

IN THE HIGH COURT OF UGANDA AT SOROTI

MISC. APPLICATION 3 OF 2014

ARISING FROM HCCA 46 OF 2014

ARISING FROM NGORA CS 46 OF 2013

ODONG SIMON PETER

OPIO JOHN

AMUANAUN SAM.....APPLICANT

V

OPOLOT DAVID.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

In this application, the applicants through their advocates Ms Omongole & Co. Advocates seek an order for stay of execution pending disposal of HCCA 46 of 2014.

The application is brought under order 43 r 1,4 and order 52 rr 1, 2 of the CPR and section 98 of the CPA.

Grounds of the application are contained in the notice of motion and affidavit in support of Odong Simon Peter.

The respondent appeared in person and did not file an affidavit in reply.

I have carefully listened to submissions of counsel for the applicants and examined the affidavit in support.

Order 43 r 4 (3) gives pre-requisites to granting stay of execution. The applicant must satisfy court that substantial loss will occur unless execution is stayed; that the application has been made without unreasonable delay and that applicant is willing to provide security for performance of the decree should the decision become binding at a later stage.

I am satisfied that an appeal is pending in this court. On the issue of whether the applicants will suffer irreparable loss, para 9 shows that the appeal will be rendered nugatory if the order for stay is not granted.

This being a suit involving land, the applicant must be accorded an opportunity to be heard on appeal . Secondly, in view of the economic status of the applicants, I will not order for security for due performance.

The respondent in his brief response prayed for an injunction to restrain applicants from use of the land. Such an order would have the effect of enforcing lower court decision yet that decision is on appeal.

In the premises, the application for stay of execution is allowed pending disposal of the appeal which should be fixed for hearing within 30 days from to date.

Costs in the cause

DATED AT SOROTI THIS.....06.....DAY OF.....March.....2014.

HON, LADY JUSTICE H. WOLAYO

