

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(EXECUTION AND BAILIFFS DIVISION)**

**MISCELLANEOUS APPLICATION NO. 368 OF 2016**

5 **(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 2067 OF 2014 AND  
EMA 1956 OF 2014)**

**(ARISING FROM HC. FAMILIY DIVISION MISCELLANEOUS CAUSE NO. 03 OF  
2014)**

**NEVILLE JAMES STEVENS ----- APPLICANT**

10 **VS**

**SANDRA STEVENS ----- RESPONDENT**

**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

**RULING**

This application was brought under 0.46 C.P.R and SS. 82 and 98 C.P.A.

15 The Applicant seeks review of this court’s order dated 02.10.15, which gave a conditional order of stay of execution. The condition was that the Applicant pays the Respondent 50% of the decretal sum as maintenance, and the other 50% be deposited in court within 60 days of the order.

Costs of the application were also applied for.

20 The grounds of the application are set out in the motion and there is an affidavit in support sworn by the Applicant.

Since there is also an affidavit in rejoinder, court presumes there is an affidavit in reply, which however, does not appear on record.

25 The application was called for hearing on 11.04.16. Counsel for the Applicant gave the background to the application in the terms set out in the motion. Referring to the copy of the decree on court record, Counsel submitted that the conditions of staying execution were harsh and a bar to the Applicants intended appeal.

He contended that, the Applicant's passport is held by court as security, a fact that has hindered the Applicant from travelling for any business trips thereby making it impossible for him to meet the conditions set by court let alone pursue the intended appeal.

5 It was then prayed that court reviews the order for stay, adding that the intended application for leave to appeal has a high likelihood of success and that the Applicant is likely to suffer loss if the application for review is not granted. That it is in the interests of justice that the application be granted.

10 Going through the provisions of S.82 and 98 C.P.A, Counsel prayed court to exercise its inherent powers and grant the application. The case of **Margaret Kato and Another vs. Nuulu Nalwoga SC Miscellaneous Application 11/2011** was relied upon to support the contention that the conditions set out in the order of stay were harsh and unconscionable.

In that case the Supreme Court found that ***“the Applicant would be inconvenienced to deposit a big sum of money.”***

In reply, Counsel for the Respondent relied upon the affidavit in reply.

15 He submitted that 0.46 C.P.R sets out grounds for review and they are:-

- 1) Discovery of new and important matters of evidence previously overlooked by excusable misfortune.
- 2) Mistake or error apparent on face of the record, and
- 3) Any other sufficient reason.

20 That in the present case, the Applicant does not disclose any of those grounds for review, He only contents that the conditions are harsh and he cannot meet them.

The case of **Yusuf vs. Nokrach [1971] IEA 104 (HCU)** which was relied upon in the case of in the matter of **Nakivubo Chemists (U) Ltd [1979] HCB 12** was cited in support.

25 Counsel further submitted that, the case relied upon by Counsel for the Applicant while is good law does not apply to the present situation.

Submitting that the application was devoid of merit, Counsel applied that it should be dismissed with costs.

In rejoinder, Counsel for the Applicant reiterated the provisions of S.82 and 98 C.P.A, stating that the case relied upon is intended to persuade and guide court to invoke its inherent powers

to review its order, as the amount required to be deposited by the Applicant is exorbitant and yet the application for leave to appeal is likely to succeed.

S.82 C.P.A empowers parties aggrieved to make applications for review of judgment or order to the court that passed the decree or made the order, and the court may make such order on  
5 the decree or order as it thinks fit.

The grounds on which review may be applied for are:-

- Discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the Applicant's knowledge or could not be produced by him or her at the time decree was passed or order made.
- 10 - Some mistake or error apparent on the face of the record, or
- For any other sufficient reason.
- See also the case of **Nakivubo Chemists (U) Ltd (Supra)**.

It is true as submitted by Counsel for the Respondent that court have held that "**any other sufficient reason**" means "**sufficient reason of a kind analogous to those set out in the**  
15 **rule**". – **Yusuf Nokrach (Supra)** and **In Re Nakivubo Chemist (Supra)**.

However, my view is that the holdings in the above cases are no longer good case law as they limit the discretion of a court to determine what amounts to "**any sufficient reason**" depending on the circumstances of each case.

I am fortified in my holding by S. 33 of the Judicature Act and the decision of the Supreme  
20 Court in the case of **Byaruhanga & Co. Advocates vs. UDB SCCA 02/2007**. While the case concerned the application of SS. 5 and 6 of the Commissioner for Oaths (Advocates) Act and the rules made thereunder, I find the holding applicable to the circumstances of the present case.

The court held that "**it should be the discretion of the judge in the circumstances of each**  
25 **case to decide whether in the circumstances of a particular case and the dictates of justice a strict application of the law should be avoided.**"

Applying the above decision to the present case, I find that the circumstances of the case and the dictates of justice demand that strict application of 0.46 should be avoided.

The conditions upon which the order for stay was given in essence amounted to enforcement  
30 of the decree in total disregard of the indication of the Applicant that he was in the process of

filing an appeal. The conditions were harsh and unconscionable. This is coupled with the fact that the Applicant's passport is being held as security by the court resulting into his inability to make any business trips to enable him meet the conditions.

Those grounds amount to "***any other sufficient reason***" for which review can be made.

- 5 The application is accordingly allowed for those reasons. The order requiring the Applicant to deposit sums of money in court and to also pay the Respondent \$5,500 is hereby reviewed.

Stay of execution is granted without any conditions pending the disposal of the pending application for leave to appeal.

- 10 This court is aware that under 0.46 r 4 C.P.R – application for review should be made to the same judge who made the order. But in the circumstances of this case, the judge who made the order has been promoted to the Court of Appeal and is therefore no longer attached to this court.

Each party should bear its own costs.

15

**FLAVIA SENOGA ANGLIN**

**JUDGE**

**19.04.16**