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**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT GULU  
MISCELLANEOUS APPLICATION NO. 01 OF 2023  
(ARISING FROM MISC APPL. NO. 142 OF 2022)**

10

**KAGGWA MICHAEL..... APPLICANT**

**VERSUS**

**APIRE JOHN..... RESPONDENT**

15

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

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**RULING**

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The Applicant seeks for this Court’s exercise of its review powers under section 82 of the Civil Procedure Act (CPA), Order 46 of the Civil Procedure Rules (CPR), S.I 71-1 and section 98 of the CPA. The Applicant is aggrieved with the order of the Deputy Registrar of Court, given on 14<sup>th</sup> July, 2022 in Miscellaneous Application No. 142 of 2022, where the Learned Deputy Registrar ordered for stay of execution of the Decree of the Court given in Civil Appeal No. 126 of 2019 (Mubiru, J.) as well as the Decree given in Civil Suit No. 25 of 2016 of the Magistrate Grade One Court (Amuru) which this Court had already set aside *vide* the above decree.



5 The main contention of the Applicant is that the Learned Deputy Registrar stayed the Decree of the Learned Judge without jurisdiction. There are further a litany of complaints which I will only summarize, but will not resolve, as they are not for this Court, but the Court of Appeal. The complaints gravitate around  
10 the allegation that the Deputy Registrar acted on an expired Notice of Appeal, purported to have been lodged against the decree of the Learned Judge. The Applicant also contends that the Notice of Appeal was lodged late, and not served on the Applicant. He further contends that no appeal has been lodged  
15 in the Court of Appeal against the decision of this Court, as the purported Record of Appeal shown to have been lodged, bears no appeal number. The Applicant concludes that the Appeal should have been lodged within 60 days from the date of the Judgment of this Court which was 30<sup>th</sup> October, 2020. With  
20 respect, as noted, these complaints can only be addressed to the Court of Appeal, under, among others, rule 82 of the Judicature (Court of Appeal Rules) Directions, S.I 13-10. In this application, therefore, I will only deal with the issue of jurisdiction of the Deputy/ Registrar High Court to stay  
25 execution of a Decree or Order of a Judge.

### **Representation**

The Applicant represented himself while the Respondent did not appear, despite service of the Motion on him by the Applicant.  
30 The Respondent was served through Donge & Co. Advocates,

5 the firm that had represented him in the impugned proceedings.  
Service was effected on 8<sup>th</sup> February, 2022 at 8:46 am. This  
Court therefore decided to proceed *ex parte* during the hearing  
of 22<sup>nd</sup> February, 2023, under Order 9 rule 11 (2) of the CPR  
given that no opposing affidavit was on Court record.

10

### **Issues**

1. Whether the decision of the Deputy Registrar High Court,  
granting stay of execution of the Decree in Civil Appeal  
No.0126 of 2019 was made without jurisdiction?

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2. What remedies are available?

### **Determination**

The Applicant orally submitted that the Learned Deputy  
20 Registrar of High Court lacks jurisdiction to stay a Decree of a  
Judge of the Court. He cited no law, perhaps being a lay person  
proceeding *pro se*.

Before I address the issue, I reproduce the Decree of this Court  
25 given in Civil Appeal No. 0126 of 2019, arising from Amuru  
Grade One Magistrate's Court Civil Suit No. 025 of 2016:  
Kaggwa Micheal Vs. Apire John.

30

*Hutoen.*

5 It reads,

**“Decree on Appeal.**

This Civil Appeal coming up this 30<sup>th</sup> day of October, 2020 for final disposal before Hon. Justice Stephen Mubiru, Judge of the High Court of Uganda, electronically delivered.

10 It is *HEREBY ORDERED THAT:-*

Judgment of the Court below set aside (sic). Instead, judgment is entered for the appellant against the respondent in the following terms;

- 15 a) A declaration that the appellant is the rightful owner of the plot in dispute measuring approximately 50 feet x 100 feet located at Kal East, Kal Parish, Atiak Sub- County, in Amuru District.
- b) An order of vacant possession.
- 20 c) A permanent injunction restraining the respondent, his relatives, agents, servants, assignees and person claiming under him from trespassing in any other way interfering with the appellant’s possession and use of the land (sic).
- d) Shs. 24,000,000/= as general damages for trespass to
- 25 land.
- e) Interest on the sum in (d) above at the rate of 8 % per annum from the day of this judgment until payment in full.
- f) The costs of the appeal and of the court below.

Given under my Hand and the Seal of this Honourable Court this 30<sup>th</sup> day of October, 2020.

30 JUDGE”

5 The Decree was extracted by the present Applicant who  
was the successful party. The impugned Order, the  
subject of the present application, was issued on 14<sup>th</sup>  
July, 2022, in Miscellaneous Application No. 142 of 2022,  
arising from Civil Appeal No. 126 of 2019, all arising from  
10 Civil Suit No. 025 of 2016: Apire John Vs. Kaggwa  
Michael. It reads,

*“ORDER.*

*This Application coming up this 14<sup>th</sup> day of July, 2022  
15 before His Worship... in the presence of Counsel Donge SD  
Opar, for the Applicant and in the presence of the  
Respondent self-represented.*

*IT IS HEREBY DIRECTED THAT:*

1. *An Order of stay of execution is hereby issued against  
20 the Respondent, his agent/ workers and or employees  
from executing the Decrees in Civil Appeal No. 126 of  
2019 and Civil Suit No. 25 of 2016 until the disposal of  
Civil Appeal No. 183 of 2022 pending in the Court of  
Appeal of Uganda at Kampala.”*
- 25 2. *Costs shall be in the cause.*

*Given under my Hand and the Seal of this Honourable  
Court this 14<sup>th</sup> day of July, 2022.*

*DEPUTY REGISTRAR”*

*H. O. O. O.*

5 The Registrar's order is shown to have been served on the Applicant on 26<sup>th</sup> July, 2022, at 1:21 PM, who signed for it.

Turning to the complaint, the question of jurisdiction of Registrar/ Deputy or Assistant Registrar of Courts, have been  
10 subject of adjudication in the recent past.

Jurisdiction is the power of court to hear and entertain an action or proceedings. It is the extent of the authority of Court to administer justice not only with reference to the subject  
15 matter of the suit but also the local or pecuniary limits of its jurisdiction. See: **Mukasa Vs. Muwanga, HCMA No. 31 of 1994; Sir Dinshah Fardunji Mulla, The Code of Civil Procedure, Vol. 1, 17<sup>th</sup> Edn, Lexis Nexis, 409.**

20 Jurisdiction of Court is not a matter of inference but of law and must be prescribed by law. It has been held that proceedings of a Court without jurisdiction are a nullity because no court can confer jurisdiction upon itself. Lack of jurisdiction goes far beyond any "error, omission, or irregularity" nor can it be  
25 regarded as a mere technicality. See: **Desai Vs. Warsama (1967) EA 351.**

**In Florence Dawaru Vs. Angumale Albino & Samuel Ondoma, Misc. Civil Application No. 0096 of 2016,** The High Court  
30 considered the aspect of jurisdiction of Registrar. It was an

5 application seeking review under O.46 CPR (among others), and  
seeking to set aside an order of the Registrar by which the  
Registrar of Court had dismissed an application for contempt of  
court. It was argued that the Registrar had no powers to  
entertain the application which he had dismissed and thus the  
10 dismissal was irregular. The Court considered article 139 (1) of  
the Constitution, 1995, and noted that the High Court has  
unlimited original jurisdiction in all matters and such appellate  
and other jurisdiction as may be conferred on it by the  
Constitution or other law. Court also noted that under O.50 of  
15 the CPR, auxiliary jurisdiction is conferred upon a Registrar of  
the High Court. A Registrar High Court thus has primary  
auxiliary jurisdiction to deal only with those matters expressly  
prescribed by O.50 and therefore, exercises powers ancillary or  
incidental thereto. Thus the jurisdiction exercised by Registrar  
20 High Court is purely auxiliary, and is neither original nor  
appellate or revisional. The original, appellate, revision or review  
powers are reposed in the Judge.

Where jurisdiction is conferred by Rules or a statute, it is limited  
25 to the extent prescribed under the Statute or Rules. However,  
where jurisdiction is conferred to entertain certain matters,  
then all powers to make that jurisdiction effective must be  
implied to the authority unless expressly prohibited.

5 Court concluded in the **Dawaru case** (*supra*), that, the powers and jurisdiction of the Registrar of the High Court are those which are expressed and conferred by Order 50 of the CPR and also those which inhere in the exercise of that jurisdiction or are ancillary or those which sub-serve the exercise of that  
10 auxiliary jurisdiction. The incidental powers are those which are directly and immediately appropriate to the execution of the powers expressly granted and which exist only to enable the Registrar to carry out the purpose for which the auxiliary jurisdiction was conferred. The Registrar can only grant  
15 auxiliary reliefs of a more routine and formal nature, pending the determination of a substantive relief by the Judge. The nature and extent of incidental/ ancillary power will therefore depend on the jurisdiction that is exercised. The incidental can never be one which is in the form of “prelude” to the main but  
20 it has to be of the nature of “sequel” of the main power. (See: Dawaru, *supra*).

It has been recognized by the apex Court in this country that the powers of the Registrar of High Court are circumscribed.  
25 Thus whereas under O.50 rule 6 CPR, a Registrar is deemed to be a civil Court, for purposes of exercising its powers under the specified rules of O.50, I think the deeming principle should also apply to matters listed under rule 10 of O.50 CPR. This is so because, at the time rule 6 of O.50 CPR was made, the added  
30 powers of Registrars which was given vide the Practice Direction



5 No.1 of 2002 was not yet in place. I would therefore observe that even when performing powers under rule 10 of O.50, a Registrar is deemed a civil Court.

Be that as it may, the central issue here is about whether a  
10 Registrar has jurisdiction to hear an application seeking to stay a decree of Court. It should be recalled that a Registrar, Deputy or Assistant Registrar High Court is an Officer of the High Court with special status. It is not a subordinate Court either. See: **AG & another Vs. James Mark Kamoga & another, SCCA No. 8 of 2004.**  
15

Other than the enhanced powers vide O.50 rule 10 CPR, this Court recognizes that the powers of Registrar High Court have been further enhanced by the Amendment to the CPR in 2019,  
20 where several matters considered under summons for directions, may now be handled by the Registrar. In this Ruling however, I do not seek to discuss or pronounce myself on specific matters which I think a Registrar can handle and those that a Registrar may not handle, under summons for directions.  
25 I wish to add that stay of proceedings which can be considered under summons for directions, specified in the amended CPR (2019), can in no way be construed to cover a stay of execution of a High Court Decree.

5 Before resolving the issue at hand, I wish to advert to what execution means and consider under what law a stay of execution of the High Court decree can be sought and granted.

Execution, in its widest sense signifies the enforcement of or  
10 giving effect to the judgments or orders of courts of justice: See:  
**Words and Phrases Legally Defined, Vol. 2, 3<sup>rd</sup> Ed., London and Butterworths 1989 at p. 195-6.**

In Re Overseas Aviation Engineering (GB) Ltd [1962] 3 All  
15 ER 12 at p.16, Lord Denning MR noted that the word  
'execution' is familiar to lawyers. It means, "***The process for enforcing or giving effect to the judgment of the court.***"  
Execution is completed when the Judgment creditor gets the money or other thing awarded to him/ her by the judgment.

20 Regarding the substantive law on stay of execution of High Court Decree or Order, it has been held that there is no specific provision for stay of execution by the High Court, pending appeal to the Court of Appeal. The High Court therefore always  
25 invoke its inherent powers to stay execution of its own Decree/ Order, under section 98 of the CPA, pending appeal. See:  
**Mugenyi & Co. Advocates Vs. The National Insurance Corporation, Civil Appeal No. 13 of 1984, (Wambuzi, CJ);**

5 In **Francis Micah Vs. Nuwa Walakira, SCCA No. 9 of 1990,**  
the Supreme Court held that there is no specific procedure  
governing the High Court to stay its own decree but the Court  
has inherent powers to stay its decrees under the inherent  
powers, under section 98 CPA (at the time section 101 CPA).

10

In **DFCU Bank Ltd Vs. Dr. Ann Persis Nakate Lussejere, Civil  
Application No. 29 of 2003,** the Court of Appeal recognized  
that an applicant for stay of execution of the High Court Decree/  
Order may be required by the Judge to satisfy the conditions of  
15 O.43 rule 4 (3) of the CPR ( at the time O.39 rule 4 (3) CPR),  
namely, that substantial loss may result to the Applicant unless  
the order of stay is made; that the Application has been made  
without unreasonable delay, and that security has been given  
by the Applicant.

20

In **Shell (U) Ltd & 9 Others Vs. Muwema & Mugerwa  
Advocates & another, Civil Appeal No. 2 of 2013 (SCU),** the  
Supreme Court considered, among others, whether the  
Assistant Registrar of the Court of Appeal could stay the  
25 proceedings of a High Court Judge, *vide* an interim Order.  
There, the then Learned Judge of the High Court had ignored  
an interim order issued by the Assistant Registrar of the Court  
of Appeal, staying proceedings before the High Court Judge. The  
Supreme Court held that that the Assistant Registrar had  
30 issued the order without a clue about the facts of the matter

5 before the Judge of the High Court, and had acted prematurely,  
in abuse of the court process. The Supreme Court explained  
that whereas the Practice Direction No. 1 of 2004 (then  
applicable in the Court of Appeal), gave Registrars of that Court  
jurisdiction to hear and grant interim orders, yet the power  
10 must be exercised judiciously and ought not to be abused. The  
Supreme Court adverted to article 139 (1) of the Constitution,  
1995, on the unlimited jurisdiction of the High Court and held  
that, the Court of Appeal had erred in declaring that the ruling  
of the High Court Judge was a nullity because the Court of  
15 Appeal had found that the Learned Judge had disobeyed the  
interim order issued by the Assistant Registrar of the Court of  
Appeal.

I must state here that the above authority underscores the  
20 important point that a Registrar of Court of Appeal lacks  
jurisdiction to stay, in the interim, the proceedings before a High  
Court Judge.

I now consider the authority which I think is more specific to  
25 the matter at hand. In **Mohamed Kalisa Vs. Gladys Nyangire  
Karumu & 2 Others, Civil Reference No. 139 of 2013**, the  
Court of Appeal of Uganda, after considering the Practice  
Direction No. 1 of 2002, which, as noted, was later incorporated  
in O.50 rule 10 CPR, noted that the purpose of the Practice  
30 Direction is to assist Judges to expedite the hearing of cases.

5 Court adverted to rule 7 of O.50 CPR which allows Registrar  
High Court to refer a matter to a Judge where any matter  
appears to the Registrar to be proper for the decision of the  
Judge. The Judge may then decide to dispose of the matter, or  
refer it back to the Registrar, with direction as the Judge thinks  
10 fit. The Court of Appeal further noted that rule 7 of O.50 makes  
perfect sense as the Registrar would, through his/her enhanced  
powers, be acting on behalf of the Judge to whom the file would  
have been allocated.

15 The Court of Appeal, held, a Registrar therefore, when  
exercising the limited powers under O.50 CPR, must act  
judiciously, when deciding whether or not to hear a matter, as  
it is not automatic. It was opined that this allows harmony and  
good order within the Judiciary. A party aggrieved by a  
20 Registrar's decision may of course appeal to the Judge under  
O.50 rule 8 CPR.

In the above authority therefore, the Court of Appeal proceeded  
to consider the powers of the Registrar/ Assistant/ Deputy  
25 Registrar, Court of Appeal, under Practice Direction of 2004.  
The Court compared that Practice Direction with that  
incorporated in O.50 rule 10 of the CPR (*supra*), and concluded  
that, a Registrar Court of Appeal, in the exercise of its powers,  
can not issue lawful order to a High Court Judge to stay  
30 execution or proceedings before the Judge. The Court was

5 emphatic that the fact that a High Court Judge may be overwhelmed with work is no basis for the short cut to having a High Court Judge deal with the matter. In the upshot, the Court of Appeal concluded thus,

10 ***“It is our finding that it is not proper, just and /or convenient for a Registrar of this Court (Court of Appeal) to issue interim orders staying orders and proceedings of the High Court Judges. They can not use their enhanced powers to do so.”***

15

I am bound by the above decisions of superior Courts. They apply to the matter before me with equal and compelling force. I hasten to add that just like a Registrar Court of Appeal, I find it improper for a Registrar High Court to grant substantive stay  
20 of a decree or order of a Judge, pending an intended appeal to the Court of Appeal. I hold that no such powers are available to a Registrar or Deputy or Assistant Registrar, High Court, under O.50 of the CPR. A substantive stay of execution is not an interlocutory matter pending in the High Court that Registrar/  
25 Deputy or Assistant Registrar can exercise jurisdiction over. A substantive stay application is not anywhere governed by O.50 CPR, but by section 98 of the CPA. O.52 of the CPR is only concerned with general procedure for lodging applications in the Court, where a specific procedure is not provided for. So, it is  
30 thus not helpful as it does not confer any Jurisdiction to

5 Registrar High Court to stay Decree or Order of a Judge. A Registrar therefore cannot arrogate powers to hear substantive stay of execution of the decree/ Order of a Judge. The powers to hear substantive stay of execution of Decree/ Order of High Court is only vested in the High Court Judge, under section 98  
10 of the CPA. A Judge cannot decline to hear substantive stay application because of workload or for other reasons. That power is non delegable either.

In my view, where a Judge declines to grant substantive stay of  
15 execution of his/ her Decree/ Orders, a single Justice of Court of Appeal or full bench of the Court, under section 12 of the Judicature Act, rule 6 (2) (b), and rule 53 (1) and (2) (b) of the Judicature (Court of Appeal Rules) Directions, can hear the Application for stay of execution. I should add that, a proceeding  
20 to the Court of Appeal would only be available, after the Applicant has first proceeded in the High Court, but without success. See Rule 42 of the Rules of the Court of Appeal (*supra*). I am however aware that the Court of Appeal has in some exceptional circumstances stayed High Court Decrees/Orders,  
25 where an Applicant has not first applied in the High Court.

In my view therefore, once a final decree is issued by a Judge of the High Court, that is the end of the matter before that Court. What follows are post Judgment proceedings. A final decree  
30 determines the final rights of the parties as far as the rights of

5 the parties to litigation is concerned unless the Judge issued a preliminary decree. There is therefore nothing that intervenes between a final decree of a Judge and the Appeal to the Court of Appeal, which a Registrar of the High Court can exercise auxiliary powers over, to stay. The Registrar/ Deputy/ or  
10 Assistant Registrar can only entertain interim stay applications, in deserving circumstances, but also strictly pending an ascertained hearing of the substantive stay application by a Judge. Interim stay orders should also not be abused. Actually, it ought to be issued only when the tree is about to fall, or the  
15 axe is on the tree, if I were to adopt that euphemism.

Accordingly, this Court has powers to review the Order of the Registrar where an error is apparent on the face of the Record. In **AG & another Vs. James Mark Kamoga & another, SCCA**  
20 **No. 8 of 2004**, the Supreme Court held that the review powers of a High Court Judge extends to orders of Registrar.

In this matter, therefore, I hold that the Learned Deputy Registrar of this Court, with respect, lacked jurisdiction to stay  
25 an Order/ decree of the Judge. I note that the Learned Deputy Registrar closed a file for an interim application before him, to the chagrin of the Applicant who protested. The Learned Deputy Registrar then decided to hear the substantive application instead. With respect, that was irregular. I therefore hold that  
30 the decision of the Learned Deputy Registrar of Court was given



5 in error. The error stared Court in the face. There was no long  
drawn argument to point out the error before me. I also noted  
that the Learned Deputy Registrar committed an error in  
proceeding to also stay an Order/ Decree of the lower Court  
given in civil suit no. 25 of 2016, between the same parties,  
10 which had already been set aside on appeal by the High Court  
Judge vide Civil Appeal No. 126 of 2019.

Given the foregoing, the application succeeds. I grant review  
under section 82 (b) of the CPA and O.46 CPR, to correct the  
15 error of a substantial nature. Accordingly, the Order of the  
Deputy Registrar of Court, given on 14<sup>th</sup> July, 2022, in Misc.  
Application No. 142 of 2022: Apire John Vs. Kaggwa Michael,  
staying the execution of the Decree of the Judge of the Court,  
given in Civil Appeal No. 126 of 2019, is reviewed and set aside.  
20 The Applicant shall have costs of this Application, but limited  
to disbursements since he was self-representing.

Delivered, dated and signed in chambers this 24<sup>th</sup> February,  
2023.

25

  
Handwritten signature: *George Okello* 24/2/2023  
George Okello  
JUDGE HIGH COURT

30

5 Ruling read in Court.

**10:55am**

**24<sup>th</sup> February, 2023**

10 **Attendance**

Ms. Grace Avola, Court Clerk

The Applicant in Court, self-representing.

The Respondent is absent.

No Counsel for the Respondent.

15

Applicant: I am ready to receive the Court Ruling.

Court: Ruling delivered in open Court.

20



*Handwritten signature and date: George Okello 24/2/2023*

George Okello

JUDGE HIGH COURT

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