

**THE REPUBLIC OF UGANDA**

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

**MISC. APPLICATION NO.292 OF 2019**

**ARISING FROM MA NO.291 OF 2019**

**ARISING FROM MISC. APPEAL NO.001 OF 2019**

**ARISING FROM CIVIL SUIT NO.110 OF 2018**

**NANYANZI SARAH JOWERIA:..... APPLICANT**

**VERSUS**

**MODA INVESTMENTS (U) LTD:..... RESPONDENT**

**27<sup>TH</sup> SEPTEMBER 2019**

**12:20 p.m.**

**BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT**

**RULING**

- **Mary Wokape for Clerk**
- **Sseryazi Benon for the Applicant.**
- **Respondent is absent.**

This is an Application that was filed on 23<sup>rd</sup> September 2019 this year. However, the Deputy Registrar has not yet signed for purposes of having it served on the Respondent and heard by this court.

However, there is an emergency which has prompted the Applicant to appear before you for issuance of an interim stay of execution.

The Application is brought by chamber summons under 0.43 r (4) and Rule 5 of the CPR. She is seeking the indulgence of this honourable court pending the hearing of **MA 291/2019** which is pending before this court and **Misc. Appeal No.1 of 2019** all arising from **Civil Suit No.110 of 2019**.

The grounds are contained to the Affidavit of the Applicant and attached Annextures.

Emphasis is on the fact that the Appeal is pending before this court arising out of an error on the face of the record in **Civil Suit No.110/2019** in which the learned Registrar issued a Decree and Orders of vacant possession against the Applicant without jurisdiction which the Applicant is challenging and is on serious ground of Appeal against the Registrars Orders.

Before the hearing and determination of the said Appeal and the determination of the main Application for stay of Execution, the Respondents have commenced execution proceedings and have served an eviction Order on the Applicant through the local authorities.

The Applicant avers in paragraph 9 of the Application that of the Application is not granted her Appeal as well as Application for stay of Execution will be rendered nugatory and she will be rendered homeless as well as her family.

We pray that the Application is allowed in the interest of justice and wish to rely on the famous case of **Hwan Sung Industries Ltd Vs C/A No.19/2008** in which the learned Justices had this to say that for an Application for an Interim Order of stay, it suffices to show that the substantive Application is pending and that there is a serious threat of execution before the hearing of the substantive Application it is not necessary to pre-empt the consideration of matters necessary in deciding whether or not the grant to substantive Application.

The ..... of that authority is that the Applicant has to prove that there is a pending Application.

We pray that this court grants the Application as prayed and issue an Interim Stay of Execution for the Applicant and fixing of the main Application.

## **RULING**

This Ruling is in respect of an Application for an Interim Stay of Execution supported by the Affidavit of the Applicant.

The grounds are:

- (1) That the Applicant has filed both an Appeal against the Court Decree signed by the Registrar and an Application for stay of execution which both have a high likelihood of success.
- (2) That the Interim Order is sought to be issued exparte as a matter of urgency to stop the eviction of the Applicant who has been served through the local Council Committee.
- (3) That the grounds of the Appeal include and point to the error on the face of the court record and touch the Order of the court sought to be executed.
- (4) That if the Interim Order is not issued the Appeal and Application for stay will be rendered nugatory.

Counsel Benon Sseryazi relied on the case of **Hwan Sung Industries Ltd Vs. Tajdin Hussein and Others** Civil Application No. Civil Application No.19/2008 where the Supreme court held that; **“For an Application for an Interim Order of stay, it suffices to show that a substantive Application is pending and that there is a serious threat of execution before the hearing of the pending substantive Application.**

**It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive Application for stay”.**

I have looked at the Decree dated 11<sup>th</sup> April 2019 signed by the Deputy Registrar, Her Worship Cissy Mudhasi and a warrant to give vacant possession of land comprised in Plot 3736 Block 116 Kyaggwe situated at Nabuti in Mukono Municipality in execution of Decree of court, dated 8<sup>th</sup> July 2019 which warrant is open ended without date of return, a letter dated 19<sup>th</sup> August 2019 by Mutungi Charles commandant land Protection Unit – Kibuli addressed to The Commander, Kampala Metropolitan Police in which he was forwarding a warrant for vacant possession vise CS No.110/2018 in which execution if it is to be done is against Applicant, and a letter written by Nkurunziza Frank a Court Bailiff requesting for Police officers to witness giving vacant possession of the subject matter.

Ideally this Application was to be heard by the Deputy Registrar of Court who is absent and has locked the parent file in her chambers for reasons best known to her. Her Clerk who has access to her chambers is equally absent with no explanation.

According to the amended Civil Procedure Rules Statutory Instrument No.33 of 2019 Rule 6, which amended Order 50, the Court shall in all cases before granting relief for an Interim Order direct Notice of the Application to be given to the opposite party except where it appears that giving of such notice would cause undue delay and that the object of granting the interim relief would thereby be defeated, (O.50 r 3 A (1)).

The amended Rules further provide for all Applications for Interim relief to be heard inter parties except for exceptional circumstances that may include:

- (a) Where the matter is urgent in nature.
- (b) Where there is a real threat or danger.
- (c) Where the Application is made in good faith.

Considering the fact that the Warrant has already been issued and Police has cleared it, there is a real threat of execution and eviction to give vacant possession.

The Applicant has fulfilled the requirement set by the Supreme Court in the case of Hwan Sung Industries (*supra*).

The pending Application for the substantive stay has not been heard. It is still pending and has not yet been fixed for hearing by the Deputy Registrar.

In the instant Application I am satisfied that there is a pending substantive Application nugatory.

Consequently I allow the Application with the following Orders;

1. Warrant to give vacant possession of land comprised in Plot 3736 Block 110 Kyaggwe situated at Nabuti Mukono Municipality in execution of a Decree of court date 8<sup>th</sup> July 2019 is stayed, pending the disposal of HCT-14-CV-MA-0291-2019.
2. In view of the fact that this Interim Order is issued on 27<sup>th</sup> September 2019 a Friday, it will remain in force from today 27<sup>th</sup> September 2019 up to 2<sup>nd</sup> October 2019, when the Deputy Registrar would have fixed the main Application for hearing.

3. If by 2<sup>nd</sup> October 2019 the Deputy Registrar of court has not fixed the main Application for hearing, then it will be extended by her as she deems fit and reasonable.
4. Costs of the Application to abide in the result of the substantive Application.

**GIVEN** under my hand and seal of this Court this 27<sup>th</sup> day of **September, 2019.**

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Margaret Mutonyi

**RESIDENT JUDGE**

**MUKONO HIGH COURT**