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The Republic of Uganda
High Court of Uganda Holden at Soroti
Miscellaneous Application No. 0174 of 2022

(Arising from High Court Civil Appeal No. 015 of 2018)

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(Arising from Kumi Civil Suit No. 019 of 2015 Consolidated with Civil Suit No. 05 of 2016)

(Arising from Administrative Cause No. 11 of 2016)

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- 1. Elungat Michael
- 2. Omoding Stephen
- 3. Achola Florence
- 4. Aoloi Gapito

} Applicants

Versus

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Mai Faustine Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Background:

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This application is brought by notice of motion under Order 43 rules 4(2) & (3), Order 52 rule 1, 2 & 3 of the Civil Procedure Rules, section 98 of the Civil Procedure Act, and section 33 of the Judicature Act for orders that execution of the decree in High Court Civil Appeal No. 015 of 2018 be stayed pending the hearing and determination

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5 of the applicants' appeal in the Court of Appeal and costs of this application be provided for.

2. Grounds:

The grounds of this application as set out in the application and supporting affidavit which briefly are that the applicants are not satisfied with the decision of the High
10 Court in Civil Appeal No. 015 of 2018 delivered on the 8th day of June 2022 of which they have filed an appeal against which appeal has a likelihood of success.

That the respondent has filed his bill of costs which is fixed for taxation and the that applicants shall suffer substantial and irreparable loss if this application is not granted with their appeal rendered nugatory in the event of execution prior to
15 disposal of the appeal now in the Court of Appeal.

And finally That this application has been made with unreasonable delay and it is in the interest of justice that this application is allowed.

In reply, the respondent in his affidavit stated that there are no pending applications for stay of execution in this honorable court and also that there is no eminent threat
20 of execution to warrant stay of execution which situations render this application premature.

Further that there is no substantive appeal with a likelihood of success as the purported second appeal by the applicants to the court of Appeal is erroneously filed before the 2nd appellate court based on mixed fact and law.

25 That the applicants will not suffer any substantial loss or irreparable damage except self-inflicted loss.



5 That in the event that the court deems it proper to grant this application, security for due performance of Ugx. 500,000,000/= be imposed on the applicants.

That this court should further note that the applicants do not state any willingness to deposit security for due performance as per the law.

10 In rejoinder, the applicants state that this application is not for an interim order for stay of execution but a substantive one and the law does not prevent one from applying for a stay of execution before an application for execution is made.

Further that the applicants are ready and willing to deposit security for due performance of the decree in the event that court deems it fit and but not on the amount proposed by the respondent.

15 3. Representation:

The applicants were represented by M/s Malinga, Kinyiri & Co. Advocates while the respondents were represented by M/s Odokel Opolot & co. Advocates.

4. Determination:

20 During the argument of this application which was by way of filed written submissions, Counsel for the respondent raised two preliminary points of law relating to the 1st applicant's affidavit and the pending appeal in the Court of Appeal. According to Counsel for the respondent, the 1st applicant's affidavit filed in support of this application was deposed without the express authority of the 2nd to 4th applicants and that the pending appeal offended the law governing second appeals.

25 After careful perusal of the application and the affidavits in support and against it, I have found it right that the raised objections need not be dealt with for the sole reason that this application itself has not met the prerequisites for stay of execution.



- 5 This is because, overall, the conditions that the courts do consider before allowing an application to stay execution are provided for in Order 43 rule 4(3) with the said conditions espoused in the case of *Lawrence Musiitwa Kyazze Vs Eunice Busingye, Supreme Court Civil Application No 18 of 1990* but more pronounced in the Supreme Court case of *Hon Theodore Ssekikubo and Ors Vs The Attorney General and Ors*
- 10 *Constitutional Application No 03 of 2014* and these include:
- a. The applicant must show that he lodged a notice of appeal.
 - b. That substantial loss may result to the applicant unless the stay of execution is granted.
 - c. That the application has been made without unreasonable delay.
 - 15 d. That the applicant has given security for due performance of the decree or order as may ultimately be binding upon him.

While it is clear that the applicants have filed an appeal in the Court of Appeal and this application was made without unreasonable delay, the essential element of eminent threat of execution has not been proved.

- 20 Typically, the proof of threat of execution is seen from evidence of the fact that there indeed there is a pending application for execution filed by a respondent which may result, upon its granting to substantial loss to an applicant who has filed an appeal. If that is proved then an application for stay of execution is relevant for it shows that an applicant has initiated the process of execution and that would show
- 25 that there is indeed eminent threat of execution of a decree of the court may change the *status quo* in such a manner that an appeal could be rendered nugatory if such execution is not stayed.



5 The position of the law is that once an appeal is pending and there is a serious threat of execution before the hearing of the appeal, a court would intervene to serve the purpose of substantive justice as was held in the case of *Hwang Sung Industries Ltd. vs. Tadjudin Hussein & others SCCA No. 79 of 2008*.

10 However, the general rule is that courts should not order a stay where there is no evidence of an application for execution of a decree.

See: *Baguma Paul t/a Panache Associates vs. Eng. Karuma Kagyina MA No. 460 of 2020*.

15 Consequently, I would find that since there is no application for the execution of the decree of this court pending in this court, I would deem that this application premature and is wanting of any merit and is actually a waste of the courts time. Accordingly, it is dismissed with costs.

5. Orders:

- This application is premature and lacks merit as there is no eminent threat of execution.
- 20 - This application is dismissed.
- Costs of this premature application is awarded to the respondent.

I do so order.



25 Hon. Justice Dr Henry Peter Adonyo

Judge

5th May 2023