

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
MISCELLANEOUS APPLICATION NO. 350 OF 2014
(ARISING OUT OF CIVIL APPEAL NO. 26 OF 2014)
(Arising out of Mityana Civil Suit No. 17 of 2013)

**KAMOGA BONNY ::::::::::::::::::::::::::::::::::: APPLICANT/
DEFENDANT**

VERSUS

**DANIEL SEBUNYA KABUYE:::::::::::::::::::::
RESPONDENT/PLAINTIFF**

BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

RULING

The Applicant, through his lawyers M/s Kaweesi-Kakooza & Co. Advocates brought this Application by Notice of Motion vide Miscellaneous Application No. 350 of 2014 against the Respondent for stay of Execution of Civil Suit No. 17 of 2013 pending the hearing and final disposal of Civil Appeal No. 26 of 2014 and Costs be provided. The Application was brought under Sections 33 of the Judicature Act Cap. 13, Section 98 of the Civil Procedure Act Cap 71 and Order 43 r. 4(3), (a), (b), (c), rule 4(5) of the Civil Procedure Rules.

On the 21st day of October, 2014, when the parties appeared before this Court for hearing of the Application for stay of Execution, Mr. Ogwado Francis, learned Counsel for the Respondent brought it to the attention of Court that he did not intend to oppose the Application except that the

Applicant pays security for due performance of a Decree. Therefore this Ruling is based upon that sole ground on what the Applicant should pay as security for due performance of a decree prior to the grant of stay of execution.

This honorable Court is vested with jurisdiction to grant an order for stay of execution under **Order 43, r. 4(3) of the CPR**. However, this is subject to satisfying conditions that;

- a) That substantial loss may result to the party applying for staying 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.***[Emphasis added]

My attention has been drawn to the submissions of Mr. Kafuko Ntuyo, for the Applicant regarding to his submissions on the authority of **Margaret Kato vs. Nuulu Nalwoga Supreme Court Miscellaneous Application No. 11 of 2011** where a similar point was raised regarding payment of security for due performance of a decree. But the learned justices in their Ruling observed that it would be unfair to order the Applicant to pay the whole decretal sum in a land matter where an appeal may succeed and where the Applicant resides within jurisdiction. The Court should decide what's reasonable otherwise if the entire amount were to be paid, it would do away with the need for the Appeal. Furthermore, learned Senior Counsel observed that, whereas the High Court has a specific provision on deposit of security for due execution of the decree, the Supreme Court decision offers guidance to this honourable Court on how it can arrive at the amount for due performance.

With due respect, I agree with the submission of the Learned Counsel for the Respondent pertaining to this case, particularly considering the fact that the **Margaret Kato case, supra** dealt with an Appeal from the Court of Appeal to the Supreme Court and the fact that the learned Justices labored to highlight the fact that there is no specific provision under the Judicature (Supreme Court) Rules where Court specifically mandated to ensure the deposit of security for due performance of a decree. Under that provision, Court is mandated to order a stay of execution in any civil proceeding as the Court may deem to be just. However, under **Order 43, r. 4(3) of the CPR**, the Rules are specific about this issue.

However, notwithstanding that, Courts have been reluctant to Order security for due performance of the decree. Rather Courts have been keen to order security for Costs. In the Supreme Court case of **Tropical Commodities Supplies Ltd & Others vs. International Credit Bank Ltd (in liquidation) [2004] 2 EA 331** Ogoola, J (as he then was), was of the view that the requirement for depositing security for due performance of a decree is more just and insistence on a policy or practice that mandates security for the entire decretal amount is likely to stifle appeals especially in the commercial court where the underlying transactions typically lead to a colossal decretal amounts. In another case where a similar issue was being considered, **Watulatsu Samuel & 2Ors vs. Zirimu Haruna, HCT-04-CV-MA-0050-2010, Justice Musota Stephen** observed that

“Without valuation it is difficult to tag value on a Carib vehicle of the UAE registration series. In my consideration view therefore I will allow this application and order that the Carib vehicle produced before the Registrar for viewing with its latest third party insurance cover, and in addition to that security each of the other two applicants will bind themselves respectively in the sum of 5,000,000/= not cash for the due performance of the decree as will be binding on each.”

Having regard to the facts of this case, and notwithstanding the fact that the matter is not before the commercial Court, I am of the considered view that, in the interests of justice, the Applicant should commit himself to pay a percentage of 30% of the decretal amount as security for costs. This shall be paid upon demand or to pay it in kind by depositing a Certificate of Title in his names worth 30% of the decretal amount or a vehicle of the same value with the relevant papers of transfer signed and deposited in Court.

I so Order

The Costs of this Application are awarded to the Respondent.

SIGNED:.....

HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

J U D G E

06th November 2014