

5                                   **THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT GULU**

10                           **MISCELLANEOUS APPLICATION NO. 293 OF 2022**  
                          **(ARISING FROM MISC. APPLICATION NO. 234 OF 2022)**  
                          **ITSELF ARISING FROM CIVIL APPEAL NO. 43 OF 2022**

15                   **OYAT TOO-LIT.....APPLICANT**

**VERSUS**

20                   **1. OKIYA GEORGE**  
                          **2. ONEN RICHARD**  
                          **3. ONONO**  
                          **4. ATON (OLOYA ANTHONY).....RESPONDENTS**

25                           **BEFORE: HON. MR. JUSTICE GEORGE OKELLO**

30                                   **RULING**

                  The Applicant by Motion seeks for the setting aside of the Ruling of the  
Deputy Registrar of this Court, given on 10<sup>th</sup> November, 2022, in which it  
35   is claimed that, the Deputy Registrar granted an order of stay of execution  
of the order of the Magistrate Grade One, pending appeal to the High  
Court. The lower court order was given in Misc. Application No. 009 of  
2022. The Applicant prays for costs of this application. The Respondents  
apparently sought, vide Miscellaneous Application No. 234 of 2022, and  
40   obtained from the Deputy Registrar of Court, an order of stay of execution



5 of the Orders of the lower court. The Order of the lower court which was  
stayed has since been appealed to this court *vide* Civil Appeal No. 43 of  
2022. The Applicant's grievance is that the Deputy Registrar entertained a  
stay of execution application when no appeal was lodged in this court and  
therefore, the Respondents had no right to seek a stay of execution of the  
10 lower court order. That, in any case, there was no threat of execution of  
the lower court order as no notice to show cause had been issued against  
the Respondents. The Applicant also avers that Civil Appeal No. 43 of 2022  
lodged by the Respondents in the High Court was lodged without leave of  
the lower court, so the Deputy Registrar was wrong to entertain a stay of  
15 execution application. The Applicant also alleges that the Affidavit in  
support of the stay of execution application was defective as the deponent  
lacked the requisite authority by the other respondents. He also averred  
that, one of the Respondents was deceased at the time the stay of  
execution application was entertained. That, the Deputy Registrar ignored  
20 several preliminary objections raised by the Applicant. That, the Deputy  
Registrar erred in not ordering for deposit of security for costs, and that,  
the stay of execution order was open ended, and therefore, ought to be set  
aside or reviewed, with costs.

25 The Application was opposed by the 1<sup>st</sup> Respondent. In his affidavit, he  
claimed the Motion was served late, and thus incurably defective. He  
responded that he sought leave to appeal the orders and ruling of the lower



5 court from the High Court, the lower court having declined leave. That,  
leave from the High Court was combined with the application for stay, and  
the Deputy Registrar granted both. That, the Deputy Registrar did not err  
in law but complied with the law to grant stay of execution, and duly  
entertained it since there is a pending appeal. That, his initial leave to  
10 appeal and the initial application for stay of execution was refused by the  
lower court, hence the Respondents had to pursue them in the High Court,  
which were entertained by the Deputy Registrar. The Respondent deposed  
that he swore affidavit in support of the stay of execution application in  
his own right and not on behalf of the co-respondents, and that, at the  
15 time the Respondents filed their defence in the lower court, the fourth  
respondent was still living. That, the Deputy Registrar exercised his  
discretion not to order for security for costs.

When the application came before me for hearing on 5<sup>th</sup> May, 2023, Mr.  
20 Nicholas Atuhairwe appeared for the Respondents, while no advocate  
appeared for the Applicant. The Applicant was also absent, however, the  
1<sup>st</sup> and 2<sup>nd</sup> Respondents were in court. It was reported that the 3<sup>rd</sup>  
Respondent is deceased, while the 4<sup>th</sup> Respondent was absent.

25 Court noted that the Application was drawn by M/s Kunihiro & Co.  
Advocates. Court, therefore, directed the Respondents' counsel to serve the  
Applicant's advocates with the order regarding the filing of submissions.



5 The order was extracted by the Respondents' counsel and I believe it was served. The Applicant was to lodge submission and serve by 19<sup>th</sup> May, 2023, while the Respondents would file and serve by 2<sup>nd</sup> June, 2023. Rejoinder, if any, would be lodged and served by the Applicant by 9<sup>th</sup> June, 2023. The Ruling was fixed for 13<sup>th</sup> July, 2023.

10

The Applicant's counsel did not comply. I think because of their inaction, the Respondents' counsel also saw no point in filing submissions. Conduct such as these, with respect, are unacceptable in our noble profession.

15 Be that as it may, I have perused the Motion and the affidavit in support, and the affidavit in reply. I must express my disappointment with the manner in which the Motion and its supporting affidavit was prepared. The court documents contain several errors and contradictory depositions. For instance, the order of the Magistrate Court which was stayed, is stated  
20 to have been issued in Misc. Application No. 009 of 2022. Elsewhere, it is claimed that, the order was issued in Misc. Application No. 009 of 2020. Unfortunately, a copy of the order of the lower court was not attached to the affidavit. Turning to the impugned order of the Deputy Registrar, neither it nor the ruling, were attached to the affidavit in support of this  
25 application. The Applicant also makes reference to Civil Suit No. 060 of 2014 in the Chief Magistrates Court, and deposed that, there was no appeal against a ruling in that suit. The Applicant thus created more



5 confusion in the mind of this court, as to the relevance of some information contained in its pleading which remained incomplete. The Applicant also claims that the Respondents never appealed to the High Court. However, a copy of the memorandum of appeal in civil appeal no. 43 of 2022 is attached to the 1<sup>st</sup> Respondent's affidavit in reply.

10

It seems to me that, whereas some of the Applicant's grievances would have been meritorious had the case been well packaged, this court, with respect, has been deprived of supporting documents, to back the complaints. As noted, the impugned Ruling and Order of the Deputy Registrar are not attached to the Motion. This court cannot, therefore, purport to determine an appeal against the decision of the Deputy Registrar when it has been deprived of relevant information by the Applicant. It is possible that the Applicant expected court to trace for the case file completed by the Deputy Registrar, and interrogate and fill the gaps in the Applicant's case. I am afraid, that is not the duty of this court.

20 The proceedings of this nature does not require this court to take that course. This is not revision proceeding in which court would call for the record, if it were dealing with decision of a Magistrate court. On the contrary, the appeal is against the decision of the Deputy Registrar of court, under Order 50 rule 8 of the CPR. The onus was thus on the Applicant to supply the impugned ruling and order, and all necessary



5 material, such as the pleadings lodged before the Deputy Registrar, which informed the impugned order, among others.

The foregoing aside, I have also noted that, the present Motion was lodged on 28<sup>th</sup> November, 2022, yet the Applicant pleaded that the impugned  
10 Ruling and Order was given on 10<sup>th</sup> November, 2022. The Motion was therefore, lodged outside the seven days provided for appealing the Registrar's order, under 79 (1) (b) of the Civil Procedure Act Cap. 71. It has not been shown here that, a bit of time was taken by the Deputy Registrar in making a copy of the Order and proceedings. As observed, the impugned  
15 order is not attached, and neither is the Ruling or any proceedings on which this application is predicated. There is no certificate or any document whatsoever, showing that, about eighteen days had to be excluded, for the purposes of computing the seven days within which the Motion ought to have been lodged. In this case, the Motion ought to have  
20 been filed not later than 17<sup>th</sup> November, 2022 but it was lodged on 28<sup>th</sup> November, 2022.

Given that this court is deprived of the material upon which to proceed to determine the merit of the Application, and owing to the fact that the  
25 Application was lodged late, and no valid explanation was proffered, the Application is accordingly struck out under section 98 of the Civil Procedure Act, for being incompetent. The Respondent is awarded costs of

5 the Application. To avoid potential abuse of the process of court, I order  
that Civil Appeal No. 43 of 2022 between the parties be fixed for hearing  
immediately after this court vacation.

10 It is so ordered.

Delivered, dated and signed in Court this 13<sup>th</sup> day of July, 2023

*George Okello* 13/7/2023

15 George Okello  
JUDGE HIGH COURT



5 Ruling delivered in open Court

12:02pm

13<sup>th</sup> July, 2023

10

**Attendance**

Ms. Grace Avola, Court Clerk.

Mr. Nicholas Atuhairwe, Counsel for the Respondents.

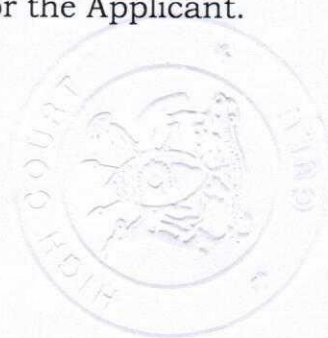
1<sup>st</sup> and 3<sup>rd</sup> Respondents in Court.

15 Mr. Okot Douglas Odyek, Counsel for the Applicant.

The Applicant in Court.

The 2<sup>nd</sup> Respondent absent.

The 4<sup>th</sup> Respondent is deceased.



20

*George Okello* 13/7/2023

George Okello  
JUDGE HIGH COURT