

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

MISCELLANEOUS APPLICATION NO 1487 OF 2023

(Arising out of Civil Suit No 142 of 2012)

5 **SAMUEL WILSON KALEMESAAPPLICANT**

VERSUS

KAGGWA CHRISTOPHER & 2 OTHERS.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya

10 **RULING**

Introduction:

This application seeks a stay of execution of the judgment and orders of this court dated 11th July, 2023 in **HCCS No. 142 of 2012**, pending the applicant's appeal to the Court of Appeal. The application was filed by Mr. Samuel Kalemesa
15 who was the defendant in **Civil Suit No. 142 of 2012**.

In his affidavit in support, he averred that having been aggrieved by the decision of this court under that suit, he filed a notice of appeal on 13th of July, 2023 and also requested for the record of pleadings.

20 That the respondents will not be prejudiced by an order of stay; that this application was filed within reasonable time and that the appeal will be rendered nugatory if denied and substantial loss would be occasioned to him.

Response by the 1st respondent:

The reply in objection to the application was filed by the 1st respondent, Ms Betty Kizza. In her response, she claimed that the appeal must be lodged within 60
25 days.



The notice of appeal in this case was filed on 13th July, 2023. The 60 days expired on 11th September, 2023 and no memorandum has yet been filed to date.

That the order has in any case already been executed by the respondents in respect of **plot 1316** which was transferred into their names as administrators of the estate of the late Christopher Munyegenya, as per the orders granted by this court. Therefore, according to them there was nothing to stay.

Court's attention was also drawn to the demise of the 1st plaintiff in this suit. Prior to his death an application for review **MA No. 1399 of 2023** had already been filed by him, jointly with the respondents in this present application.

The prayers in the said application for review were in respect of an error as pointed out and detected in this court's judgment.

In its ruling dated 7th December, 2023, the following orders/declarations were made:

1. The names of the 1st defendant/respondent shall be cancelled from the title for plot 1315; and the names of the administrators of the estate of the late Christopher Ezra Munyegenyo be entered as the rightful owner of the said plot.

2. For the avoidance of doubt since there is a pending application for stay of execution (MA No. 1487 of 2023) order 1 above shall not be executed by the applicants, until the determination of the said application, or until other orders are made by a competent court. (emphasis added).

3. Costs awarded to the applicants in respect of the main suit; however no costs are awarded in relation to the present application.

In their two letters addressed to this court both dated 13th December, 2023, the firm of **M/s Kimanje Nsibambi Advocates**, jointly with **M/s Muhimbura & Co.**

Advocates and acting for and on behalf of the respondents filed a complaint. Details of their complaint are contained in those letters.

The first letter: *Request for urgent delivery of a ruling in MA No. 1487/2023 to resolve all pending conflicts over land comprised in Kyadondo Block 246 plot 1315*
5 *vide MA No. 1399 of 2023 and Civil Suit No. 142 of 2012..*

The second letter titled is: *Application for the correction of the mirakes (sic!) in the ruling and orders vide MA No. 142 of 2012...under sections 98 and 99 of the Civil Procedure Act, Cap. 71.*

10 The gist of their complaint was that a correction had to be made to remove an order for stay in the application for review: **MA No. 1399 of 2023**. The argument was that after granting the application for review this court became *functus officio* and had no power to stay the execution of the same orders through an application which did not arise from **MA No. 1399 of 2023**. Accordingly, that the offending order was smuggled in the final orders of this court.

15 The obvious and simple response by this court to that concern is that going by the same **section 98 of the Civil Procedure Act, Cap. 71** cited by counsel in that letter, this court has unlimited jurisdiction and is vested with inherent powers guaranteed thereunder, necessary to meet the ends of justice or prevent abuse of process of court to make interim orders.

20 In alignment with that provision, at the time when the review application was heard and determined by court, court was mindful of the fact that an appeal had already been filed by the applicant herein; and partial execution had already commenced and concluded in respect of **plot 1316**.

25 The present application (**MA No. 1487 of 2023**) for stay of the orders granted under the main suit was also pending. Needless to add, the execution of the review orders would have rendered both the application for stay and the pending appeal by the applicant nugatory.



It is for those reasons (and the administration of justice in fact so demanded) that an order be made by this court as an interim measure to stay the execution of the order for review, *till further orders were made by a competent court.*

5 This court learnt thereafter that a notice of appeal was on 14th December, 2023 lodged in the registry by the complainants/respondents herein against the said review orders of this court in **MA No. 1399 of 2023.**

I can only add therefore that since there are two notices of appeal filed against the same judgment, the Court of Appeal would be the competent court to address the issues raised.

10 The order for stay made under **MA No. 1399 of 2023** remains in force therefore until further orders are made by the Court of Appeal.


Alexandra Nkonge Rugadya

Judge

15 **19th December, 2023.**

Delivered by mail
Alexandra

J.

19/12/2023.