowed as there no security for costs paid.

50 5. That there is no threat of execution of the said decree against the Applicant and the current application is unwarranted and the same should be dismissed with costs.

In rejoinder the applicant indicated:

1. That he filed a notice of appeal and a letter asking for a typed record of proceedings in the High Court and he is following up on the same to secure
55 a certified copy of the record.

2. That once a party acquires a judgment, the next step is execution. That if the Respondent does not intend to execute, then he will not suffer any prejudice if the application at hand is granted.

60 3. That he furnished security for costs of Ugx 600,000 and he was advised that the same should be paid in the Court of Appeal.

4. That if the application at hand is not granted, his appeal in the Court of Appeal shall be rendered nugatory.

Representation:

65M/s Kaweesi & Partners Advocates represented the Applicant while M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates represented the Respondent. The parties filed written submissions which I have considered.

Issues:

1. Whether this application is premature before this Court.

70 2. Whether the applicant's application meets the requirements for grant of a stay and if so whether execution should be granted pending the determination of the Appeal in the Court of Appeal.

3. Remedies available.

Issue One: Whether the application is premature before this Court

75 Learned Counsel for the Respondent submitted that since the judgment was delivered by court, no action was taken by the Respondent to have the same executed. That the bill attached to the application is alien to the Respondent and as such there is no threat of execution rendering the current application premature before court. Counsel for the Applicant in his submissions in rejoinder did not
80 address this issue.

Order 43 Rule 4 of the Civil Procedure Rules states that: *“an appeal to the High Court shall not operate as a stay of proceedings under Decree or Order appealed from except so far as the High Court may order, nor shall execution of a Decree be stayed by reason only of an appeal having been preferred from the Decree; but
85 the High Court may for sufficient cause order stay of execution of the decree”*.

The Hon. Lady Justice Elizabeth Ibanda Nahamya, in the case of **Equity Bank Uganda Ltd versus Nicholas Were M.A No.604 of 2013**, noted that:

90 *“The import of this provision is that an Appeal to the High Court does not perse operate as a stay of execution of proceedings. Rather, any person who wishes to prefer an Appeal from such a decision shall institute a stay of proceedings on such sufficient cause being shown to Court. “Sufficient cause” under the provision, leaves the High Court with the discretion to determine whether the proceedings fall within the premises”*

A party seeking a stay of execution of the decree of court must apply to court, first
95 from the Court that made the decree.

Before a stay is granted, the applicant must satisfy the conditions set out in Order 43 Rule 4 (3) of the Civil Procedure Rules and those espoused in the case of *Lawrence Musiitwa Kyazze Vs Eunice Businge, Supreme Court Civil Application No 18 of 1990*, but more pronounced in the Supreme Court Case 100 of *Hon Theodore Ssekikubo and Ors Vs The Attorney General and Ors Constitutional Application No 03 of 2014* which include:

- (a) The applicant must show that he lodged a notice of appeal;
- (b) That substantial loss may result to the applicant unless the stay of execution is granted;
- 105 (c) That the application has been made without unreasonable delay;
- (d) That the applicant has given security for due performance of the decree or order as may ultimately be binding upon him. **(See also *Steve Sahabo Vs. Larissa Kaneza Misc. Application No. 524 of 2019*)**

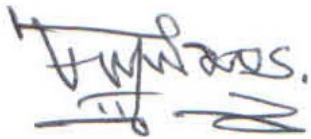
In my view that before an application for stay is considered, the applicant must 110 prove that there are efforts to execute the Decree from which an appeal was made or that the orders issued are self-executing. Such efforts include that a successful party has extracted the decree and filed a bill or he or she has applied for a notice to show cause why execution should not issue. There must be visible efforts by the decree holder to execute the decree of court. That a successful party may soon 115 execute remains at the level of anticipation and speculation. The mere fact that a party has filed an appeal and paid some amount of money as security for costs is not enough. A stay of execution is intended to halt steps by the decree holder that have been put in motion to put into effect the decree, so as to preserve the status quo until the determination of the appeal. The applicant is therefore required to 120 prove that the decree holder has taken steps to execute the decree which will render his appeal nugatory.

In this case, no single step was taken by the Respondent who is the decree holder, to execute it. He has never extracted the decree or even filed a bill of costs in relation to the judgment of this court that was appealed against by the applicant.

125The bill attached to the affidavit in support of the Application was filed by the Applicant in the lower court after judgment was made in his favour. In other words, there is no execution to stay since there are no steps which have been taken by the Respondent to execute the decree of this Court. This application is premature before this Court. It is hereby dismissed with costs awarded to the

130Respondent.

I so order.

A handwritten signature in dark ink, appearing to read 'Vincent Wagana', with a stylized flourish underneath.

Vincent Wagana

High Court Judge

135**FORT-PORTAL**

23.1.2023