

That the Respondent was aware that the Applicant was in possession of the suit premises but he deliberately misled court that it was Uganda Consolidated Properties in possession, whereas the property had long been sold to the Applicant.

- 5 The Applicant has filed a suit at the Land Division to enforce his rights as an equitable owner and the same has a high probability of success.

There were material illegalities, irregularities and great injustices that marred the hearing of the main suit that ought to be determined by court.

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The Applicant was not a party to the suit from which the warrant and execution emanated whereas there are substantial matters of law with a high probability of success on the part of the Applicant, which ought to be heard and determined on merit.

- 15 It is in the interests of justice that this application be granted. The application is supported by the affidavit of the Applicant.

There is an affidavit in reply deposed by the Respondent, where he claims that the application is misconceived, frivolous, and vexatious, lacks merit and does not establish sufficient grounds to warrant grant of the orders sought.

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That the Applicant has no locus standi to bring the application since he was never a party to High Court Civil Suit 170/2016 as he admits in his affidavit in support.

- 25 The application for stay is incompetent and improperly before court there being no pending suit, as Civil Suit 170/2016 was disposed of – See Annexure “R” decree.

The decree has already been executed by vacating the lease and noting a re-entry on the certificate of title, warrant to give vacant possession of the suit property issued and executed and a return filed on 19.01.17. - See Annexure R₂, R₃, R₄, R₅ and R₆ respectively.

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While the Applicant claims he filed a suit at the Land Division which will be rendered nugatory, there is no documentary evidence of the said suit.

- 35 There were no material illegalities, irregularities and great injustices in the hearing of the main suit, since the Applicant thereof filed an application for leave to appear and defend the summary suit, it was heard interparties, dismissed and judgment entered.

While it's true the Applicant was not a party to the suit, it is because the lessee in default of the lease terms was Uganda Consolidated Properties Ltd as indicated on the Malio Title. The lease was registered on the title as an encumbrance and also appeared on the lease status report from lands. The Applicant was not reflected anywhere in the official Lands records as an interest holder in the main suit property.

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Therefore that, the application does not meet the criteria necessary for grant of stay of execution, there being no pending suit and there is no likelihood of success of the suit if at all it exists because:-

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i) The Applicant has neither legal nor equitable interests in the suit property.

10 ii) Its purported purchase of the suit land is based on a sale agreement Annexure "A" to affidavit in support, where no stamp duty was paid as revenue, is incomplete and bears no reference to the lease agreement Annexure R_{6A}, between the lessor and lessee for compliance thereof.

iii) There is no company resolution to sell the lease interest to him.

15 iv) There is no consent to the lessee to assign his lease interest to the Applicant as required in the lease agreement.

And there is no proof that Kateera and Kagumire Advocates had instructions to receive ground rent on behalf of the lessor.

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v) There is no transfer instrument duly executed by the lease holder in favor of the Applicant.

25 vi) The purported sale and purchase was in violation of company law and the law on disposal of Government property.

vii) The lease on the suit property is already vacated from the mailo title and re-entry noted thereon and the Applicant evicted from the suit land.

30 viii) The Applicant has brought his application before court with unclean hands, being in contempt of court by retaking repossession of the suit premises after he was evicted on 19.01.17 and a warrant issued by a court of competent jurisdiction. – See R₇.

35 That the Applicant being in contempt of court orders is not entitled to be heard on the suit property unless he purges himself of the contempt.

The Balance of convenience is in favor of the Respondent not to allow the application as the decree was executed and the reversionary interest restored to the Respondent; lease vacated on the title and thereafter interest transferred to a third party as reflected on the title. – Annexure
40 R₂.

The application was heard on 07.03.17 in presence of the parties and Counsel.

Counsel for the Applicant recited the contents of the application and gave the background to how the Applicant obtained interest in the property. He emphasized that the Applicant has been in possession for 17 years but that the judgment was obtained without him being granted a hearing. That this is contrary to Article 28 of the Constitution.

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Further that, to protect his interest, the Applicant has filed HCCS 511/17 in the Land Division together with MA 117/17 seeking to review or set aside the judgment given for the Respondent. By the time of this application, court was informed that the hearing was fixed for 08.06.17.

10 The case of **Kampala Capital City Authority vs. Mulangira Joseph MA 26/2016** was relied upon for setting out the grounds upon which stay can be granted. That is:-

1) Likelihood of substantial loss if the order is not made.

15 2) Application made without unreasonable delay.

3) Provision of security for due performance of the decree.

20 It was then contended that if stay was not granted in the present case, the Applicant will lose a home where family has been for 17 years. Yet Counsel argued, shelter is one of the fundamental human rights.

The application was filed without delay as warrant of vacant possession was issued on 16.01.17 and application was filed on 25.01.17 that is, within ten (10) days.

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Further that, the Applicant is willing to deposit security for due performance so as to be given a chance to be heard in the suit and application pending before the Land Division.

Commenting about the affidavit in rejoinder, Counsel insisted that it proves that the suit exists and has been given a date for hearing.

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Submitting that the Applicant has satisfied all requirements for grant of stay, it was pointed that application be allowed with costs.

35 Counsel for the Respondent opposed the application on the ground that there was no pending suit as the same was disposed of that is, Civil Suit 170/16 after application for leave to appear and defend was dismissed.

The decree was execution by re-entry on the title and vacant possession was given in accordance with decree. Return of warrant was made.

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That since there is no amendment to the application reflecting the newly filed suits under which stay is being sought this offends 0.6 r 3 C.P.R. There is therefore no pending suit and application is incompetent.

Further that, there are no pending execution proceedings to be stayed or set aside and therefore the remedies sought are not to be given.

5 Reciting the conditions to be established for stay to be granted as set out in the case of **Akankwasa Damian vs. Uganda SC Appl 07/2011** (same as the ones already set out in this ruling), Counsel argued that there is no likelihood of success of the application for review as the purported purchase of the suit property was based on illegality. There is no prima facie case of Applicant's right and therefore no proof of suffering legal grievance.

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The purported purchase agreement stands alone, Counsel argued, without reference to the lessor.

On payment of ground rent that, there is no incorporation of lease agreement between lessor and lessee yet Applicant claims to have brought the lease.

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Also that, the lease is not registered anywhere. There was undue delay in filing the suit in the Land Division. It was filed after the current application, when it should have been vice versa, Counsel claimed.

20 There is neither equitable nor legal right to the property by the Applicant since re-entry was made on the title and there is therefore no lease as claimed by the Applicant.

There was also no consent to transfer the lease to the Applicant. – The cases of **Erukaana Kuwe vs. Varsi Rwambani Rumji SCCA 02/02, Francis Butagira vs. Deborah Namukasa SCCA**
25 were cited in support. And the case of **Construction Properties & Ndibalekera** for the principle that ***“nonpayment of ground rent is a breach of the law and the lease agreement”***. S.103 (b) of the Registration of Titles Act was also cited.

Counsel then argued that ***“once an illegality is brought to the attention of court, it overrides all pleadings including admissions”***. – Case of **Makula International vs. Cardinal Nsubuga [1982] HCB 13**.
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And that the Applicant will not suffer any irreparable damage as lease was terminated and re-entry done. The current possession of the Applicant arises out of contempt of court. The cases
35 of **Miriam Kuteesa vs. Edith Namtumbwe & 3 Others MA 201/14 SCA** was relied upon for the holding that ***“after execution of the decree is complete by registering the Judgment Creditor on the title as decreed, then all subsequent efforts to change status quo are futile and attempt tantamounts to abuse of court process which court is enjoined to prevent”***. It was prayed that the application be disallowed with costs.

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In rejoinder, Counsel for the Applicant stated that proof of the suit and application for review before Land Division are in the affidavit in rejoinder.

S. 2 CPA was referred to adding that, execution is not complete as Applicant is in possession of the suit premises and that is the status quo. And as the decree holder is not the owner of the registered suit premises, court can order stay.

- 5 The other issues touching the merits of the main suit should be ignored and the application allowed, Counsel submitted.

Whether this is a proper case for grant of stay of execution.

- 10 In determining this issue, I wish to remind myself of the principle that ***“while court has discretion to grant stay of execution, this power ought to be exercised judiciously and where it appears equitable to do so, with a view to temporarily preserving the status quo”***.

I have also borne in mind the guiding principles established by decided cases to be considered in applications for stay of execution. They include among other things:-

- 15 1) Pending suit before another court.
- 2) Likelihood of suffering substantial loss or irreparable damage.
- 20 3) Application has been made without unreasonable delay.
- 4) Security for costs has been given by the Applicant.
- 25 5) Balance of convenience.
- Refer to the case of **David Wesley vs. Attorney General – Constitutional Application 61/14.**

This court is also aware that ***“in applications of this nature, guiding principles will depend on the individual circumstances and merit of each case. The individual circumstances of each case will determine whether the case falls within the scope and parameters of any other laid down principle”***. – See the case of **East African Development Bank vs. Blueline Enterprise Ltd [2006] 2 EA 5 (CAT)**.

- 35 The circumstances of the present case can be discerned from the application, it’s supporting affidavits, affidavits in reply and the submissions of all Counsel.

The Applicant claims to be the owner of the suit premises and that he has been in occupation of the property since 2000. Without being made party to the main suit, the Applicant was evicted from the suit premises in total disregard of his rights that were affected by the orders issued in the suit.

It is Applicant's further contention that the Respondent was aware of his possession of the suit premises but chose to ignore the fact.

5 When the Applicant was evicted, he re-entered the premises, which the Respondent claims was in contempt of court orders.

However, the Applicant has since filed a suit in the Land Division to try and enforce what he terms as his equitable rights.

10 He also contends that there were material illegalities and irregularities and great injustices that barred the hearing of the suit, which culminated into this action. And that there are substantial matters of law in the suit he has filed which ought to be heard and determined on merit.

15 The Respondent admits that Applicant was never a party to the suit 170/2016, but agrees that the execution is complete and a re-entry noted and therefore the Applicant has no locus standi, to bring this application.

20 In contradiction of himself, the Respondent denies the illegal purchase of the premises by the Applicant but then raises about 8 or 9 issues which he claims vitiate the purchase. The said issues have already been set out in the response of the Respondent.

25 Also that by retaking possession of the premises, the Applicant was in contempt of court orders and is therefore not entitled to be heard until he purges himself of the contempt. Therefore that the Balance of Convenience is in favor of the Respondent.

It is not disputed from those circumstances that execution was completed and there is nothing to stay except that, the Applicant re-occupied the suit premises.

30 Since it is admitted by the Respondent that the Applicant was never heard and he has filed a suit where the issues raised by both the Respondent and Applicant can be properly determined, this court finds that, the balance of convenience demands that the status quo be maintained to give the parties a chance to be heard on all the issues.

35 To deny a party a hearing should be the last resort of court. The Respondent can in his defence raise the issues of contempt of court so that they can be pronounced upon in the civil suit filed by the Applicant.

The application is accordingly allowed on those grounds. The status quo to be maintained pending the determination of the civil suit filed by the Applicant at the Land Division.

40 Costs of the application will abide the outcome of the civil suit.

Flavia Senoga Anglin
JUDGE
31.07.17