

**BISUTI SARAH (Suing as the Administratrix of the estate of the
Late Kato William Kaziba:.....:PLAINTIFF**

[illegible]

Held: Application NOT granted.

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

This Ruling follows an Application by Chamber Summons brought under **S. 98 of Civil Procedure Act (CPA), S.33 of the Judicature Act Cap 13 and Order 43 r 4(2), of the Civil Procedure Rules (CPR)** seeking for orders that:-

1. The execution of the Decree or Orders arising from the Judgment against the Applicant in **High Court Civil suit No. 33 of 2017** be stayed pending the hearing and determination of the appeal.
2. Costs of the application be provided for.

The grounds upon which this Application is premised are that:-

1. That the Applicant is the Administratrix of the estate of the late Kato William Kaziba who passed away on 2nd day of February, 2022.
2. That the Late Kato William Kaziba was the defendant in **High Court Civil Suit No.33 of 2017**.
3. That on the 5th day of July 2022, the Applicant obtained letters of administration to administer the estate of the late Kato William Kaziba.
4. That on the **15th day of March 2022**, the learned Deputy Registrar delivered Judgement in **High Court Civil Suit No.33 of 2017** which was in favor of the Respondent.

5. That on the **18th day of July, 2022**, the Applicant being dissatisfied with the same judgement filed notice of appeal in this Honourable Court to safeguard her right of Appeal.
6. That on the same day, the Applicant through her lawyers of Ms. Isabirye & Co. Advocates wrote a letter requesting for a record of proceedings in this court to enable the Applicant proceed with her Appeal.
7. That since writing the same letter, the Applicant has on several occasions followed up with the court to find out if the same record of proceedings is ready but all her efforts have been with no gain making it difficult for her to proceed with Appeal.
8. That the Applicant is currently waiting for the court to avail her with the record of proceedings in **Civil Suit No.33 of 2017** so that she can be able to proceed with her appeal.
9. That the Applicant has learnt that the Respondent through his lawyers of Ms. Deric Advocates and Solicitors has instituted execution proceedings **EMA No.008 of 2023** against her arising from the orders of this court in **Civil Suit No.33 of 2017**.
10. That on 19th day of May 2022, the Applicant further learnt the Respondent through his lawyers Ms. Deric Advocates and Solicitors served Birungi Lydia who was the wife of the late Kato William Kaziba with a Notice to Show Cause in execution proceedings arising from the orders of this court in **Civil Suit No.33 of 2017**.
11. That the Respondent has further ordered the deceased family to vacate the suit land where they are staying.
12. That there is serious threat of execution of the decree and orders of this court in **Civil Suit No.33 of 2017** by the Respondent and that if this application is not granted, the appeal would be rendered nugatory.
13. That they shall suffer irreparable loss/irreparable damage if the Respondent vacated the deceased's family from the suit land.
14. That the Applicant has a plausible appeal on the merits which raises serious questions and that the appeal has a high likelihood of success which warrants for stay of execution against the applicant.
15. That this Application has been brought without undue delay following the respondent's imminent threats to execute against the applicant.
16. That it is in the interest of justice that an order for stay of execution be granted pending determination of the appeal.

The Application was supported by the affidavit of the Applicant in which the above stated grounds of the Application were more buttressed.

In reply, the Respondent filed an affidavit in which he vehemently opposed the Application.

REPRESENTATION

When this case came up for hearing before me, the Applicant was represented by learned counsel Mr. Isabirye of M/S. Isabirye & Co. Advocates, while the Respondent was represented by Buringi Lillian M/S. Deric Advocates and Solicitors.

Both learned counsel for both parties made oral submissions which I have considered in this Ruling.

THE LAW

Section 98 of the Civil Procedure Act which reads that:-

“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.

This section empowers the court to grant orders in all cases in which it appears to the court to be just and convenient to do so to restrain any person from doing certain acts. The main principle in this section is whether the dictates of justice so demand.

Further the grant of an application for stay of execution by the High Court are stated in **Order 43 rule (4) of the Civil Procedure Rules SI 71-1** states that:-

“Stay by High Court.

(1) An appeal to the High Court shall not operate as a stay of proceedings under a 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 the High Court may for sufficient cause order stay of execution of the decree.

(2) 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 the execution to be stayed.

(3) No order for stay of execution shall be made under sub rule (1)

or (2) of this rule unless the court making it is satisfied—

(a) That substantial loss may result to the party applying for stay of execution unless the order is made;

*(b) That the application has been made without unreasonable delay;
and*

(c) That security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

Order 43 rule 4 (3) CPR in my interpretation means that the conditions stated under sub rule 3 must all exist and the absence of one or two renders the application incompetent.

RESOLUTION OF THE APPLICATION

I have carefully examined the application and taken into account the oral submissions of both sides. Briefly it was submitted by learned counsel for the Applicant that the Applicant indicates that she is the Administratrix of the estate of late Kato William Kaziba. The letters of administration are attached as **annexure “B”** as paragraph 5 of the affidavit refers.

That the Applicant indicates that on the 15th March 2022 that is paragraph 4. That the Learned Deputy Registrar delivered a judgment in **Civil Suit No.33 of 2017** in favour of the Respondent. Counsel submitted that he had attached a judgment as **annexure “A”** that is a Judgment between Kiyuba Fred and the late Kato William Kaziba.

Further, that at the time of delivering the Judgment, Kato William was deceased. According to that judgment the property in issue where the deceased was staying was adjudged to be the property of the Respondent. That upon the applicant acquiring letters of administration, the Applicant filed an appeal against the judgment. There is a notice of appeal referred to in paragraph 7 and **as annexure “C”**.

That upon filing Notice of Appeal, he wrote to court requesting for record of proceedings. The letter they wrote requesting for proceeding is attached as **annexure “D”** as paragraph 8 refers.

That as that Appeal is pending there has been attempts to execute the Judgment in the matter; he attached a Notice to Show Cause as **annexure “E”** it is at paragraph 12. That he also attached **annexure “F”** where the Respondent wrote to the family of deceased asking them to vacate the premises which were the subject of the suit. They invited court to look at **annexure “E” and “F”**; and submitted that it is against that background the Applicant has filed this application saying that stay of execution be issued.

Further, that staying execution in **Civil Suit No 33 of 2017** on ground that the Applicant who is also appellant has a good appeal. They argued that the principles upon which stay of execution is granted is that for court to consider on whether or not to grant the Application of this nature.

1. The Applicant can satisfy court that they have filed an appeal. That an appeal to the Court of Appeal is commenced by Notice of Appeal which is attached to the application.
2. Show that there is eminent threat/danger which would in effect render the appeal nugatory.

They submitted that he had attached Notice to Show Cause and a letter which attached **as annexure “E” and “F”** which points out attaching immoveable and movable property belonging the estate of late Kato William Kaziba. That **annexure “F”** is asking them to vacate the premises which is the subject of appeal.

They prayed that a stay of execution be issued because if Appellant and family of the deceased are evicted from the premises, it will render the appeal pending in Court of Appeal nugatory.

In addition, that court can grant such an Application conditionally where it can require the Applicant to pay security; and prayed that the Plaintiff in **Civil Suit No.33 of 2017** passed away and that in the instant case, it was the family the wife and the children who are staying in the premises who were the subject of this Application

They therefore submitted that court exercises its discretion to grant the stay of execution without requiring them to pay security for reasons that the widow who is staying in the premises did not have means and that the Honourable Court be pleased to allow this application and we pray that you allow it with costs.

In reply, learned counsel for the Respondent submitted that according to the law under Order **43 rule 3** CPR which provides for circumstances under which may be stayed. It gives 3 grounds that;

- a) Substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) The application has been made without unreasonable delay; and
- (c) Security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

They submitted that the applicant's counsel had raised the three grounds and that she would resolve them as raised; and that counsel for the Applicant had intimated that He had lodged notice of appeal in the Court of Appeal.

Further, that according to the affidavit in support the Judgment was delivered on the 15th day of March 2022 and that still according the same affidavit in support, the appeal was lodged on the 18th July 2022.

That according to **rule 76 (1) of the Court of Appeal Rules**, provides that Notice of Appeal shall be lodged within 14 days.

They further submitted that according to Applicant's affidavit in support, it clear that he lodged his Notice of Appeal outside the 14 days which is required by **Rule 76 (1) of the Court of Appeal Rules**.

Again, learned Counsel for the Respondent submitted that moving to the second ground for stay of execution as argued by counsel for the applicant, He talked substantial laws about evictions. That the family of late Kato William Kaziba shall be evicted if execution is not stayed. Counsel for the respondent argued that they didn't apply for execution but rather applied to attach the properties of the deceased which were;-attaching the sale of immovable property belonging to late Kato William Kaziba situate at Buwenge, Busia Town Council in Nagira zone in Jinja district valued at 5 million, attaching and sale motor vehicle registration No. UAR 917 E belonging to the estate of late Kato William Kaziba valued at 6 million, and for vacant possession of the Defendant on the suit land situate at Igombe-Bulagala L.C. I, Magamaga parish, Bugembe Town Council.

According to counsel for the Respondent's his submission, she mentioned the threat on last property which is vacant possession.

They prayed that the Honourable court grants the Respondent to execute on the two properties which the Applicant did not submitted on. Since there is no threat or danger which has been posed on the family of the late Kato William Kaziba if execution ensue on the two properties.

They therefore submitted on the third ground which was security for due performance; and relied on the case of ***Wandera Michael vs Waguma Samali HCMA No. 36 of 2021*** where it was decided that under **Order 43 rule (4), (3) CPR**, the basic requirement that a party who is desirous in securing stay of execution, he/she must be willing to deposit security for due performance for decree in court; and this condition must be mandatory because it works as security in the event the appeal is not successful.

They concluded with the prayer that according to the circumstances of this case, there is no success on the applicant's appeal and that if this court is grant stay of execution, the applicant must be directed to deposit the decretal sum in this Honorable Court as security for the intended appeal; and that the Application be dismissed with costs to the Respondent.

In resolving this Application, I the following are the issues that Court must address:-

1. Whether there is an arguable appeal which would be rendered nugatory if such application is not granted?
2. Whether substantial loss may result to the party applying for stay of execution?
3. Whether the Application has been made without undue delay?
4. Whether there is serious or eminent threat of execution of the decree or order if the Application is not granted?
5. Whether the Application is not frivolous and has a likelihood of success?
6. Whether security has been given by the Applicant for the due performance of the decree or order as may ultimately be binding upon him or her?

In order to resolve them, I have considered the purpose of the Application for Stay of Execution pending Appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising his/her undoubted right of appeal are safe guarded and the appeal if successful, is not rendered nugatory. **See *Lawrence Musiitwa Kyazze vs. Eunice Busingye SCCA NO. 18 of 1990 [1992] IV KALR 55.***

Further, in the case of ***Hansa Industries Ltd vs Tadjir Hussein & 2 Ors S.C.A. No. 19 of 2018***, the court of appeal stated that for an application for stay of execution to succeed there must be a pending appeal filed in court.

I have also referred to the case of ***Nalwanga vs Eden Ltd & Ors MA 7/2017*** where court noted that once an appeal is pending, court intervenes by preserving the status quo pending disposal of the appeals. The conditions for granting Stay of Execution pending appeal are mainly;

- a) Whether there is an arguable appeal.
- b) That substantial loss may result to the applicant unless the order of stay is made.
- c) That the application has been made without unreasonable delay; **(See *Mugene vs Akankwasa [2008] HCB 160*)**; and
- d) That security has been given by the applicant for due performance of the decree or orders as may ultimately be binding upon him or her. This is available where an application for stay of execution is made before the expiry of the time allowed for appealing from the decree to be executed.

The above conditions are also reiterated in the case of ***Membe vs Mayoga [2009] HCB 82***.

Having elaborately stated the position of the law, I will analyze each of the conditions to be met against the evidence adduced in this application.

ISSUE 1: Whether there is an arguable appeal which would be rendered nugatory if such application is not granted?.

Regarding the presence of an appeal, I have carefully analyze it, the supporting affidavits and reply made by the Respondent in his affidavit in Reply and the submissions of both sides.

For this court to grant a stay of execution consideration should be made on the Judgment the applicant intends to challenge to determine and know the reasons why he or she lost the case. This would discourage frivolous appeals only intended to delay realization of the fruits of litigation as was stated in the case of ***JWR Kazoora vs MLS Rukuba SC CA No.4/1991 (KALR 287)***.

One of the factors to be considered in an Application for stay of execution is “Whether the outcome of the appeal would be rendered nugatory, if execution is not stayed.” Refer to ***East African Development Bank vs Blue Nile enterprises Ltd. [2006] EA 51 (CAT)***.

Further in the case of ***Attorney General of the Republic of Uganda vs East African Law Society & Another EACJ Application No. 1 of 2013***, it was held that a notice of appeal is sufficient expression of an intention to file an appeal and that such an action is sufficient to found the basis for grant of orders of stay in appropriate cases.

Regarding the first principle that there should be a pending Appeal, the Applicant annexed a Notice of Appeal to this Application. The said Notice of Appeal was received by the High Court on the 18th July, 2018, while the Judgment of the High Court was delivered on the 23rd May 2022 in the presence of Counsel Adikini Esther for the Defendant and Counsel Sefuka Kabali for the Plaintiffs although both parties were absent. Counsel Adikini brought it to the attention of court that the defendant was dead, but she was ready to receive the Judgement.

The Notice of Appeal the Applicant seems to be alluding to was filed on 18th July 2023, outside of the prescribed time by the law by and it is clear from the record that it was not filed in the Court of Appeal Registry, but in the High Court as per the stamp that it bears. This means that it was filed in the wrong court and well outside the prescribed time.

In the case of ***Stanbic Bank Uganda v Atyaba Agencies SCCA NO.31 of 2004*** where Court noted that where a Notice of Appeal or an Application or an Appeal is pending before a Superior Court, it is right and proper that an interim order for stay of execution be granted in the interests of justice and to prevent the proceedings and any order there from, of the Appellate Court being rendered nugatory; however, in this case, the so called Notice of Appeal was not filed in the Court of Appeal in time and the Applicant has not shown that she filed an Application to file her Appeal outside the prescribed time. This means that as of now, there is no pending Appeal filed that can be relied upon to support the Applicant's averments.

I therefore find this principle has not been complied with by the Applicant under the circumstances.

ISSUE 2: Whether substantial loss may result to the party applying for stay of execution

The second principle that substantial loss may result. This was discussed in the case of ***Tropical Commodities Supplies Ltd & 2 Others v International Credit Bank Ltd (In Liquidation) [2004] 2 EA 331***, Ogoola J. held that the

phrase substantial loss doesn't represent any particular amount or size, it cannot be qualified by any particular mathematical formulae. It refers to any loss great or small, of real worth or value as distinguished from a loss that is merely nominal. It is my considered view that the Court ought to consider substantial loss claimed.

I will refer to the affidavit in support of the Applicant's Application. In paragraph 11, she avers that she was ordered by the Respondent to vacate the suit land where they are currently staying. In paragraph 11, she states that she shall suffer irreparable loss/damage if the respondent vacates the deceased family from the suit land.

She further avers in paragraph 12 that on 19th day of May 2022, the Applicant further learnt the Respondent through his lawyers M/S. Deric Advocates and Solicitors served Birungi Lydia who was the wife of the late Kato William Kaziba with a notice to show cause in execution proceedings arising from the orders of this court in **Civil Suit No.33 of 2017**.

In regard to execution, I have taken time to cross check the all the records related to this matter and found that the Applicants applied for execution of decree or order on 11th April 2023 under **EMA No. 008 of 2023**. A Notice to Show Cause is also on record and Application for vacant possession.

I have relied on the case of **Steel Rolling Mills Ltd & Anor v Gestation Economique Des Mission Catholique & Anor** where Mukasa L J cited the case of **Pan African Insurance Company (U) Ltd v International Air Transport HCT MA No.86/2006** where the Applicant merely stated that if the decree is not stayed the Applicant will suffer substantial loss and stated that:-

"The deponent should have gone a step further to lay the basis upon which court can make a finding that the applicant will suffer substantial loss as alleged. The applicant should go beyond the vague and general assertion of substantial loss in the event a stay is not granted".

The learned Judge also cited the case of **Bashidar v Pribku Dyal Air 41 1954** where it was stated that:-

"It is not merely enough to repeat the words of the code and state that substantial loss will result, the kind of loss must be given and the conscience of court must be satisfied that such loss will really ensue".

Further it was observed in the same case that “*the words substantial’ cannot mean the ordinary loss to which every judgment debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case.... substantial loss must mean something in addition to all different from that*”.

The Applicant argued that the likelihood of substantial loss if the order of stay of execution is not granted. As stated in the decided cases, it must be substantiated by evidence and it is for that reason that before courts of law can grant an Application for stay of execution, there must be proof that there is a threat for execution which some decided cases refer to as eminent threat of execution.

Bearing that in mind, it is clear from these two paragraph that substantial loss would occur to the Applicant if execution is not stayed and that the Applicant may lose her house. According to the Respondent’s affidavit in reply in paragraph 17 of the affidavit in reply, the Respondent averred that he has suffered loss due to the family of the Late Kato William Kaziba for refusal to vacate the suit land yet it was supposed to be done 30 days from the date of Judgement in **Civil Suit No.33 of 2017**.

While I agree with learned counsel for the Applicant that she is likely to suffer loss, it is clear as per my finding on the first issue that where there is no proper Appeal, then court has no basis to staying execution.

I therefore agree Respondent and resolve this ground in their favour.

This ground also fails.

ISSUE 3: Whether the Application has been made without undue delay?

As to whether this application has been made without unreasonable delay, the Applicant also argued that this Application was made without unreasonable delay as required under **Order 43 (3) CPR**.

I have already indicated above that the Judgment of the High Court was read on the 23rd May 2022, there is not a valid Notice of Appeal on record, however, in paragraph 1, the Applicant averred that she is the Administratrix of the estate of the late Kato William Kaziba who passed away on 2nd day of February 2022.

She further averred in paragraph 3 that on the 5th day of July 2022, she obtained Letters of Administration to administer the estate of the late Kato William Kaziba. That the application for stay was filed on 16th May, 2023.

It is my considered view that this Application was lodged late. In the case of **Sewankambo Dickson vs Ziwa Abby HCMA No. 178 OF 2005**, Court cited **Ujagar Singh vs Runda Coffee Estates Ltd where Sir Clement De Lestang, Ag. V.P** stated that “... it is only fair that an intended appellant who has filed a Notice of Appeal should be able to apply for a stay of execution to the Court which is going to hear the appeal as soon as possible and not have to wait until he has lodged his appeal to do so. Owing to the long delay in obtaining the proceedings of the High Court it may be months before he could lodge his appeal. In the meantime, the execution of the decision of the Court below could cause him irreparable loss,..” at Page 266.

From the foregoing, this principle would have applied if the Applicant had satisfied court that she had lodged her Notice of Appeal in the Court of Appeal, which is the correct Court to hear it. In the absence of that proof, it is my finding and decision that she has not satisfied this and as such, this issue is resolved in favour of the Respondent.

ISSUE 4: Whether there is serious or eminent threat of execution of the decree or order if the Application is not granted?

The fourth Principle that there is serious or eminent threat of execution of the decree or order if the Application is not granted, the appeal would be rendered nugatory. In paragraph 9 of the affidavit attached to the Application that the Applicant avers that she has learnt that the Respondent through his lawyers of M/S. Deric Advocates and Solicitors has instituted execution proceedings **EMA No.008 of 2023** against her arising from the Orders of this court in **Civil Suit No.33 of 2017**.

In response, the Respondent in paragraph 26 of the affidavit in reply, averred that no injustice shall be suffered by the family of the Late Kato William as he has given them sufficient time “a year” to look for an alternative home.

Having resolved the 3rd issue as I have, I see no need to deal with this as the reasons I have given above suffice to resolve this issue as well; that in the absence of proof that an Appeal has been properly lodged in the Court of Appeal, then court cannot work on speculations. This issue is also resolved in favor of the Respondent.

ISSUE 5: Whether the Application is not frivolous and has a likelihood of success?

I have critically examined the application, proceedings the Judgment as they are on the record. It should be noted at this stage, I'm not required to reevaluate the Judgment of this Court or delve into the reasons why the Applicant is not satisfied with it given the fact that I'm not a Court of Appeal, however, where it is clear that there is no proof of a proper Notice of Appeal filed in that court, it will be presumptuous of me to even try to guess the likely outcome.

As for this Application, as already found in the first four issues above, the main reason why an Application for stay of Execution should be considered is lacking and as such, it is my finding that this issue also fails.

ISSUE 6: Whether security has been given by the Applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

It is noted that the Applicant did not in any way state that they are willing to deposit security for costs. In order to resolve this issue, I have relied on the case of ***Tropical Commodities Supplies Ltd & Others v International Credit Bank Ltd (in liquidation) Civil Appeal No.24 of 2004*** where Justice Ogoola held that the requirement is more of justice and insistence on policy or practice that mandates security for the entire decretal amount is likely to stifle appeals.

Further, Justice Mukasa in the case of ***New Vision Publishing Corporation & 2 Others v Peter Kagawa HCMA 127/2006 [KALR 391]*** while emphasizing the rationale of furnishing security for due performance of the decree in an Application for stay of execution quoted with approval the Judgment of Justice Kato in the case of ***Ntege Mayambala v Christopher Mwanje (1993) KALR 97*** that:-

"I...there are several reasons why depositing of security by the applicant in this type of application is necessary. One of the reasons is to maintain the status quo among the parties; another reason is to ascertain that the purpose of the application is not merely intended to defeat the course of justice by delaying tactics whereby after the execution has been stayed the decree holder is made to wait indefinitely for the fruits of his success. By providing security the judgment debtor is also trying to prove how serious he is in his application for stay of execution".

Relating the above to this application, I have found that the Applicant has neither furnished security for due satisfaction of the decree nor intimated to court by way of affidavit evidence that she even intends to do so.

I have analyzed the submissions and authorities relied upon by both learned counsel. It is indeed true that the Applicant has not provided security for due performance of the decree/order in accordance with **Order 43 rule 4(3) (c) of the CPR**.

Further, the provision of this security is mandatory before any order for stay of execution can be granted. See the Court of Appeal decision of ***International Credit Bank (In Liquidation) vs Tropical Commodities Ltd & 2 Others Civil Appeal No.24 of 2004***.

Having stated the law as above, my interpretation of the provisions of **Order 43 rule 4 (3) CPR** is that all the conditions stated under **sub rule 3** must be considered by court before the Application is granted. It is only the court which can dispense with depositing of security for costs if the justice of the case warrants.

In this particular application, having found that the Applicant has not given in any way intimated that she is willing to put up security for due performance of the decree or order as may ultimately be binding upon her or given any reasons as to why court should consider excusing her from doing so, I'm of the view that every Application should be handled on its merits and a decision whether or not to order for security for due performance be made according to the circumstances of each particular case.

The objective of the legal provisions on security was never intended to fetter the right of appeal. It was intended to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. In essence, the decision whether to order for security for due performance must be made in consonance with the probability of the success of the appeal. There can never be cases with similar facts. As it was held in the case of Hon. Theodore Sekikubo cited above, the nature of decision depends on the facts of each case, as situations vary from case to case.

I'm persuaded by the decision Hon Lady Justice Wolayo in ***Amuanaun Sam vs Opolot David MA No 3 of 2014*** that the status of the Applicant should be put into consideration in order to decide whether security should be ordered or not. The Applicant is an Administratrix who is a sister to the deceased and the suit land is occupied by the widow who is staying in the premises with the deceased's children who apparently do not have means according to counsel for the Applicant's submissions.

I have also relied on the Supreme Court in ***Musiitwa vs Eunice Busingye SCCA No. 18/1990*** where advised that a party seeking a stay should be prepared to meet the conditions set out in **Order 43 rule 4(3) CPR**.

Having resolved all the above issues as I have, I shall not dwell on this issue for security for due performance since it is clear that the major ground that court must consider of the existence of a valid Appeal is missing.

For all the reasons I have given in this Ruling, my final decision is that the Applicant herein has not been able to satisfy the essential conditions to be granted a stay of execution. This Application as it is presented lacks merit, and cannot succeed in its current form. It is accordingly dismissed with costs to the Respondent.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
24/10/2023

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
24/10/2023