

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

FAMILY DIVISION

MISCELLANEOUS APPLICATION NO. 25 OF 2015

ARISING FROM CIVIL APPEAL NO.5 OF 2012

GEORGE WILLIAM KALULE.....APPLICANT

VERSUS

1. NORAH NASSOZI

2. THOMAS KALINABIRI.....RESPONDENTS

BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This court heard the above application on 26/03/2015 where the applicant sought an order that the execution of the decree and taxation of the Bill of Costs in Civil Appeal 05/2012 disposed of by this court be stayed, and that costs be provided for. The ground of the application is that the applicant had appealed the decision of this court, which had been entered against him vide Civil Appeal 05/2012, to the Court of Appeal; and that he would suffer substantial loss not atoned by way of damages if the stay is not granted.

The respondents' counsel did not object to the application on condition that the applicant deposits the taxed costs in court as required by law. He argued that the order for stay of

execution is conditional on deposit of security. He cited Order 43 rule 4(3) of the Civil Procedure Rules (CPR) to support his position. He also informed court that he will avail the relevant authorities on the matter, which was eventually done.

The applicant's counsel opposed the respondents' prayer for security of costs. He maintained that that the applicant had filed an appeal in the Court of Appeal against this court's orders, which was the reason why this court's orders should be stayed. He argued that this was meant to give opportunity to the applicant to be heard in the appellate court, and that there is likelihood of the appeal succeeding. He argued that if the applicant deposits costs it would not serve justice to him and would make the application useless. He also subsequently filed written submissions on his own motion, where he added that, among other things, there is no formal application for costs on record, and that the application should be dismissed. I did not address the written submissions, since they had not been raised in his initial oral submissions before court as to require the other counsel to respond to them in the interests of natural justice.

This court proceeded to issue the order staying execution of the decree and taxation of the Bill of costs in Civil Appeal 05/2012 since it was not opposed by the respondents' counsel. It reserved ruling on the aspect of security for costs, pending counsel for the respondents' submission of the authorities he promised to avail court.

It may be pointed out however that this court, after granting orders to stay execution and taxation of costs as per the prayers in the application, eventually found, on perusal of the record, that the applicants' counsel had conceded the respondent's counsel's objection to staying the taxation of the Bill of Costs before the Registrar of this court. He had accordingly agreed that taxation can proceed, although it is yet to take place. Counsel, at the time of hearing this application, did not

advise court about this, or at least amend the application to leave out the said aspect of staying the taxation of the Bill of Costs. This therefore renders part of this court's order, that is, the part regarding stay of the taxation of the Bill of Costs redundant, having been overtaken by events.

On security for costs, Order 43 rule 4(3)(c) of the CPR provides that no order for stay of execution shall be made unless the court making it is satisfied that security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her. The other conditions to be met are contained in rule 4(3)(a) & (b) of the same Order, that is, that substantial loss may result to the applicant, and that the application was made without reasonable delay, but these two are not relevant in the instant application where both counsel agreed to stay the execution. I will therefore only focus on the aspect of security for costs on stay of execution.

In **Lawrence Musiitwa Kyazze V Eunice Busingye Civil Application No 18/1990**, the Supreme Court stated that parties asking for a stay should be prepared to meet the conditions set out in Order 34 rule 4(3) of the CPR - the Order now is 43 rule 4(3) of the CPR in the 2000 edition of the Laws of Uganda. The same principle was emphasized by the Court of Appeal in **DFCU Bank Ltd V Dr. Ann Persis Nakate Lusejjere Civil Application No 29/2003** which emphasized that under Order 39 rule 4(3) of the CPR (now Order 43 rule 4(3) of the CPR), an application for stay of execution pending an appeal must be accompanied by payment of security for costs. Also see **Godfrey Kasujja & 7 Others V Paul Njawukana Civil Application No 242/2012, COA.**

In the premises, based on the forgoing authorities, it is my considered opinion that an application for stay of execution pending an appeal must be accompanied by payment of security for costs as

required under Order 43 rule 3(c) of the CPR. In that regard, this court grants the respondents' counsel's prayer that the applicant pays security for costs for stay of execution pending appeal in this matter, by depositing the taxed costs deposits in court as required by law.

Dated at Kampala this 20th day of April 2015.

Percy Night Tuhaise

Judge.