

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT – 01 – CV – MA – 0024 OF 2023**  
**(ARISING FROM HCT – 01 – CV – CS – NO. 017 OF 2019)**  
**(ARISING FROM ADMIN CAUSE NO. 0025 OF 2019)**

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**MUZOORA BOB ::: APPLICANT**  
**VERSUS**

**KABANYOMOZI GRACE ::: RESPONDENT**  
**BEFORE: HON. JUSTICE VINCENT WAGONA**

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**RULING**

This ruling follows an application under Section 98 of the Civil Procedure Act and Order 43 rule 4 and order 52 rule 1 & 3 of the Civil Procedure Rules seeking orders:

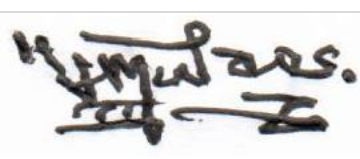
1. That the execution of the decision/decree in Civil Suit No. 17 of 2018 be stayed upon such terms and conditions as court may deem fit and proper in the circumstances of the case until disposal of the appeal filed by the appellant or until further orders.
2. That the costs of and or incidental to this application to this application abide the outcome of the appeal.

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The application is supported by the affidavit of Muzoora John Bob, the applicant herein who stated:

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1. That he instituted High Court Civil Suit No. 17 of 2019 against the Respondent seeking several declaratory orders which matter ended in favour of the Respondent. That being aggrieved by the said decision, he filed a notice of appeal and applied for a typed record of proceedings.



2. That he later filed Civil Appeal No. 208 of 2023 through the Electronic Case Management System. That the said appeal has a high likelihood of success and that it was in the interest of justice that court stays execution of the decree in Civil Suit No. 17 of 2018 pending the determination of the appeal.

5 3. That he was prepared to abide by the reasonable and lawful terms and conditions as to security for the due performance of the decree which court deems necessary for a stay.

4. That the application was brought without inordinate delay and thus the same should be granted.

10 The application was opposed by the Respondent who contended thus:

1. That the application is moot or premature as he had not commenced execution against the applicant since there is no execution application on court record. That the applicant will not suffer substantial and irreparable injury if the orders sought are not granted thus the application was speculative, unfounded  
15 with no evidence and legal basis.

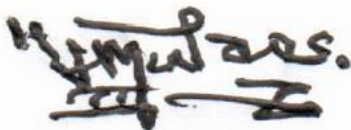
2. That the intended appeal has no likelihood of success as it is based on frivolous grounds. That the applicant's intention is to obtain the reliefs in the application, buy time and delay the implementation of the orders and prosecution of the appeal. That the applicant has not shown any sufficient  
20 cause to warrant grant of a stay and does not satisfy the grounds for a stay.

3. That in the event court is inclined to grant a stay, the applicant should be ordered to deposit security for costs.

4. That the application has no merit and the same should be dismissed with costs.

In rejoinder, Mr. Muzoora John Bob contended:

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1. That the orders in civil suit no. 017 of 2019 are self-executing and the respondent extracted a decree and the Respondent's attorneys on a number of occasions called the applicant several times threatening to execute the orders appealed against. That the Respondent also attempted on several occasions to use the orders appealed against in the criminal proceedings in the magistrate's court at fort portal.
2. That this court has no jurisdiction to inquire into the merits of the appeal.
3. That the applicant's application satisfies all the requirements for grant of a stay of execution.

10 **Issues:**

Two issues in my view are at the heart of this application thus:

1. **Whether a stay of execution of the decree in Civil Suit No. 25 of 2019 should be granted.**
2. **Remedies available to the parties.**

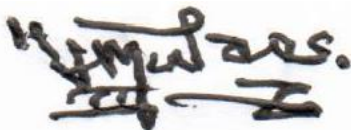
15 **Representation and Hearing:**

*Mr. Amany Joseph of M/s Moriah Advocates* appeared for the applicant while the Respondent was represented by *M/s ASAB Advocates*. Both parties proceeded by way of written submissions which I have referred to in this ruling.

20 **CONSIDERATION OF THE APPLICATION BY COURT:**

Order 43 rule 4 provides thus:

- (1) *An appeal to the High Court shall not operate as a stay of proceedings under a decree or order appealed from except so far as the High Court may order,*

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*nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the High Court may for sufficient cause order stay of execution of the decree.*

5 (2) *Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing from the decree, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.*

10 (3) *No order for stay of execution shall be made under subrule (1) or (2) of this rule unless the court making it is satisfied—*

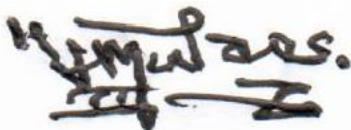
*(a) that substantial loss may result to the party applying for stay of execution unless the order is made;*

*(b) that the application has been made without unreasonable delay; and*

15 *(c) that security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.*

Therefore, an appeal does not operate as a stay of execution. A party who is desirous of staying execution must apply for the same upon proof of the conditions set out  
20 under Order 43 rule 4 (3) of the Civil Procedure Rules.

The supreme court observed in **Dr. Ahmed Muhammed Kisule Vs. Greenland Bank (in Liquidation), Supreme Court Civil Application No. 7 of 2010**, that in addition to the requirements under Order 43 rule 4( 3), there must be proof of  
25 lodgment of an appeal in the appellate court. In case of the Supreme Court, the applicant should have lodged a notice of appeal in the Court of Appeal.



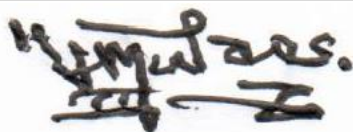
In addition to the grounds above, Justice Kakuru (RIP) **In Kyambogo University Vs. Prof. Isiah Omolo Ndiege, C.A.C.A No. 341 of 2013** observed that in application for stay the applicant must prove in addition to the above the following grounds: **(a) That there is a serious and imminent threat of execution of the decree or order and (b) That refusal to grant the stay would inflict greater hardship than it would avoid.**

In summary, the applicant in an application for stay of execution must prove the following:

- (1) That there is proof of lodgment of an appeal or proceedings that seek to challenge the decree or order sought to be executed.
- (2) That there is a serious and imminent threat of execution of the decree or order.
- (3) That substantial loss may result to a party applying if a stay is not granted.
- (4) That the refusal to grant a stay would inflict greater hardship than it would avoid.
- (5) That the application was brought without inordinate delay and
- (6) That security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon the applicant.

I will thus proceed to consider the application guided by the above principles

- (1) Proof of lodgment of an appeal or proceedings that seek to challenge the decree or order sought to be executed.**

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It was submitted for the Applicant that he had lodged a notice of appeal and a memorandum of appeal. The applicant attached both the notice of appeal and the memorandum of appeal.

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I have perused the record and found a copy of the notice of appeal lodged in the registry of this court and duly served upon the Respondent's lawyer who received it in protest on 18<sup>th</sup> November 2022. There is equally a memorandum of appeal on record lodged by the applicant. It is also not opposed by the Respondent that the applicant lodged a notice of appeal and a memorandum of appeal. Therefore, there is proof of lodgment of an appeal by the applicant.

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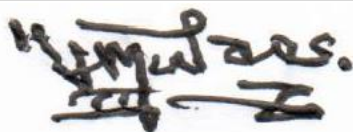
**(2) That there is a serious and imminent threat of execution of the decree or order.**

Learned counsel for the applicant contended that the orders issued by court in Civil Suit No. 17 of 2019 are self-executing and there is imminent threat of execution. That the applicant was served with a copy of the decree and several calls have been made to him by the Respondent's attorneys inviting him for a DNA. It was submitted that there are also criminal proceedings in the Chief Magistrate's court of Fort Portal which constitute a threat of execution.

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In response counsel for the Respondent contended that there is no threat of execution. Counsel argued that in **Kyambogo University Vs. Prof. Isiah Omolo Ndiege, Civil Application No. 341 of 2013**, the court of appeal emphasized that the applicant must prove an imminent or serious threat of execution. Learned counsel

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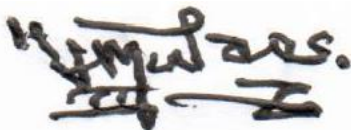
contended that the Respondent has not made any effort to execute the decree of court and thus the application for stay of execution made by the applicant is speculative, unfounded with no evidence or legal basis.

I have considered the submissions of the parties, the record of court in Civil Suit No. 5 17 of 2019 and the applicable law. The main import of a stay is to avert any threat of execution against a party who has challenged the decision of court sought to be executed. A stay is meant to offer temporary protection to a party seeking to challenge the order so that he or she can prosecute the appeal without a threat of execution. Therefore, before a stay is granted, the applicant shoulders the legal and 10 evidential burden to prove and place evidence before court pointing to an imminent threat of execution.

A stay of execution should not be granted as a matter of course. It is not automatic that once a person appeals then they are entitled to an order of stay of execution. A 15 stay of execution as the word sounds means to temporarily suspend the enforcement of an order whose implementation has been commenced. Therefore, there must be effort to execute the orders or decree of court which is challenged on appeal.

In this case, court issued the following orders:

1. *That the case is dismissed.*
- 20 2. *That the family resolutions including conducting a DNA paternity test on Muzoora John Bob, the plaintiff to ascertain his paternity by Muhindu Sebastian should be adhered to and the proper procedure for obtaining the letters of administration should be followed.*

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3. *An injunction doth issue restraining any person from intermeddling with the estate of the late Muhindu Sebastian until an administrator is appointed by court to administer the said estate.*

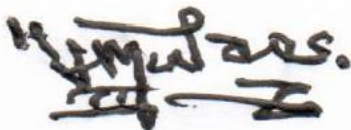
4. *Administration Cause No. 28/2019 is hereby struck out on grounds that the signature of the defendant was forged.*

5. *That each party shall bear their own costs*

There is no evidence that the respondent has taken any steps to have the orders of court executed. The only evidence is that the applicant only extracted a decree. Whereas extraction of a decree is part of the execution process, there is no evidence that there is an imminent threat of its execution. There is no sufficient evidence that specific steps and actions have been taken to have the decree executed. There is nothing on record to suggest that the Respondent commenced execution proceedings against the Applicant. There is no application for orders or any other prayers made by the Respondent to put into effect the decree of court in Civil Suit No. 017 of 2019 and thus a stay of execution in the circumstances is speculative.

The applicant also contended that he has on several occasions been called by the Respondent's lawyer to go for a DNA and that this poses a threat of execution. I am not convinced that there was such call. The Applicant did not state who called him and when it was. I find this more speculative and not grounded in evidence. I am not moved to the required standard to accept the analogy put forward by the applicant.

I find that it is not sufficiently demonstrated to court that there is a serious and imminent threat of execution of the decree or order. After making this finding, I find

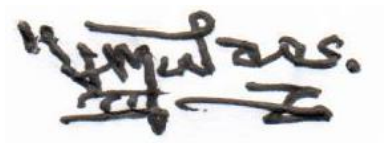




it unnecessary to delve into the remaining requirements. In conclusion I find that the applicant has not proved his application to the required standard and it fails. I therefore hereby dismiss this application with costs awarded to the Respondent.

5 It is so ordered.

**Dated at High Court Fort-portal this 31<sup>st</sup> day of May 2023.**



31.05.2023

10 Vincent Wagona

**High Court Judge**

**FORT-PORTAL**

