

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISCELLANEOUS APPLICATION NO. 0170 OF 2022
(ARISING FROM MISC. APPLICATION NO. 0011 OF 2022)
(ARISING FROM CIVIL SUIT NO. 0046 OF 2019)

1. KHAUKA TOM
2. MASABA MICHEAL
3. MUSAHUJA CALEB
4. NDYAMUHAKI NAUME
5. KOBUSINGYE ALLEN :..... APPLICANTS

VERSUS

1. MBABAZI SAMUEL
2. ISINGOMA JULIUS
3. MWESIGYE SIMON
4. JOHN MUSOKOTA WILLIAM
5. TUMUSIIME GERALD
6. WABWIRE MESSENGER GABRIEL
7. OCEMA RICHARD
8. WILSON SHIKHAMA
9. MASERUKA ROBERT :..... RESPONDENTS

BEFORE: Hon. Justice Isah Serunkuma

RULING

This application was brought under section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and Order 0.52 rule 1, 2 & 3 of the Civil Procedure Rules S.I 71-1 seeking for the order that;

1. An interim order for stay of execution be issued to restrain the respondents, their agents, employees or any other person acting under their instructions from executing the consent judgment entered on the 22nd October, 2020 between

Mbabazi Samuel on behalf of 350 residents and Isingoma Julius, Mwesige Simon, John Musokota, Tumusiime Gerald, Wabwire Messenger Gabriel, Ocema Richard, Willson Shirkama and Maseruka Robert until the hearing of the main application for review and stay of execution.

- 5 2. Costs of this application be in the main cause.

Background

The 1st respondent filed Civil Suit No. 0046 of 2019 being a representative suit on behalf of 350 residents of three villages of Nyamutenda, Kigulu and Ndoyo in Kitwara Parish, Kiryandongo Sub- County in Kiryandongo District seeking for a declaration and orders
10 against the 2nd - 9th respondents that they had been fraudulently registered and given a certificate of title for land described as LRV MAS2 Folio 8 Plot 22 Block 8 Land at Kibanda Kiryandongo.

The 1st respondent entered into consent with the 2nd - 9th respondents with the following terms;

- 15 1. That the defendants (2nd - 9th respondents shall duly compensate the occupants /persons represented by Mbabazi Samuel bonafidely occupying the suit land. Mr. Samuel Mbabazi shall comprise or form part of the compensation team.
2. That the plaintiff shall withdraw Civil Suit No. 0046 of 2019 and all the arising injunctive reliefs.
- 20 3. That the plaintiff shall withdraw the caveat he filed on the land described as LRV MAS2 Folio 8 Plot 22 Block 8 formerly known as ranch 22.

Being aggrieved by the above orders, the applicants filed an application to this court to review and set aside the above orders but have filed this application supported by their affidavits pending determination and hearing of the main application. The grounds as
25 per the applicants' affidavits are that;

1. That sometime in 2019, a one Mbabazi Samuel purported to represent 350 residents of Kigulu, Nyamutende and Ndoyi villages and filed Civil Suit No. 0046 of 2019 in this court contending that the defendants in the suit had illegally converted and registered land belonging to residents of the said three villages into their names and illegally sold it to the 9th respondent which sale he prayed to be cancelled.
2. That before the said suit could be heard a consent judgment was entered between Mbabazi Samuel and defendants with orders among others that the respondents compensate the occupants with no amounts specified.
3. That the applicants being aggrieved by the said consent judgment as it determines their rights without their consent or being heard effectively deprives them of their land and gives it to Maseruka Robert which consent judgment they have challenged through an application for review and setting aside of the same.
4. The applicants also seek a permanent stay of execution in the main application pending before this court but before the same is heard, there is a threat of eviction looming on their heads /homes/property based on the said consent judgment.
5. That if an order for interim stay of execution is not granted, the applicants stand to suffer irreparable damage as their rights to a fair hearing, property/land, homes with their burial grounds would be demolished/razed down by the time the main application will be heard which will render it nugatory.
6. It is just, fair and equitable that execution be stayed pending the determination of the main application for review and stay.

This application was contested by affidavits sworn by of the respondents which stated that;

1. The first respondent was approached by the residents of the suit land called former ranch 22 to help them get their land.
2. That the first appellant got a representative order from this honorable court thus instituted Civil Suit No. 0016 of 2019 against the 2nd - 9th respondents.
- 5 3. That in due course of the hearing the 1st respondent entered into consent with the 2nd - 9th respondents wherein it was agreed that the 9th respondent compensates the residents including the applicants.
4. That the 9th respondent has compensated majority of the residents and they have already vacated the suit land.
- 10 5. That this application was brought by the applicants as an afterthought with bad intentions to frustrate the 9th respondent.
6. That by granting this application the 9th respondent will be inconvenienced and will incur a lot of losses as he has compensated almost all residents.
7. That it is in the interest of justice that this application is not granted.

15 *Issues for determination*

Counsel for the litigants didn't frame any issues but in order to make a guided analysis I will frame one issue for determination;

Whether the applicants' application merits the grant of orders sought for?

Submissions

- 20 Court set limes within which counsel for both parties should file their written submissions however none of them complied. Nevertheless, I will go ahead with my analysis.

Representation

The applicants were represented by Counsel Arinaitwe Peter of M/S Arinaitwe Peter & Co. Advocates while the 1st, 3rd and 9th respondents were represented by Counsel Kinali Albert of M/S Aeton Advocates. The other respondents were represented by

Court's Analysis

- 5 *Section 98 of the Civil Procedure Act* gives the high court inherent powers to take decisions which are pertinent to the ends of justice; and an order for stay of execution falls under that category.

It is trite law that the purpose of orders staying execution is to maintain status quo so as not to render court process nugatory or to avoid abuse of court process. In the case of
10 *Zubeda Mohamed & Sadru Mohamed v Laila Kaka Wallia & Anor; Supreme Court Civil Reference No. 007 of 2016*, it was stated as follows;

15 *"Consideration for grant of an interim stay of execution or interim injunction are whether there is substantive application and whether there is a serious threat of execution before hearing of the substantive application. Needless to say, there must be a notice of appeal."*

In the affidavits in support of this application, the applicants state that they have made an application vide *Miscellaneous Application No.11 of 2022* with prayers to review and set aside the orders in the consent judgment vide civil suit No. 0046 of 2019. As such review was opted for and not an appeal.

- 20 Further in case of *Huan Sung Industries versus Tajuddin Hussein & 2 Ors; Civil Application No. 019 of 2008 S.C.* it was observed that;

"For applications for interim order of stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before the hearing of the pending substantive application. It is not

necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay."

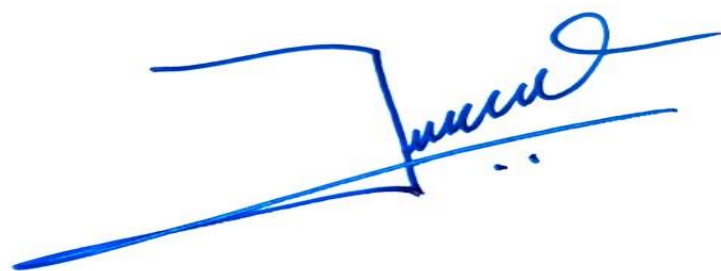
In both the affidavits in support and those in opposition of this application it is not contested that execution of the consent orders commenced however the applicants have not particularly been compensated and as such are still on the Suitland. From this, one can rightly conclude that the applicants are under threat of execution since execution is already on going in the neighbouring villages though it has not reached the applicants.

According to the circumstance before me, I am satisfied that there is a pending substantive application for review and staying execution of consent orders in Civil Suit No. 0046 of 2019 whose execution is already on going and if not stopped by this honorable court, then Miscellaneous Application No. 0011 of 2022 will be rendered nugatory.

This application is therefore allowed. Costs shall abide the cause.

I so Order.

Dated and delivered this 22nd day of December 2023.



Isah Serunkuma
JUDGE