

**IN THE HIGH COURT OF UGANDA AT SOROTI**

**MISC. APPLIC. 54 OF 2011 ARISING FROM HCCA 54 OF 2011,**

**ARISING FROM SOROTI CHIEF MAGISTRATE'S COURT CIVIL SUIT 40 OF 2006**

**AMAITUM PIUS AND OCAN BONIFACE.....APPLICANTS**

**VERSUS**

**BAPTIST UNION OF UGANDA.....RESPONDENT**

**BEFORE : HON. LADY JUSTICE H. WOLAYO**

**RULING**

When Misc. applic. 54 of 2011 was called, Mr. Okuku indicated he had had a preliminary objection . The chamber summons , filed way back on 24.8.2011, was for stay of execution of the judgment and orders of the chief magistrate dated 9.2.2009 which were upheld by Hon. Justice S, Musota on 13.6.2011 when judgment was delivered by the Deputy registrar.

The application is brought under order 22 r 23 (1) , 89 (1) of the CPR.

Mr. Okuku , counsel for the respondent objected to the jurisdiction of this court to entertain this application on the grounds that

- a) the CPR do not confer jurisdiction on the High court to stay execution of its own orders .
- b) jurisdiction is conferred by rule 53 Court of Appeal Rules on the Court of Appeal

Counsel cited **Mbale High court MA 89 of 2011 arising from HCCS 5 of 2010 between Mbale District Local Government and Gidudu Hannah** in support. In the cited application, counsel for applicant had sought extension of time within which to file a notice of appeal in the Court of Appeal. The application was brought under order 52 rule 6 of the CPR. In dismissing the application as an abuse of the court process, the court held that the CPR are applicable in the High Court and that the Court of Appeal Rules SI 13-10 regulate appeals to the Court of Appeal.

Mr. Obore for the applicant cited order 22 r32 , and article 126 (2) (e) of the Constitution on the court's obligation to administer substantive justice.

I agree with the holding of the judge that Court of Appeal rules regulate appeals to the Court of Appeal. I also agree that applications for extension of time to file an appeal in the Court of Appeal must go direct to the Court of Appeal.

The above notwithstanding, execution proceedings are of such nature that the High court may exercise powers to stay execution for a limited time until the applicant has secured the record of proceedings or filed the notice of appeal. Thereafter, the order of stay would cease to have effect and a party would have to seek another stay in the Court of Appeal.

I am fortified by this reasoning by section 33 of the Judicature Act that empowers the High court to grant remedies to parties on such terms and conditions as it seems fit.

With regard to procedure, section 39 of the Judicature Act empowers the High Court to adopt such procedure as is justifiable under the circumstances. In the

premises, I adopt order 22 r 23 which provides that an order for stay may be granted to enable the judgment debtor to apply to the court which passed the decree or a court with appellate jurisdiction .

The relevant portions of order 22 r 23 are:

‘the court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay execution of the decree for a reasonable time to enable the judgment debtor to apply to the court that passed the decree or to a court with appellate jurisdiction ... for an order to stay execution or for any other order relating to the decree.’

Therefore, while it is true that the Court of Appeal Rules regulate appeals in the Court of Appeal, the High court may entertain applications for stay of execution under sections 33 and 39 of the Judicature Act and order 22 r 23, and make interim orders pending the filing of appeals/record of proceedings in the Court of Appeal.

It is for these reasons that I dismissed the preliminary objection raised by Mr. Okuku and ordered that the application for stay be heard on the merits.

**DATED AT SOROTI THIS 15<sup>TH</sup> DAY OF MAY 2014.**

**HON. LADY JUSTICE H. WOLAYO**