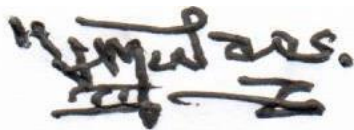




The application was supported by the affidavit of Baguma Samali, the applicant who averred as follows;

1. That she was the successful party in Land Civil Suit No. 029 of 2013 where judgment was delivered in her favour on 7<sup>th</sup> December 2020. That the Respondent being aggrieved lodged a notice of appeal and a letter requesting for the certified record of proceedings but never instituted the appeal and thus he is deemed to have withdrawn the same.
2. That the Respondent also filed Misc. Application No. 36 of 2021 for stay of execution of decree in the suit pending determination of the appeal. That a stay was granted on condition the Respondent deposits in court security for due performance of the decree of shs 45,000,000/= within three months from the date of the decree.
3. That the Respondent defaulted on the decree directing him to deposit in court security for due performance of the decree. That in execution of the decree, a warrant of attachment and sale of movable property was issued by Court on 12<sup>th</sup> July 2023 directing the attachment of the suit land and the house thereon.
4. That despite the issuance of a warrant, the Respondent has been denying prospective buyers access to view the property under attachment thus frustrating execution and undermining the enforcement of the judgment of court.
5. That the applicant took steps to advertise the property on two separate occasions on 15<sup>th</sup> July 2023 and 31<sup>st</sup> July 2023 but the Respondent's actions prevent potential buyers from accessing the property thereby obstructing the sale in satisfaction of the decree.



6. That the actions of the Respondent are in contravention of the execution orders issued by court. That the Respondent has on several occasions been asked by the Court bailiff to peacefully vacate the suit property to no avail.

7. That the Respondent remains indebted to the tune of shs 45,000,000 and the applicant continues to suffer damages resulting from unlawful deprivation of enforcement of the decree. That the Respondent shall not suffer any prejudice and it is in the interests of justice that the application is granted so that the Respondent is evicted to allow potential buyers inspect the suit property and buy and take possession thereof.

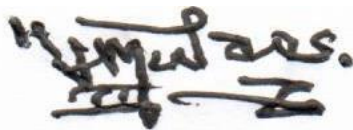
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**Reply by the Respondent:**

The application is opposed by the Respondent who deponed as follows:

1. That the Respondent was dissatisfied with the decision of this court in land Civil Suit No. 029 of 2013 and appealed against the same in the Court of Appeal and the appeal is pending hearing. That he also lodged Misc. Application no. 36 of 2021 for stay which was granted on condition he deposits in court security for due performance of the decree of shs 45,000,000/=.

2. That he subsequently filed Misc. Application No. 547 of 2023 and 546 of 2023 in the Court of appeal for interim stay and stay of execution pending determination of the appeal. That in applications, his counsel and that of the applicant appeared and filed their respective submissions and the same are awaiting fixing dates for rulings.

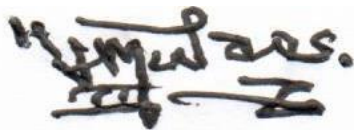


3. That the current application has the effect of rendering the applications pending before the Court of Appeal nugatory. That the current application is misplaced, strange and unnecessary since the subject matter has not been sold in execution as such this application should be struck out.
- 5 4. That the attachment, advertising, inspection, eviction and intended sale are of no consequence since third party interests cannot be created in light of the pending litigation in the Court of Appeal. That the suit property is his home where he lives with his family and he has nowhere else to go.
- 10 5. That the order of eviction sought by the applicant has the effect of dispossessing him of his interests in the suit property where he has an interest. That he has never prevented any person from viewing or bringing buyers to view the suit property and the applicant has not presented any evidence to that effect. That this application should be denied and dismissed with costs.

15 **Rejoinder by the Applicant:**

In rejoinder, the applicant contended as follows:

- 20 1. That there is no pending appeal since the memorandum of appeal was filed outside the statutory time. That the Respondent lodged the appeal out of time to frustrate the applicant's efforts from enforcing her rights as a successful party.
2. That stay of execution was granted in Misc. Application No. 36 of 2021 subject to depositing security for due performance of the decree. That the Respondent defaulted on compliance with the order of this court and now



attempts to challenge it by way of appeal and thus the Respondent's property should be sold in satisfaction of the decree of court.

3. That the Respondent's application for stay of execution in the Court of Appeal are of no consequence and are intended to deny the applicant from enjoying the fruits of the judgment of this court.

4. That the pending applications in the Court of Appeal have no merit since they arise from an appeal filed out of time and the Respondent shall not suffer any prejudice if the application is allowed.

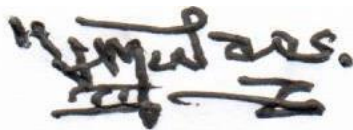
5. That whereas the Respondent lives in the house, he chased the applicant away and she fend for herself and the children without support from the Respondent. That the Respondent's stay in the house is meant to frustrate execution and scaring away potential buyers. That it was in the interests of justice that the application is granted.

#### 15 **Representation:**

*Miss Kusemererwa of M/s Keera H. & Co. Advocates* appeared for the applicant while *Mr. Robert Kyaligonza of M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates* appeared for the Respondent. A schedule to file written submissions was issued and only learned counsel for the applicant complied. I have thus taken into account her submissions.

#### **Issues:**

25 I find two issues pertinent for determination of this application being:

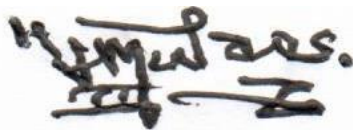


1. Whether an order of eviction should be issued against the Respondent to allow execution of the decree in civil suit no. 029 of 2013.
2. What remedies are available to the parties.

5 **Resolution:**

It was submitted for the applicant that in Misc. Application No. 36 of 2021, court granted a stay of execution of the decree in Civil Suit No. 29 of 2013 on condition that the Respondent deposits in court shs 45,000,000/= as security for due  
10 performance of the decree within three months from the date of delivery of the ruling. That in the event there was no compliance, execution would proceed against him. Learned counsel contended that the Respondent did not comply as such the applicant commenced execution.

The applicant cited a number of authorities which are to the effect that orders of  
15 court must be respected. The applicant contended that the Respondent disobeyed the order of court regarding the stay of execution and as such he was in contempt. That he had also frustrated execution since all the potential buyers were not in position to inspect the house with a view of buying it. It was contended that the actions of the respondent were in contempt of the orders of court in Misc. Application No. 36 of  
20 2021. That as such court should be pleased to have the Respondent evicted from the suit property so that potential buyers can freely access the same, and inspect it without being threatened by the Respondent. it was submitted that this Court has the power to issue such orders including arrest of the Respondent to stop him from frustrating execution. That it was in the interest of justice that the application is  
25 allowed.



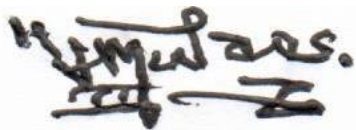
**Consideration by Court:**

This application arises from a failed execution process of the decree in Civil Suit No. 29 of 2013. Execution connotes the steps leading to and achieving the satisfaction of the decree. (See *Papada Holdings ltd & Anor v Christopher Kisembo& Anor, HCMA No. 00497 of 2021*).

The mode of execution directed by court is discretionary and the executing court has the absolute discretion to pick from a range of the modes of execution provided for under Section 38 of the Civil Procedure Act, one which is best to have the orders of court implemented.

It is also trite law that questions relating to execution, discharge or satisfaction of a decree may be raised by the decree holder or by the judgment debtor at any time after the decree is passed until its full satisfaction. See *Papada Holdings ltd & Anor v Christopher Kisembo& Anor (supra)*. Where questions are raised either by the decree holder or the judgment debtors, court is duty bound to pronounce itself on the same before ordering for the execution to proceed.

It is also a settled principle of law, that a decree or order issued by court is meant to be obeyed without demand and if there is default in obedience, the judgment creditor is entitled to commence enforcement proceedings. A decree or order of a Court of competent jurisdiction is valid until set aside on appeal and as such must be obeyed. Once a decree or order is passed by the court, it is the obligation of the person against whom the order or decree is passed (judgment-debtor), to give effect to it so as to



enable the decree-holder to enjoy its benefits. When there is no voluntary compliance with the decree or order by the judgment debtor, then execution of the decree or order becomes necessary, indeed inevitable. (See: Papada Holdings ltd & Anor v Christopher Kisembo & Anor (supra)).

5

In Misc. Application No. 36 of 2021, the Respondent applied for execution and court granted a stay in the following terms;

*That the execution of the decree in HCT – 01 – LD – CS – 0029 of 2013 is stayed subject to the Applicant depositing in Court Ugx 45,000,000/= as security for due performance of the decree within 3 months from the date of delivery of this ruling, in default of which execution shall issue against him.*

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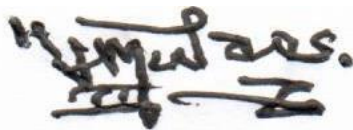
The said ruling was delivered on 30<sup>th</sup> March 2023. Therefore, the three months expired on 30<sup>th</sup> June 2023 and the Respondent did not comply. The failure to comply automatically set execution of the decree in Civil Suit No. 29 of 2013 in motion. The applicant went ahead and applied for execution by way of attachment and sale of the suit property in Civil Suit No. 29 of 2013. The applicant avers that execution is frustrated by the Respondent since prospective buyers cannot freely inspect the property.

15

20

The Respondent on the other hand contends that he applied for stay of execution of the decree in Civil Suit No. 29 of 2013 in the Court of Appeal. That if court issues the orders sought in this application, it will render the pending application for stay in the Court of Appeal nugatory. In addition, that the order sought will alienate his interests in the suit land.

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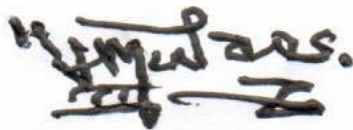




I have considered the submissions of counsel for the applicant and the pleadings of both parties. Section 98 of the Civil Procedure Act Cap. 71 and 33 of the Judicature Act grants court unfettered discretion to grant any orders to ensure that the ends of justice are met. This power must be exercised judiciously and only in deserving  
5 circumstances.

In this case, execution was commenced by the applicant but since the Respondent is in possession of the house and land that court ordered to be attached and sold, the would be buyers cannot enter the land and the house to inspect the same with the  
10 prospect of buying. Whereas the Respondent claims that he applied for stay of execution in the Court of Appeal, I believe the said application was filed to circumvent the orders issued by this court. The application for stay in the Court of Appeal was filed on 9<sup>th</sup> August 2023 after execution was commenced and after this application had been filed. The said applications therefore, were fronted by the  
15 Respondent to avoid a legal obligation which accrued against him in Misc. Application No. 36 of 2021.

There is a stay of execution of the decree which was issued by this court on condition the Respondent deposits in Court shs 45,000,000 as security for due performance of  
20 the decree. After the Respondent failing to comply as ordered, he purported to apply for stay of execution of the decree in Civil Suit No. 029 of 2013 in the Court of Appeal when there is in existence a stay granted by this court. I find the actions of the Respondent an abuse of court process and geared towards undermining the orders of this Court in Misc. Application No. 36 of 2021 and thus reject such argument.

A handwritten signature in black ink, appearing to read 'M. M. M. M.', is written over a horizontal line.

The Respondent failed to satisfy the condition upon which a stay of execution was granted. Thus execution must commence unless there is an order from the superior court directing otherwise. I agree with the applicant that the Respondent's presence in the house makes the execution cumbersome as the would be buyers are not free to access and buy such land. His actions thus threaten the execution of the decree in Civil Suit No. 29 of 2013.

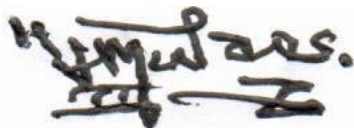
I also reject the argument by the Respondent that execution would have the effect of alienating his interests in the suit land. The suit land was valued and court ordered that if the Respondent wishes to stay with the house, he would pay shs 45,000,000 to the applicant representing half of the value of the suit land. Therefore, after the sale, the applicant would take the 45,000,000 decreed to her by court plus taxed costs and the rest would be deposited in court for onward transmission to the Respondent or to the Respondent directly.

It is therefore my finding that this is a proper application for grant of an eviction order against the Respondent to allow for an orderly execution of the orders of execution issued by Court. I therefore resolve this issue in the affirmative.

**Remedies:**

This application succeeds with the following orders:

- 1. An order of eviction with immediate effect is hereby issued against the Respondent (Wandera Michael) and / or any person(s) in occupation of**

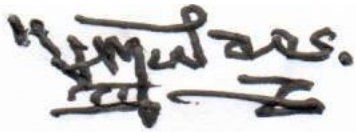


the land and house situated at Kitumba Binanata A, East Division, Fort Portal City which is the subject of attachment in Land Civil Suit No. 029 of 2013 to allow the execution process to continue.

5        2. That after the sale, all the proceeds shall be deposited in Court for apportionment by the Registrar as per the decree of court.

3. The costs of this application are awarded to the Applicant.

10      I so order.



Vincent Wagona  
**High Court Judge**  
**FORTPORTAL**

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**DATE: 30/11/2023**

