

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT LIRA**  
**M.A No. 23 of 2020**

**(Arising from Land Appeal No. 001/ 2020)**  
**(Arising from Lira Chief Magistrate court Land Claim No.29 of 2011)**

**1. ANGELINA OMING**  
**2. BONGONYINGE FRANCIS:.....:APPLICANTS**

**VERSUS**

**OCEN MOSES:.....:RESPONDENT**

**BEFORE: HON. JUSTICE DUNCAN GASWAGA**

**RULING**

- [1] This is a ruling on an application for stay of execution brought under Section 98 CPA, Order 43 rule 4 sub rule 1,3 and 4 CPR and office instruction No. 2 of 2020 for orders that;
- a) That an order for stay of execution of the decree and orders in Land Claim No. 029 of 2011 and execution thereof, be issued pending the determination of the Land Appeal No. 01 of 2020,*
- b) costs of this application be provided for.*
- [2] The grounds for this application were stated in the affidavit of **Bongonyinge Francis**, the applicant and they are that; *a decree in Land Claim No. 029 of 2011 was issued against the applicants and the applicants have appealed against the judgment and orders of the Magistrate granted in Land Claim No. 029 of 2011, that the judgment having been delivered, the*

*applicants' lawyers requested for the typed judgment but the same has never been given to-date; that there are high chances that the appeal will succeed; that there is a pending appeal in the high court which will be jeopardized by the respondent's threat to evict the applicants which will then render the appeal nugatory; the applicant has always been in possession of the land and is now being threatened with eviction by respondent; that the applicant is the one in possession of the suit land but is facing constant threats from the respondent who has been distributing an eviction order in the village. That the respondent has resorted to unconventional/ illegal means of execution and by passing known legal procedures. That the applicant would suffer irreparable loss if the application is not granted and that it is in the interest of justice that this application is granted.*

- [3] The respondents opposed the application stating that their pleadings are tainted with falsehoods. It was further stated that the court passed judgment in favour of the respondent in Land Claim No. 29 of 2011 after hearing the suit on merit. That the appeal by the applicants was filed in bad faith with intentions of denying the respondent from enjoying the fruits of the judgment, that the applicants have been so reluctant to fix the appeal and have thus filed stay of execution without sufficient proof.
- [4] This application raises one issue:  
***Whether the applicant has fulfilled the conditions for the grant of an application of stay of execution***
- [5] It was submitted by the applicant that this application is premised on the pending Appeal No. 001 of 2020. That the

applicants who have been living on the suit land have been asked to immediately vacate without a concise and proper schedule as to the execution order. That the appeal is meritorious and has a likelihood of success. That the applicants are ready to deposit security for costs as regards the performance of the decree and has brought the application without delay. See **Gashumba Maniraguha Vs Sam Nkudiye, Supreme Court Civil Misc. App. No.24 of 2015.** Further that the respondent has already extracted an order and used unconventional means to enforce the court order.

[6] **Order 43 rule 3 of the CPR** is to the effect that;

*(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;*

*(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. The same conditions are reiterated in the case of **Lawrence Musitwa Kyazze v Eunice Busingye Civil Application No. 18 of 1990***

**Substantial Loss;**

[7] For an application for stay of execution to be granted, the applicant must prove that substantial loss will be occasioned to them if the application is not granted. However, this shouldn't be merely an assertion without evidence to prove the same. See the case of **Gaaga Enterprises Limited and anor Vs Mpindi Muhamadi Bossi, Misc. App. No.02 of 2014**



where Masalu, J, relied on Transami (Tanzania) LTD vs M/S STE DATCO, Civil Application No.97 of 2004 which held that *"loss of business good will is just an ordinary loss to which every judgment debtor is necessarily subjected to when he loses his case"*. The applicant herein has stated that he is in imminent danger of being evicted from the land where they have been staying and deriving livelihood and yet the respondent intends to perform an execution at a time when execution had been stopped. This would in effect occasion irreparable loss to the applicant who would have lost a place of abode if at all the appeal were decided in their favour. I agree with the applicant that indeed there will be substantial loss if the application is not granted only that a judgement has already been entered against them.

**Unreasonable delay**

- [8] From the record, the lower court judgment was delivered on 20/12/2019 and this application was filed on 19/08/2020, a few months after the appeal, which was filed in January 2020. I find that the application was filed in reasonable time.

**Security for due performance of the decree**

- [9] According to the case of International Credit Bank Limited (In Liquidation) Vs Tropical Commodities Supplies Limited & 2 Others C.A.C.A No.24 of 2004 that it was mandatory for the respondents who were appellants in the High Court to give Security for the due performance of the decree or order as may ultimately be binding upon them/ him or her. The applicants have stated that they are willing to pay security for due performance of the decree. I think that given

the circumstances of this case it would only be fair that leave to furnish security for due performance of the decree should be granted.

**Pending Appeal;**

- [10] **Order 43 rule 4(1) CPR** states that;

*“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 to order stay of execution of the decree.”*

- [11] While explaining the above order, Nahamya, J in the case of **Equity Bank Uganda Ltd Versus Nicholas Were, M.A No.604 of 2013**, noted that;

*“The import of this provision is that an Appeal to the High Court does not per se 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”*

- [12] From this application, the applicant states that they are under imminent threat of eviction if indeed the execution takes place. As such, there is a need that this execution be stayed to enable the conclusion of the appeal take place. Considering that this is the place of abode the applicant and her family

have been having for a long time, it is only fair and just that the execution be stayed.

- [13] In the circumstances therefore, I hereby grant a conditional order of stay of execution of the judgment in Land Claim No.029 of 2011 pending the disposal and completion of Land Appeal No.01 of 2020. This order takes effect upon the applicant's payment into court of the security for due performance of the decree in the sum of Ugx 15,000,000/= within sixty (60) days from the date of the order herein. The costs of this application shall abide the outcome of the appeal.

I so order

Dated, signed and delivered at Lira this 22<sup>nd</sup> day of August,  
2023



Duncan Gaswaga

JUDGE