

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT MBALE**

HCT-04-CV-MA-0009-2012

(Arising from HCCA No. 0012/2012)

(Arising from Busia Civil Suit No. 28/2009)

WASIKE STEPHEN MUGENI.....APPLICANT

VERSUS

SSEMAKULA BABU.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for stay of execution under O.43 r.4 CPR. This law provides that no order for stay of execution shall be made unless 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.

At the hearing of this application both the applicant and respondent made written submissions in support of their respective cases. However as rightly submitted by the applicant, the respondent told court that he withdrew instructions from M/s Kamba & Co. Advocates and gave it to M/s Madaba & Co. Advocates. It was the latter advocate who sought court's permission to allow written submissions. However the submissions in opposition to the application were filed by M/s Kamba & Co. Advocates. This discrepancy remained unexplained to the confusion of this court. I will therefore decide this application basing of the pleadings of both parties and submission by the applicant.

After considering this application as a whole and the submission of the applicant as well as the law applicable, I am satisfied that the applicant has shown that he is entitled to a stay of execution in order not to render his appeal nugatory. The subject matter is real property and ownership is still in contention.

Although the respondent states that if in possession he will preserve the property as it is and will not sell or deal in it in any way until the disposal of the appeal, there is no way this can be guaranteed or enforced by court. This could lead to substantial loss if the property is disposed of.

Secondly for some time now, an interim order of stay of execution has been in place. I am of the view that the same be consolidated into a substantive stay until the disposal of the appeal. I note that this application was filed without delay and security worth 30 million comprised in land at Namaumbi village has been given for the due performance of the decree as may ultimately be binding on the applicant in any event.

In my considered view, this security is sufficient.

Consequently this application is granted.

Costs shall be in the cause.

Stephen Musota
JUDGE
13.03.2013