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The Republic of Uganda  
In the High Court of Uganda Holden at Soroti  
Miscellaneous Application No. 72 of 2022

*(Arising from Civil Appeal No. 7 of 2017)*

*(All arising from Civil Suit No. 11 of 2016 of the Chief Magistrate's Court of Kumi at Kumi)*

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The Registered Trustees of Church of Uganda, Kumi Diocese ::::::::::: Applicant  
Versus  
Apio Anna Betty ::::::::::: Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Background:

20 The respondent instituted Civil Suit No. 11 of 2016 against the applicant in the  
Chief Magistrate's Court of Kumi at Kumi for a declaration that the respondent is  
the lawful owner of the suit land measuring approximately 33 gardens situated  
at Oleicho village, Mukongoro sub-county in Kumi district and judgement was  
entered against the applicant on 11<sup>th</sup> October 2017.

The applicant appealed the said judgement to the High Court vide Civil Appeal  
No. 71 of 2017 and the appeal failed on all grounds and was dismissed with costs,  
25 both in the High Court and the lower court and the judgement and orders of the  
learned trial Magistrate Grade One upheld.

The applicant is disgruntled with the decision of the High Court of Uganda holden  
and is said to have filed a notice of appeal in this court with the intention to  
appeal to the Court of Appeal.

5 This instant application is brought by way of a Notice of Motion under Section 98 of the Civil Procedure Act, Cap 71, Order 22 Rule 23 (1) and Order 50 Rule 3 of the Civil Procedure Rules SI 71-1 for orders that;

10 a) A stay of execution/ injunction to maintain the status quo be granted for the judgement and orders in Apio Anna Betty versus The Registered Trustees of Church of Uganda – Kumi Diocese, Civil Suit No. 11 of 2016 of the Chief Magistrate’s Court of Kumi at Kumi pending disposal of the appeal at the Court of Appeal.

b) Costs of this application be provided for.

2. Grounds of this Application:

15 The grounds of the application set out in the application and supporting affidavit deposited by Rev Omoding Simon Peter, the Diocesan Secretary of the Church Land Committee, are briefly that;

20 a) The applicant is disgruntled with the decree/order vide Civil Suit No. 11 of 2016 of the Chief Magistrate’s Court of Kumi at Kumi, and the appellate decision of the High Court vide Civil Appeal No. 71 of 2017, which it has appealed vide Civil Appeal No. 205 of 2022 of the Court of Appeal. **(A copy of the notice of appeal lodged in this court on 25<sup>th</sup> May 2022 is attached and marked “A”)**

25 b) The applicant has filed a Memorandum of Appeal in the Court of Appeal vide Civil Appeal No. 176 of 2022 against the decision of this court vide HCCA No. 71 of 2017. **(A copy of the Memorandum of Appeal vide 205 of 2022 in the Second Appeal received in this court on 25 May 2022 is attached and marked as “B”).**

30 c) The respondent has taken steps to proceed and execute the said judgement of the High Court by setting up structures on the suit land and destroying crops grown by the applicant’s staff members thereon. (a

5           copy of the photo of the permanent structure is attached hereto marked as "C")

- d) The respondent is also in the process of setting up a second structure on the suit land, which is being built. **(A copy of the second structure is attached and marked as "D")**
- 10       e) The respondent has set up a road passing through the suit land to inconvenience the students in the church school and the staff members resident on the suit land. **(A copy of the photo showing the setup road passing through the suit land is attached and marked "E").**
- 15       f) The respondent has also gone ahead to trespass on land that was not included in the suit judgement claiming that the court has granted her the said land.
- g) The applicant's lawyers advised that the respondent's actions of utilising the suit land will have the effect of rendering the appeal nugatory and of no effect.
- 20       h) The intended appeal has a high likelihood of success, and the stay of execution will safeguard the applicant's right to appeal.
- i) The applicant will suffer irreparable and substantial loss if the stay of execution is not granted pending the hearing and determination of the appeal.
- 25       On the other hand, the respondent filed an affidavit in reply opposing the application on the grounds that;
- a) The respondent emerged as a victor in HCCA No. 71 of 2017, which confirmed the decision, orders, and judgement vide Civil Suit No. 11 of 2016 of the Chief Magistrate's Court of Kumi at Kumi.



- 5 b) I have never been served with a Notice of Appeal, including the Memorandum of Appeal, which I surprisingly received in the afternoon of 1<sup>st</sup> June 2022 from my agent, Adong Esther.
- 10 c) I clearly demarcated a road on the suit land to separate Oleicho Primary School and Oleicho Church of Uganda, the staff quarters including the toilets, kitchen, the newly constructed Health Center and football pitch, among others.
- 15 d) Following the decision, orders and decree of the Magistrate's court and this court, the bailiff was instructed by warrants to demarcate and give vacant possession of land by the Chief Magistrate, Kumi, which he did with the help of the District Police Commander of Kumi, the Security Committee headed by the Resident District Commissioner of Kumi which were all done in the presence of many people.
- 20 e) I was advised by my lawyers that besides the question of saving a life, I should halt any form of activity on the suit land granted that the applicant had a leeway to appeal to the High Court within thirty days, the expiry of which I would be free to continue with the developmental activities on the land. **(Copies of the development I did on the land and continue to do so are attached hereto and marked collectively as "CC")**
- 25 f) I did exactly what I was advised and thereby refrained from undertaking any form of activity on the suit land, but I have proceeded to develop my land measuring thirty-three gardens and continue to do so up to the present day together with my family members and clan mates.
- g) I am also doing the cultivation of seasonal crops for survival, including rearing and breeding of animals such as goats, cattle and hens.
- 30 h) The applicant's agents were given clearances by the High Court to harvest their crops then growing on the suit land within two weeks when

5 the Honourable Judge vide HCCA No. 71 of 2017 visited locus in quo on  
8<sup>th</sup> June 2018, and which they did through their servants, agent and  
workers mostly teachers and church men two years ago hence their  
allegation that they have crops in the suit land is false, baseless and lacks  
merit.

10 i) I have been advised by my lawyers that the conduct of the applicant  
through their representatives, especially the Bishop, in refusing to have  
an audience with me before the institution of Civil Suit No. 11 of 2016 in  
the Magistrate's Court, deliberately defaulting in filing a defence in the  
said court in time and now also deliberately filing this application two  
15 years later beyond the mandatory statutory thirty days period clearly  
amount to an abuse of court process which they deserve punishment.

j) I have been advised by my lawyers that execution was ordered and fully  
finalised by the bailiff of the court, and I am currently doing all sorts of  
activities on the suit land; there is nothing more to execute. Hence this  
20 application has been overtaken by events and is not sustainable. **(copies  
of documentation to this effect are attached and collectively marked as  
"ZZ")**

k) My lawyers advised me that the intended appeal has no likelihood of  
success and no deserving grounds to stay execution has been averred.

25 l) My lawyers have advised me that the applicant shall not suffer any  
irreparable damage if this application for a stay of execution is denied.

m) I have had the benefit of being served with documents pertaining to this  
application only recently, on 1<sup>st</sup> June 2022, after two years from the time  
of passing the Judgement of the High Court.

30 n) In the event this Court is inclined to grant this application, the applicant  
should be conditioned to deposit in court security for costs of a proposed

5 sum of UGX 800,000,000 reflecting the value of the suit land – thirty-  
three gardens and taxed bill of costs of the lower and High Court.

3. Representation:

The applicant is represented by M/s E. Wamimbi Advocates and Solicitors,  
whereas the respondent is represented by M/s Mungao and Company  
10 Advocates.

4. Submissions:

Only the applicant filed its submissions. The respondent was served with the  
applicant's submissions which was acknowledged on 10/01/2023 as is evidenced  
by an affidavit of service deposed by one Apio Pamela on 10/01/2023 and filed in  
15 this court on 22<sup>nd</sup> February 2023.

The applicant's submissions together with this application and the grounds in  
support and against are considered accordingly.

5. Issues:

a) Whether there is a proper case for grant of an order for a stay of  
20 execution?

b) What are the remedies to the applicant in the circumstances?

6. Resolution:

The applicant brought this application under Section 98 of the Civil Procedure  
Act, Cap 71 (CPA), which provides for the inherent powers of this court to make  
25 such orders as may be necessary for the ends of justice or to prevent abuse of  
the process of the court.

The applicant further cites Order 43 Rules 4 (1) of the Civil Procedure Rules, which  
provides for a stay by the High Court states that;

**An appeal to the High Court shall not operate as a stay of proceedings under a  
30 decree or order appealed from except so far as the High Court may order, nor shall  
execution of a decree be stayed by reason only of an appeal having been preferred**



5 from the decree; but the High Court may for sufficient cause order stay of execution of the decree.

The position of the law is that the duty and burden of proof in an application like the instant one lies on the applicant because it the one which is seeking to have a decision of this court made in its favour. (See: Sections 101 and 102 of the  
10 Evidence Act, Cap 6).

This application is thus examined to determine whether it raises fundamental reasons which are in consonance with the law as to why it should be granted as prayed by the applicant.

a) Whether there is a proper case for grant of an order for a stay of  
15 execution?

This is an application for the grant of an order for a stay of execution. The grounds upon which this application is anchored upon arises from the judgement and orders made against the applicant in Civil Appeal No. 07 of 2017 and Civil Suit No. 11 of 2016.

20 In the case of ***Lawrence Musiitwa Kyazze vs Eunice Busingye SCCA No. 18 of 1990*** it was held that an applicant who is applying to court for orders of stay of execution must fulfill the following grounds;

- 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  
25 execution is granted.
- c) That the application has been made without unreasonable delay.
- d) That the applicant has given security for the due performance of the decree or order as may ultimately be binding upon him.

The above grounds were reiterated by the Supreme Court decision in the case of  
30 ***Hon Theodore Ssekikubo and ors vs The Attorney General and ors Constitutional***

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5 **Application No. 3 of 2014** with The Court of Appeal in the case of **Kyambogo University vs Prof Isaiah Omolo Ndiege CACA No. 341 of 2013** extending the list of the grounds to include;

- 10 a) That there is a serious or imminent threat of execution of the decree or order, and if the application is not granted, the appeal would be rendered nugatory.
- b) That the application is not frivolous and has a likelihood of success.
- c) That the refusal to grant the stay would inflict more hardship than it would avoid
- d) The Applicant must show that he lodged a notice of appeal.

15 Arising from the above, therefore, this application is examined to find out whether has the grounds which establishes the need for the grant or not of a stay of execution as prayed by the applicant.

i. The applicants must show that they lodged a Notice of Appeal:

20 In the applicant's affidavit it is stated that a notice of appeal was lodged in this court on 25<sup>th</sup> May 2022 against the appellate decision of this Court vide Civil Appeal No. 71 of 2017.

The applicant also states that it has filed a Memorandum of Appeal in the Court of Appeal vide Civil Appeal No. 205 of 2022 against the decision of this court in HCCA No. 71 of 2017. **(A copy of the Memorandum of Appeal in the Second Appeal**  
25 **received in this court on 25 May 2022 is attached to the affidavit and marked as "B").**

The respondent, in reply contends that she has never been served with a Notice of Appeal, including the Memorandum of Appeal, which she surprisingly received in the afternoon of 1<sup>st</sup> June 2022 from her agent, one Adong Esther.



5 Counsel for the applicant submits that there is no contestation whatsoever by the respondent that the applicant is disgruntled with the decree/order vide Civil Suit No. 11 of 2016 of the Chief Magistrate's Court of Kumi at Kumi, and the appellate decision of this Court vide Civil Appeal No. 71 of 2017 which it has appealed vide Civil Appeal No. 205 of 2022 of the Court of Appeal.

10 In the case of *Attorney General of the Republic of Uganda versus the East African Law Society and Anor EACJ Application No. 1 of 2013*, which was cited with approval in *Equity Bank (U) Ltd vs Nicholas Were Misc Application No. 604 of 2013*, it was held that;

15 *"A notice of appeal is a sufficient expression of an intention to file an appeal and that such an action is sufficient to found the basis for grant of orders of stay in appropriate cases."*

I have had a look at the notice of appeal marked as "A"; it is dated 2<sup>nd</sup> September 2020, and it was lodged in this court on 7<sup>th</sup> September 2020. The receipt and existence the notice of appeal marked as "A is thus proved by the applicant.

20 ii. *That substantial loss may result to the Applicants unless the stay of execution is granted*

The applicant deposed in his affidavit in support that it will suffer irreparable and substantial loss if the stay of execution is not granted pending the hearing and determination of the appeal. To this end, the applicant averred that;

25 a) The respondent has taken steps to proceed and execute the said judgement of the High Court by setting up structures on the suit land and destroying crops grown by the applicant's staff members thereon. (a copy of the photo of the permanent structure is attached hereto marked as "C")

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5        b) The respondent is also in the process of setting up a second structure on  
the suit land, which is being built. **(A copy of the second structure is  
attached and marked as "D")**

10       c) The respondent has set up a road passing through the suit land to  
inconvenience the students in the church school and the staff members'  
resident on the suit land. **(A copy of the photo showing the setup road  
passing through the suit land is attached and marked "E").**

d) The respondent has also gone ahead to trespass on land that was not  
included in the suit judgement claiming that the court has granted her  
the said land.

15    In reply, the respondent contends that;

a) His lawyers have advised her that the applicant shall not suffer any  
irreparable damage if this application for a stay of execution is denied

20       b) The respondent emerged as a victor in HCCA No. 71 of 2017, which  
confirmed the decision, orders, and judgement vide Civil Suit No. 11 of  
2016 of the Chief Magistrate's Court of Kumi at Kumi.

c) She clearly demarcated a road on the suit land to separate Oleicho Primary  
School and Oleicho Church of Uganda, the staff quarters including the  
toilets, kitchen, the newly constructed Health Center and football pitch,  
among others.

25       d) She did exactly what was advised and thereby refrained from undertaking  
any form of activity on the suit land, but she has proceeded to develop her  
land measuring thirty-three gardens and continues to do so up to the  
present day together with her family members and clan mates.

30       e) She is also cultivating seasonal crops for survival, including rearing and  
breeding of animals such as goats, cattle and hens.

5 f) The applicant's agents were given clearances by the High Court to harvest  
their crops then growing on the suit land within two weeks when the  
Honourable Judge vide HCCA No. 71 of 2017 visited locus in quo on 8<sup>th</sup> June  
2018, and which they did through their servants, agent and workers mostly  
10 teachers and church men two years ago hence their allegation that they  
have crops in the suit land is false, baseless and lacks merit.

In the case of *Eriab Kabigiza vs Lawrence Sserwanja [1975] HCB 199*, it was held  
that;

15 *"The main criterion for staying execution should be whether the judgement  
debtor would suffer substantial loss if the decree were executed,  
notwithstanding that the decree might subsequently be set aside."*

Also, in the case of *Tropical Commodities Supplies Ltd and others vs International  
Credit Bank Ltd (in liquidation) [2004] 2 EA 331* it was observed that *"substantial  
loss does not represent any particular size or amount but refers to any loss, great  
or small that is of real worth or value as distinguished from a loss that is merely  
20 normal."*

In this instant case, the respondent was declared owner of the suit land vide Civil  
Suit No. 11 of 2016 of the Chief Magistrate's Court of Kumi at Kumi, and even  
after the applicant appealed to this court vide HCCA No. 71 of 2017, this Court  
dismissed the appeal and confirmed the decision, orders, and judgement of the  
25 lower court.

It should be noted that ordinarily, a court of law does not, without good reason,  
delay a successful party from enjoying the fruits of his or her judgement (see  
*Membe vs Mayoga [2009]1 HCB 82*; however, a court may be moved by a party  
to halt the execution process.



5 In this instant application upon the perusal of the file, I note that the execution process is complete which means that there is nothing for this Honourable Court to stay and so on a balance of probabilities, I find and hold that the applicant has not proved this ground to the required standard.

10       iii. There is a serious or imminent threat of execution of the Decree or order, and if the Application is not granted, the Appeal would be rendered nugatory.

The applicant states that the respondent has taken steps to proceed and execute the judgement and orders of the High Court by setting up structures on the suit land and destroying crops grown by the applicant's staff members thereon. (A  
15 **copy of the photo of the permanent structure is attached hereto marked as "C").**

The applicant further states that the respondent is also in the process of setting up a second structure on the suit land, which is being built. (A **copy of the second structure is attached and marked as "D").**

In addition, the applicant avers that the respondent has set up a road passing  
20 through the suit land to the inconvenience of the students in the church school and the staff members resident on the suit land. (A **copy of the photo showing the setup road passing through the suit land is attached and marked "E").**

The respondent on the other hand bunks the contention of the applicant when in reply to this application she states that ds in reply that;

25       a) She emerged as a victor in HCCA No. 71 of 2017, where this Court confirmed the decision, orders, and judgement vide Civil Suit No. 11 of 2016 of the Chief Magistrate's Court of Kumi at Kumi.

b) She clearly demarcated a road on the suit land to separate Oleicho Primary School and Oleicho Church of Uganda, the staff quarters including the

5 toilets, kitchen, the newly constructed Health Center and football pitch, among others.

c) Following the decision, orders and decree of the Magistrate's court and this court, the bailiff was instructed by warrants to demarcate and give vacant possession of land by the Chief Magistrate, Kumi, which he did with the help of the District Police Commander of Kumi, the Security Committee  
10 headed by the Resident District Commissioner of Kumi which were all done in the presence of many people.

d) She did exactly what she was advised and thereby refrained from undertaking any form of activity on the suit land, but has now proceeded to develop her land measuring thirty-three gardens and continues to do so  
15 up to the present day together with my family members and clan mates.

e) She also does the cultivation of seasonal crops for survival, including rearing and breeding of animals such as goats, cattle and hens.

f) Her lawyers advised her that execution was ordered and fully finalised by the bailiff of the court and that the respondent is currently doing all sorts  
20 of activities on the suit land; there is nothing more to execute.

The respondent further contends that this application has been overtaken by events and as such is not sustainable. (copies of documentation to this effect are attached and collectively marked as "ZZ").

25 For a court to make a finding that there is indeed a serious or imminent threat of execution of the court's decree or order, the case of *Hwang Sung Industries Ltd vs Tadjin Hussein [2008] ULR 310* is instructive for it emphasises the requirement of serious imminent threat thus;

30 *"For a stay of execution to be granted, there should be a serious threat of execution before the hearing of the main application."*



5 In this application, the record of proceedings shows that there is attached an execution report arising which was filed at the Chief Magistrate's Court of Kumi at Kumi on 21<sup>st</sup> December 2021. The said report details how the execution in Civil Suit No. 011 of 2016 was carried out. The implication of the filing of that report is that the process of execution is complete and so there is no longer a serious or  
10 imminent threat of execution of the decree or order of this or any other court as the same is now a *fait accompli*.

There is thus no order to stay with the status quo being that it is the respondent who is now the one on the suit land. The ground that there is a serious or imminent threat of execution of the decree or order and if the Application is not  
15 granted, the intended Appeal would be rendered nugatory fails.

iv. The application has not been made without unreasonable delay:

The applicant did not make any arguments in respect of this ground. On the other hand, the respondent, however by paragraph 15 of her affidavit in reply contends that she was served with documents pertaining to this application on 1<sup>st</sup> June  
20 2022, which was two years from the time of passing the judgement of the High Court which was thus late.

In the case of *Ujagar Singh vs Runda Coffee Estates Ltd [1966] EA 263*, Sir Clement De Lestang, Ag. V.P stated;

25 *...it is only fair that an intended appellant who has filed a notice of appeal should be able to apply for a stay of execution... as soon as possible and not have to wait until he has lodged his appeal to do so. Owing to the long delay in obtaining the proceedings of the High Court it may be many months before he could lodge his appeal. In the meantime, the execution of the decision of the court below could cause him irreparable loss. (emphasis mine)*



5 The perusal of the record show that judgement in relations Civil Appeal No. 71 of  
2017 which dismissed the appeal and upheld the judgment and orders of the trial  
magistrate in Civil Suit No. 11 of 2016 was entered on 31<sup>st</sup> August 2020 and a  
decree extracted on 27<sup>th</sup> April 2022. While a notice of appeal was filed on 7<sup>th</sup>  
September 2020 and this instant application was filed in this court on 26<sup>th</sup> May  
10 2022.

In all these, there were 633 days, or one year, eight months, and 26 days' difference which evidently according to the holding in *Ujagar Singh vs Runda Coffee Estates Ltd* (cited above) cannot be said to show actions taken "*as soon as possible*". Why did the applicant delay to file the instant application? It has not  
15 furnished any reason. The applicant does not even give reasons as to why such underlying delay occurred and so since there are no provided reasons for the delay in the filing this application, it is my finding that the instant application was made with unreasonable delay. Therefore, the applicant has failed to satisfy this ground which also fails.

20 b. What remedies are available to the applicant in the circumstances?

Form the record, it is clear that the execution of the orders of this court arising from Civil Suit No. 011 of 2016 and HCCA No. 71 of 2017 was filed in the Chief Magistrate's Court of Kumi at Kumi on 21<sup>st</sup> December 2021 and it details how the execution was carried out. This means that execution in this case is complete and  
25 the respondent is occupying the suit land.

Furthermore, I have established that the applicant did unreasonably delay in filing this application. Those facts being so, I would fond and conclude that there would be no more need even to try to resolve on the issues of whether or not this application is frivolous, or whether it has the likelihood of success of the appeal  
30 or even whether or not the applicant should pay security for costs.

5 This is because doing so would be seen as conflicting and diverging from the clear and existing facts that in actual fact there is no anymore any order of execution to be stayed since there is already on record a report showing that execution is complete as an order of stay of execution only operates to prevent a judgement creditor from putting into operation the legal process of execution.

10 Besides, according to the holding in the case of *Wilson Mukiibi vs James Semusambwa Supreme Court Civil Application No. 9 of 2003*;

15 *"It is trite that an intention to appeal per se is not a ground for a stay of execution and instituting an appeal does not operate as a stay of execution. A party seeking a stay of execution must satisfy the court that there is sufficient cause why the party with judgment should postpone the enjoyment of its benefits. It is not sufficient for the judgment debtor to say that he is vulnerable because the successful party may take out execution proceedings...."*

20 Therefore, since the applicant has failed to show that there is an order of court which should be stayed then no remedies would accrue to it in the circumstances.

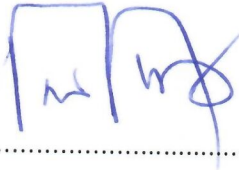
7. Conclusion:

The applicant made this application for two orders;

- 25 a) A stay of execution/ injunction to maintain the status quo be granted for the judgement and orders in Apio Anna Betty versus The Registered Trustees of Church of Uganda – Kumi Diocese, Civil Suit No. 11 of 2016 of the Chief Magistrate's Court of Kumi at Kumi pending disposal of the appeal at the Court of Appeal.
- b) Costs of this application be provided for.

5 The applicant, however, has failed to prove that there is any existing court needing to be stayed. That fact alone makes this application to be clearly misconceived and it shows lack seriousness on the part of the applicant. This application is clearly an abuse of the court process as it lacks any merit. It is dismissed with costs to the respondent.

10 I so order



Adonyo, J

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

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