



- 3) That being dissatisfied with the Judgment of the learned Appellate Judge dated 19/10/2018, I instructed my former lawyers, M/s Adsum Advocates, who filed a Notice of appeal on my behalf.
- 4) That the said lawyers then informed me that they had requested for certified copies of the record of proceedings to enable them prepare the memorandum of appeal on my behalf.
- 5) That as I awaited communication on the developments of the appeal from my lawyers, I learnt of a warrant of arrest issued against me in execution of the judgment of the High court and the court below.
- 6) That all my efforts to get any explanation from my former lawyers on what was happening yielded no fruits.
- 7) That I immediately instructed my current lawyers M/s Wameli & Co. Advocates, to take over and pursue the appeal on my behalf.
- 8) That the said lawyers then filed a Notice of change of Advocates and also requested for a copy of the proceedings.
- 9) That the said advocates have not yet been able to secure the entire record of proceedings despite all effort including my complaint to the Principal Judge who has since advised that my lawyers be given the proceedings.
- 10) That however, my said lawyers have at least been able to get a copy of the judgment, a copy of Notice of appeal and a copy of the warrant of arrest and used that to prepare a memorandum of appeal.
- 11) That I have been informed by my lawyers, M/s Wameli & co. Advocates, which information I verily believe to be true that the said Memorandum ought to have been filed within 30 days from the date of judgment.
- 12) That like I have said, the said memorandum of appeal was not filed within that period. The Lawyers had not received the proceedings, which were necessary to prepare the record of proceedings.
- 13) That I am desirous to prosecute my appeal to its logical conclusion and verily believe that the appeal has high chances of success.
- 14) That I am not to blame for the delay in filing the memorandum of appeal and verily believe that my lawyers are also not blameworthy.
- 15) That the said appeal and application thereunder are still pending before the court of appeal and they have high chances of success.

- 16) That the respondent, his agents, servants and/or persons claiming under him have embarked on and are continuing with the execution of the decree, including threatening to arrest me and have me committed to civil prison.
- 17) That unless the Respondent, his agents, servants and/or person claiming under him are restrained, my appeal in the court of appeal shall be rendered nugatory.
- 18) That I know that I shall suffer irreparable injury unless the respondents, his agents, servants, or persons claiming under him are restrained.
- 19) That it is in the interest of justice that an order does issue staying the execution of the decree in civil appeal No. 21 of 2017 until the final determination of the appeal in the court of appeal.

The application was opposed by an affidavit in reply sworn by the Respondent **Bikola Robert**, who was the successful party in the appeal to this court wherein he deposed that:

- 1 That with help of my advocates of M/s Ssemengo & Co. Advocates I have read and understood the applicant's application to which I reply as follows:
- 2 That in reply to paragraph 1 the Applicant has never served me with a copy of the Notice of appeal which he alleges to have filed in the Court of appeal.
- 3 That in reply to paragraphs 2& 3 the applicant is not at all interested in prosecuting the said appeal if at all he has filed a Notice of appeal.
- 4 That in further reply to paragraphs 2 & 3; the applicant is not interested in prosecuting the appeal. But only playing delaying tactics by preventing me from enjoying the fruits of my judgment on appeal.
- 5 That in reply to paragraphs 5, 6, 7 & 8, they are disputed in that the Applicant has not come to Court with clean hands.

**Representation:**

**M/S Wameli & Co. Advocates** represented the Applicant and **M/S Ssemengo & Co. Advocates** represented the Respondent.

Counsel for the applicant filed written submissions but during the hearing both counsel submitted orally.

At the hearing counsel for the applicant (**Nalunkuma Esther**), argued that the principles upon which stay of execution is granted are

captured in a number of authorities. She argued that the Notice of Appeal was filed before this court as per paragraphs 4 to 11 of the Applicants supporting affidavit.

She also argued that there is a serious threat to execute the decree of this court in civil appeal No. 21 of 2017 as per paragraph 17, warrant of arrest was issued in execution in application No. 8 of 2018, to arrest the applicant as per the annextures.

10 In regard to paragraphs 5 and 7 of the supporting affidavit counsel argued that it is not negligence of counsel because they extracted the Memorandum of Appeal and the letter requesting for the record of proceedings as per the annexure A2 dated 21<sup>st</sup> October, 2019.

She also submitted that as per annexure D a complaint was made to the Principal Judge.

A letter was written marked annexure A<sub>2</sub> requesting for the proceedings. Further as per Annexure B she referred court to the Principal Judge's correspondence to the Applicant upon his complaint.

Counsel submitted that there are high chances of success in the appeal therefore prayed that the application be granted.

20 **Counsel Nampiija Ruth** for the Respondent opposed the application by arguing that the Notice of appeal filed was misleading in the wording. She argued the Notice of appeal was not served to the Respondent or his counsel. Counsel referred court to **Order 49 Rule 2** of the Civil Procedure Rules.

She further argued on an illegality, that there was an un reasonable delay in filing the application for execution because the Judgment was delivered on 19<sup>th</sup> October, 2018, application for stay was filed on 16<sup>th</sup> September, 2020.

30 She further told court it is the negligence of counsel apart from the letter which was written in 2019 hardly one year after the delivery of the judgment what other step has the applicant taken to prosecute the appeal.

She further stated that in the event the application is allowed, the applicant should pay ½ of the taxed costs for security of costs for due performance.

### **Analysis of court:**

I have perused the court record, due consideration has been made of both the affidavits and oral submissions by counsel; I will not reproduce averments and submissions verbatim.

The principles under which an application for stay of execution can succeed were well espoused in the case of **Lawrence Musiitwa Kyazze v. Eunice Businge, Supreme court civil Appeal No. 18 of 1990**, but more pronounced in the supreme court case of **Hon. Theodore Ssekikubo and orders v. Attorney General and ors Constitutional application No. 03 of 2014** to include:

- a) That the applicant must show that he/she lodged a Notice of appeal.
- b) That substantial loss may occur to the Applicant unless the stay of execution is granted.
- c) That the Application has been made without unreasonable delay.
- d) That the Applicant has given security for due performance of the decree or order as may ultimately be binding upon him.

Counsel for the Applicant told court that a notice of appeal was lodged and filed annexures to that effect. Counsel further stated that the Judges then were not hearing civil matters so this caused a delay in hearing of the application

She further stated that the Corona Pandemic which began in 2019 to 2020 with various lockdowns court could not operate, she argued that this could not be said to be negligence of the applicant.

She further submitted that the Respondent was served with a Notice of appeal, a letter requesting for the certified copies of the judgment and proceedings which were steps taken by the applicant.

Counsel submitted that there is likely hood of success so prayed for grant of the application.

I wish to point out that for the court to grant an application for stay of execution, the applicant must show sufficient cause. Sufficient cause has been defined in the case of **James Bwogi & sons Enterprises Ltd v. Kampala City Council and Kampala District Land Board Civil Appeal No. 09 of 2017**, **Rules 5 of the Supreme Court Rules**, and in the case of **Boney Katatumba v. Waheed Karim S.C.C Application No. 27 of 2007**, as:

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***“What constitutes “Sufficient Reason” is left to the court’s unfettered discretion. In this context the court will accept either a reason that presented an applicant from taking the essential step in time, or other reasons why the intended appeal should be allowed to proceed though out of time. For example an application that is brought promptly will be considered more sympathetically than one that is brought after unexplained inordinate delay. But even where the application is unduly delayed the court may grant the extension if shutting out the appeal may appear to cause injustice.”***

Regarding the pending appeal, the applicant annexed a notice of appeal to this application. The said Notice of Appeal was received by the Court of appeal. The Notice of appeal was filed within the prescribed time by the law and is therefore validly before the court of appeal.

It is therefore my considered view that this application was lodged without unreasonable delay and there was sufficient advanced by counsel for the applicant being the Covid-19 situation where courts were not working and movement was limited due to lock downs.

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The issues raised by counsel for the applicants need to be resolved by the court of appeal.

Consequently I allow this application on condition that the Applicant pays half of the taxed bill , failure of which counsel for the Respondent can effect the arrest and go ahead with the other remedies.

I so order.

Right of appeal explained.

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**OYUKO ANTHONY OJOK  
JUDGE  
16/5/2022.**