

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – LD – MA – 0022 OF 2018

(Arising from HCT – 01 – CV – LD – CA – 21 OF 2015)

5 **(Arising from FPT – 00 – CV – CS – LC – 042 OF 2011)**

(Arising from retrial ordered in FPT – 00 – CV – LC – CA – 36 OF 2009)

(Arising from Kyegegwa LCIII Court Case No. 16 of 2008)

1. EVELYN BANOBERE

10 **2. BIRUNGI APOLLO (Administrator of the**

Estate of the Late Rev. Banobere Azalia)

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.....**APPLICANTS**

VERSUS

NYAMISANGO BEATRICERESPONDENT

15 **BEFORE: HIS LORDSHIP MR. JUSTICE WILSON MASALU MUSENE**

RULING

The Applicants, Evelyn Banobere and Birungi Apollo filed this application under **Order 52 Rules 1 and 3** of the Civil Procedure Rules and **Section 98** of the Civil Procedure Act for orders that:-

20 An order of stay of execution in HCT – 01 – CV – CA – 0021 OF 2015 and FPT – 00 – CV – CS – LC – 042 of 2011be issued pending the disposal of an intended appeal in the Court of Appeal.

The Applicants were represented by Mr. Bwiruka Richard, while the Respondent, Nyamisango Beatrice was unrepresented.

Counsel for the Applicants submitted that the Applicants have filed a Notice of Appeal and a Letter requesting for a typed copy of the record. He added that the threat of execution is real and that unless this application is allowed, the appeal will be rendered nugatory.

In reply, the Respondent in person wondered whether an appeal has no time limit. She added that she has won the case three times and that the Applicants have a very weak case and are employing delaying tactics. The Respondent further submitted that in 2015, the Applicants accepted to pay her costs but the lawyers prevented them from paying and that for three years now, she has not been paid. She concluded that she is old and weak and should not die before she receives her costs.

10 I have carefully considered the submissions on both sides in this old case which started as Kyegegwa LCIII Court case No. 16 of 2008. The re-trial was ordered in FPT Chief Magistrates Court on appeal from LC in Civil Appeal No. 36 of 2009. The re-trial was Fort Portal CV Suit No. 42 of 2011 which was decided by His Worship Oji Philip, Magistrate Grade I on 25.5.2015.

15 The Respondent, won the case and the present Applicants appealed to High Court whereby Justice Oyuko. Anthony Ojok dismissed their appeal on 4.10.2017. Whereas Counsel for the Applicants has submitted that it is the Respondent who is on the disputed land and there is no prejudice with the intended appeal, the Respondent has raised the issue of non-payment of her costs since 2015. The law governing stay of execution in High Court is provided for
20 under **Order 43 Rule 4** of the Civil Procedure Rules. Under **Order 43 Rule 4(1)** and **(2)** an appeal does not operate as an automatic stay of execution, but the High Court can stay execution upon sufficient cause being shown.

It is further provided under **Order 43 Rule 4(3)** that no order of stay of execution is to be made unless the Court is satisfied that;

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- a) Substantial loss may result from the party applying for stay of execution;
 - b) The application is made without unreasonable delay or;
 - c) Security has been given by the Applicants for due performance of the decree.

In the present application, a part from Counsel for the Applicants stating that the intended appeal will be rendered nugatory, he has not submitted on any substantial loss that may result
30 to the Applicants. And since the subject matter of dispute is land, land is immovable. It will never be carried away and so even if the intended appeal is heard five years from now, and

Applicants win in Court of Appeal, the land will be there in the same Village of Kiganda to be taken by whoever is successful. It shall never be carried away to Fort Portal or Kampala.

Secondly, this application for stay has not been made without unreasonable delay. The appeal in High Court was delivered on 4.10.2017 in favour of the Respondent and 9 months to date, there is no Memorandum of Appeal filed in the Court of Appeal. Under **Section 79** of the Civil Procedure Act, every appeal shall be filed or entered within 30 days from the date of decree or order of the Court. So not only are 30 days over, but it is now 9 months which for all practical purposes and intents amounts to unreasonable delay. In any case, Counsel for the Applicants did not refute the submission by the Respondent that in 2015, the Applicants were ordered by the mediator to pay her costs but were stopped by their lawyer.

Lastly, no security for due performance of the decree has been given by the Applicants as required under **Order 43 Rule 4 (3) (c)** of the Civil Procedure Rules.

In the premises, and in view of what I have outlined, I find and hold that there is no merit in this Application for stay of execution. The same is hereby dismissed with costs.

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WILSON MASALU MUSENE

JUDGE

20 **11.7.2018**

Mr. Kaahwa Muhumuza, holding brief for Mr. Bwiruka for the Applicants.

Respondents present.

Beatrice Katusabe, Court Clerk present.

Court: Ruling read in open Court.

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WILSON MASALU MUSENE

JUDGE