

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC.APPLICATION NO. 0024 OF 2018

(Arising out of Civil Appeal No. 05 of 2018)

5 **(Arising out of Civil Suit No. 0190 of 2014)**

KYENJOJO TOWN COUNCIL.....APPLICANT

VERSUS

MUGARRA RICHARD.....RESPONDENT

10 **BEFORE: HIS LORDSHIP HON. MR WILSON MASALU MUSENE**

Ruling

This is an application brought by way of Chamber Summons under **Section 98** of the Civil Procedure Act and **Order 22 Rule 23(1)** of the Civil Procedure Rules seeking orders that; an order of stay of execution doth issue restraining the Respondent, his agents and any one
15 rightfully claiming under him from executing the Decree of the Chief Magistrates Court of Fort Portal in Fort Portal Civil Suit No. 0190 of 2014 pending the final determination of Civil Appeal No. 05 of 2018 and that costs of the application be in the cause.

The Application is supported by the affidavit sworn by Kiiza Godfrey, the Town Clerk of the Applicant and the grounds briefly are as follows;

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1. That the Applicant has filed Civil Appeal No. 05 of 2018 seeking to set aside the judgment and Decree of the trial Magistrate in Civil Suit No. 0190 of 2014 and that Civil Appeal No. 05 of 2018 is pending fixing for hearing.
 2. That the Respondent intends to aggressively execute the decree in Civil Suit No. 0190 of 2014, he has extracted the same, the bill of costs regarding the same has been
25 taxed, a Certificate of Taxation has also been issued and a Garnishee Nisi has been issued to the Applicant.

3. That if the Respondent is not restrained from proceeding with execution of the Decree in Civil Suit No. 0190 of 2014, Civil Appeal No. 05 of 2018 shall be rendered nugatory and useless.
4. That Civil Appeal No. 05 of 2018 has very high chances of success.
- 5 5. That the Applicant is likely to suffer irreparable loss if this application is not granted.
6. That it is just and equitable that the order of stay of execution be granted pending the final determination of Civil Appeal No. 05 of 2018.

Counsel for the Applicant submitted that he will argue the application focusing on the well-known conditions relevant for the grant of an order for stay of execution to wit;

- 10 a. Existence of a substantive appeal pending before Court with high chances of success and failure to grant the stay of execution renders the same nugatory.
- b. A serious threat of execution by the Respondent.
- c. The Application for the stay of execution having been filed without due delay.

Resolution:

- 15 **a. Existence of a substantive appeal pending before Court with high chances of success and failure to grant the stay of execution renders the same nugatory.**

Counsel for the Applicant submitted that having filed Civil Appeal No. 05 of 2018 in this Honourable Court on the 23rd of April 2018 and the same is merely pending fixing and hearing by this Court, failure to grant this Application would jeopardize the prosecution of the filed appeal rendering the same nugatory to the detriment of the Applicant. That having
20 filed a pending appeal the Applicant has fulfilled this condition required for the grant of stay of Execution of the decree in Civil Suit No. 190 of 2014.

b. A serious threat of execution by the Respondent.

Counsel for the Applicant submitted that when the application for the Garnishee Nisi to be
25 made absolute came up for hearing on the 27th April 2018, the same was vacated after the Applicant showed sufficient cause for the same to wit the existence of an interim stay of Execution of the decree.

Counsel for the Applicant added that the said interim Order is not an absolute stay on the Respondent's zeal and ambition to execute the Decree in Civil Suit No. 0190 of 2014. That

the threat of execution still subsists as can be seen by the steps taken by the Respondent to execute the decree.

5 **c.The Application for the stay of execution having been filed without due delay.**

Counsel for the Applicant in this regard submitted that it was upon service on the Applicant of the Garnishee Order Nisi granted on the 18th April 2018 and its hearing fixed for the 27th April 2018, that the Applicant filed the instant application on the 23rd April 2018. Thus, the filing of the instant application was very prompt.

10 He added that it is also in the interest of justice to preserve the status quo of the parties and the Applicant's right to be heard in Civil Appeal No. 05 of 2018 which touches the Decree that the Respondent is threatening to execute.

Further, that the Respondent stands to suffer no loss if this Application is granted and it is instead the Applicant who stands to suffer detriment if execution of the Decree is done.

15 Furthermore, Counsel for the Applicant submitted that the Respondent even though he was served with the Application has never rebutted the same through an affidavit in reply while his Advocate appeared in Court on the 9th July 2018. That in the circumstances in the absence of an affidavit in reply to the application, it is an admission by the Respondent to the contents and averments there in and the Application should therefore be allowed and orders sought by
20 the Applicant be granted.

Analysis of Court:

I have critically considered the above submissions by Counsel for the Applicant. Since Counsel for the Respondent was served but never filed a response, then it is an indication that the Respondent has conceded to this application. In the premises, I do hereby allow this
25 application and order that the Respondent is hereby stopped from executing the decree in Civil Suit No. 0190 of 2014 till the final determination of Civil Appeal No. 0004 of 2018.

Costs to be in the cause.

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Wilson Masalu Musene

Judge

20/8/2018

5 **20/8/2015**

Mr. Isingura Isaac for Kyenjojo Town Council present.

Mr. James Ahabwe for the Respondent.

Mr. Kiiza Godfrey Town Clerk of Kyenjojo present.

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Wilson Masalu Musene

Judge

Court: Ruling read in open Court.

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Wilson Masalu Musene

Judge