

THE REPUBLIC OF UGANDA
GH COURT OF UGANDA AT FOR
HCT – 01 – LD – MA – 0060 – 2023

1. ASABA AISHA

2. BONABANA HARRIET ::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

KIIZA STEPHEN :::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

The applicant brought this application for under Section 98 of the Civil Procedure Act and Order 52 rule 1 of the Civil Procedure Rules for orders:

- 1. That the proceedings in Civil Suit No. 26 of 2022 be stayed.**
- 2. That the costs of taking out the application be provided for.**

The application was supported by the affidavit of Asaba Aisha, the 1st applicant who deponed as follows:

1. That the 1st applicant and her sister the 2nd applicant were sued in Civil Suit No. 017 of 2021 by AFRO KAI LIMITED claiming ownership of land sold to the plaintiff in Civil Suit No. 026 of 2022.
2. That before the hearing and determination of Civil Suit No. 017 of 2021 before the Chief Magistrate, Afro- Kai Ltd and Kiiza Stephen entered into a consent.
3. That they have since filed an application to set aside the said consent on ground that the same was entered into fraudulently since the suit land was sold to Kiiza Stephen, the plaintiff in Civil Suit No. 26 of 2022. That land Civil Suit No. 17 of 2021 before the Chief Magistrate between the applicants and the

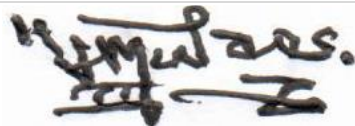
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respondents was stayed by the chief magistrate pending the determination of Misc. Application No. 18 of 2023 that seeks to set aside the consent judgement.

4. That in the event the proceedings in Civil Suit No. 26 of 2022 are not stayed,
5 there is likelihood of court giving conflicting decisions. That in the event Misc. Application No. 18 of 2023 is granted and the consent is set aside, it will naturally abate Civil Suit No. 26 of 2022.
5. That it is in the interests of justice that this application is granted since it will save courts time in the event Misc. Application No. 18 of 2023 is allowed.

10 The application was opposed by the respondent who contended:

1. That the application at hand is frivolous, vexatious and a waste of court's time. That the respondent's suit in Civil Suit No. 026 of 2021 is for breach of contract of sale of land which was entered into on 26th November 2007. That the claim in Civil Suit No. 17 of 2021 is for trespass thus the claims are
15 different and are before different courts.
2. That the applicants admit selling the land to the respondent which belongs to AFRO KAI LTD, the plaintiff in Civil Suit No. 17 of 2021 being the registered proprietor. That he was jointly sued with the applicant but before conclusion of the case in land Civil Suit No. 17 of 2021, he entered into a consent with
20 the plaintiff agreeing to vacate the suit land.
3. That the applicants could not be a party to the consent since he had parted with possession of the suit land for 15 years and the application to have the consent set aside has no merits.
4. That the current application was not brought in good faith rather it was
25 intended to frustrate the respondent's efforts to recover compensation from

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the applicants for land sold to him without title. That it was in the interests of justice that the application is denied.

Issues:

1. Whether this is a proper case for grant of stay of proceedings.

2. Remedies available to the parties.

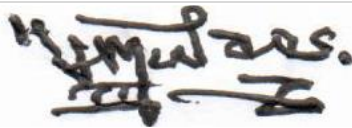
Representation and Hearing:

Learned Counsel Angella Bahenzire appeared for the applicants while Twesigye Fred Micheal was for the Respondent. Both counsel addressed me on the merits of the application by way of written submissions which I have considered in this ruling.

RESOLUTION:

Whether this is a proper case for grant of stay of proceedings:

Learned counsel Bahenzire argued that Section 98 of the Civil Procedure Act and order 52 of the Civil Procedure Rules grants court discretion to grant any order for purposes of ensuring that justice is met. That this includes the discretion to grant a stay of proceedings. Learned counsel cited the case of ***HE. Yoweri Kaguta Museveni V The Editor in Chief Daily Monitor News paper & anor, Civil Suit No. 4 of 2021*** where Sekaana J observed that: ***“The Court’s power to exercise discretion to stay proceedings before it can be exercised judicially and in public interest. The same should not be used to cause delay of hearing or inconvenience to other party or result in public mischief...”***



Learned counsel argued that the applicant laid sufficient background to warrant a stay of proceedings. That in Civil Suit No. 017 of 2021, the issue was on ownership of the land they sold to the plaintiff in Civil Suit No. 26 of 2022. That the plaintiff in Civil Suit No. 26 of 2023 entered into a consent with the plaintiff in Civil Suit No. 17 of 2021 where the applicants have since applied for a stay of execution. It was contended that should this suit be heard, it is likely to cause contradicting decisions with the one in the Chief Magistrate's court. That it was thus fair that a stay of the proceedings is granted pending determination of the suit in the chief magistrate's court.

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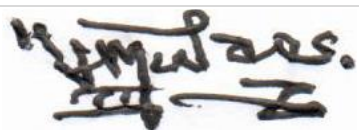
In reply, Mr. Twesigye submitted that the argument by the applicant that should Misc. Application No. 18 of 2023 in the lower be court determined in the affirmative will abate the suit in the High Court has no merit. It was submitted that the suit by the respondent in the High Court has nothing to do with the one in the lower court. That further the case in the lower court has no chance of success since the title to the suit land is registered in the names of AFRO KAI Ltd and the defense put up by the applicants has no chance of success to the claim by the plaintiff in the lower court.

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That the proceedings in the matter before this court and those in the lower court are completely different. That staying proceedings in the High Court would cause unnecessary inconvenience to the Respondent. Counsel argued that the application at hand has no merit as such it should be dismissed with costs and civil suit no. 26 of 2022.

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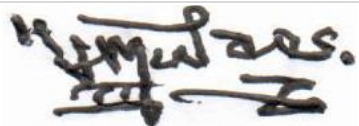
25 **CONSIDERATION BY COURT:**

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The Black's Law Dictionary, 4th edition at page 1583 defines the term “stay” to connote stopping or the act of arresting a judicial proceeding by the order of a court. The learned authors further define stay of proceedings thus: *“The temporary suspension of the regular order of proceedings in a cause, by direction or order of the court, usually to await the action of one of the parties in regard to some omitted step or some act which the court has required him to perform as incidental to the suit...”*

His Lordship *Cheborion Barishaki JA in Lugya Andrew Vs. Kikonnyogo & Anor, Supreme Court Civil Application No. 248 of 2021* guided in relation to stay of proceedings thus: *“It is usually a relief in the form of suspension of proceedings in an action which may be temporary until something requisite or ordered is done or permanently where to proceed would be improper. As a matter of law, a stay of proceedings puts a stop or stay on another conduct of proceedings in court at the stage to which the proceedings have reached. An order of stay of proceedings avoids the trial or hearing of the action taking place where the court finds it just and convenient to make such order.”*

In the persuasive case of *Kenya Wildlife Service Vs James Mutembei (2019) eKLR, Gikonyo J* in his long passage observed in relation to stay of proceedings thus: *“Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent. The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to*

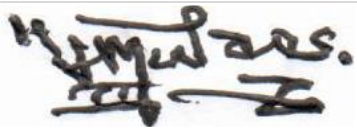
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conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases. It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case".

In this case the applicants' main ground to cause a stay of proceedings in Civil Suit No. 26 of 2022 is that there is an application to set aside a consent judgment where the respondent agreed with AFRO KAI LTD to the extent that the suit land was theirs and that he would vacate the same within 6 months. That they filed Misc. Application No. 18 of 2023 that seeks to have the consent set aside for having been arrived at through fraud; that the outcome of the said application has the effect of abating the suit in this consent.

I have considered the application and claim by the respondent in Civil Suit No. 26 of 2022 and the case in the lower court.

The case in the lower court was filed by AFRI KAI LTD against the 1st applicant and the respondent herein over ownership of the suit land. AFRI KAI LTD filed a

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case for trespass against the Respondent and the 1st Applicant claiming ownership of the suit land.

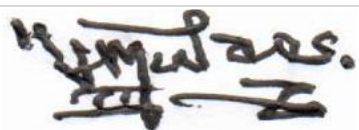
The Respondent later agreed with KAI AFRI LTD to vacate the land. The respondent entered into a consent with AFRI KAI LTD confirming them as the registered proprietor and agreed to vacate the suit land which he bought from Serina Tibakanya, Banabana Harriet and Asaba Aisha within 6 months from the date of execution of the consent.

10 The Respondent later filed Civil Suit No. 26 of 2022 in the High Court for breach of an agreement of sale against the applicants, special damages of Ugx 80,000,000/= being the developments he had put on the land, general damages, interests and costs of the suit.

15 The applicants later filed Misc. Application No. 18 of 2023 in the lower court to have the consent dated 6th April 2022 set aside and to have the case heard interparty.

There is a possibility that the courts will end up making conflicting decisions over the same subject matter that features in both courts. I thus find it prudent to order a stay of proceedings in this suit pending determination of the application to set aside the consent judgment entered into between the Respondent and AFRI KAI LTD as the outcome therein may have an impact on the proceedings in the High Court.

This application therefore succeeds with the following orders;

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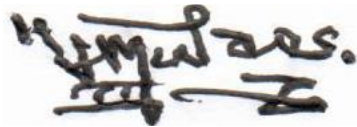
1. *An order of stay of proceedings in civil suit no. 26 of 2022 is hereby granted pending the determination of Misc. Application No. 18 of 2023.*

2. *That the stay shall remain in force for a period of two months from the date hereof wherefore the applicants shall ensure that Misc. Application No. 18 of 2023 is concluded within that time.*

3. *The case is therefore fixed for mention on 14th December 2023.*

4. *Each party shall bear own costs.*

I so order.



Vincent Wagana
High Court Judge
FORT-PORTAL

DATE: 15.09.2023

