

CIVIL SUIT NO.024 OF 2020

VERSUS

Before: Justice Ketrah Katunguka

1. Wamala Elizabeth Damulira, Nagawa Annet and Francis Mukasa (herein called '**the plaintiffs/respondents**') filed this suit against Mpempe Paskal, Damulira Angello and Rita Nayiga (herein acalled'**the defendants/applicants**') seeking orders that the caveat lodged by the defendants against the issuance of letters of administration to the estate of the late Yowana Lule be vacated;
2. When the case came up for hearing on 24/11/2022 counsel Shaffic Musa of M/s Abdallah Kiwanuka Associated Advocates appeared for the plaintiffs; while the defendants were represented by counsel Sserunkuma Faruku of M/s Kagenyi-Opira & Co. Advocates;
3. Counsel for the defendants made an oral application under section 98 of the Civil Procedure Act for stay of proceedings pending the determination of Civil Appeal No.120 of 2022; on the ground that the appeal has a net effect of disposing the current suit.
4. In opposition counsel for the plaintiffs stated that all issues were raised in M.A No.610/2021 which was earlier on dismissed; so the suit should be heard expeditiously as the defendants are intermeddling in the estate of the

state of the

late Yowana Lule using forged letters of administration; that in any case the application for stay of proceedings should be formal and not oral.

5. Court directed that both counsel provide the law on which they rely on; further court ordered that counsel for the plaintiffs avails evidence that the defendants are selling the estate property which evidence shall be shared with counsel for the defendants.

There is nothing to show that proof of sale of estate property/intermeddling, was availed; although there is reference to attached photographs they are not attached to the respondents/plaintiffs' written submissions;

6. Counsel for the applicant for stay did not provide the law on stay of proceedings but justification; counsel for the respondent also argued on what the appeal could and should not do and the effect of MA 619/2021; but do not provide the law;
7. This oral application for stay was brought section 98 of the Civil Procedure Act; to wit ' nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may necessary for the ends of justice or to prevent abuse of process of court';

Background:

8. The plaintiffs and defendants are grandchildren and great grandchildren of the late Yowana Lule who died intestate in 1969; the late Yowana Lule was survived by the late Damulira Angello as a sole child who died in 2011; the late Damulira Angello was survived by 11 children amongst whom are the parties to this suit; before his demise, the late Damulira Angello as a sole beneficiary to the estate of his late father Yowana Lule, never applied to administer the estate of Yowana Lule; the estate properties are still registered in the names of the late Yowana Lule.
9. The plaintiffs together with the 1st defendant petitioned for grant of letters of administration vide High Court Administration Cause No.263 of 2019 to administer the estate of the late Yowana Lule; the defendants lodged a caveat against the issuance of the said letters of administration to the plaintiffs; the 2nd defendant together with Namayanja Desiranta filed HCCS No.003 of 2020 contesting the issuance of letters of administration to the plaintiffs; the plaintiffs in turn instituted the instant suit HCCS No.024 of 2020 seeking court to vacate the lodged caveat by the defendants;



10. The 2nd defendant and Namayanja Desiranta filed M.A No.619 of 2021 arising out of CS No. 003 and 024 of 2020 seeking for orders that: Administration Cause No.263 of 2019 be struck off as it is incurably defective and time barred; civil suit No.024 of 2020 be struck off as it offends the rule of Lis Pendens and is an abuse of court process; in alternative but without prejudice to above, HCCS No.024 of 2020 and HCCS No.003 of 2020 be consolidated; and costs of the application. At submission the ground of consolidation was abandoned because, according to counsel one can not consolidate a nullity.
11. The learned trial Judge, in his ruling in M.A No.619 of 2021 found that Administration Cause No.263 of 2019 is not a suit as envisaged under the law; section 20 of the Limitation Act is not applicable since there had never been any administrators and no distribution of the said estate had ever been done; therefore Administration cause No.263 of 2019 was held not to be time barred; the implication of lodging of a caveat meant that the matter had become contentious therefore the plaintiffs were right to file HCCS No.024 of 2020; the allegation in M.A No.619 of 2021 could be handled in HCCS No.024 of 2020; HCCS No.003 of 2020 was erroneously lodged by the defendants as the caveators therefore it was frivolous, vexatious and an abuse of court process so it was dismissed; M.A No.619 of 2021 was then dismissed.
12. The applicants (2nd defendants and Namayanja Desiranta) in M.A No.619 of 2021 being discontented with court's ruling filed Civil Appeal No.120 of 2022 against the plaintiffs herein; it is on that basis that counsel for the defendants prays for stay of proceedings in the present HCCS No.024 of 2020.
13. Since neither counsel in their submissions framed an issue for court's consideration, I shall in view of the facts of the case, under Order 15 Rule 1(5) of the Civil Procedure Rules frame the following issue for court's determination;
- Whether the application merits the grant of stay of court proceedings in HCCS No.024 of 2020 pending the determination of Civil Appeal No.120 of 2022?***
14. There is a memorandum of appeal Civil Appeal No.120 of 2022; dated 9/3/2022 premised on the following grounds;

- i. The trial Judge erred in law and in fact when he held that Administration Cause No.263 of 2019 is not a suit as envisaged under the law thus occasioning a miscarriage of justice to the appellants.
- ii. The learned trial Judge erred in law and in fact when he held that section 20 of the Limitation Act is not applicable to matters before court where there has never been any administrator and no distribution has ever been done thus occasioning a miscarriage of justice to the appellants.
- iii. The learned trial Judge erred in law and in fact when he held that an estate of deceased person cannot be just left without an administrator simply because the letters of administration were not secured before the expiration of 12 years thus occasioning a miscarriage of justice to the appellants.
- iv. The learned trial Judge erred in law and in fact when he held that section 20 of the Limitation Act applies to claims in respect of an estate which is being administered or after distribution is done thus occasioning miscarriage of justice to the appellant.
- v. The learned trial Judge erred in law and in fact when he held that Administration Cause No.263 of 2019 is not time barred by law thus occasioning a miscarriage of Justice to the appellants.
- vi. The learned trial Judge erred in in law and in fact when he failed to resolve the substantive issues raised in their application and rather went on to invent minor technicalities with (*'sic'*) biasness thus occasioning miscarriage of justice to the appellants.
- vii. The learned trial Judge erred in law and fact when he failed to pronounce himself on the defects complained of in Administration Cause No.263 of 2019 thus occasioning a miscarriage of justice to the appellants.
- viii. The learned trial Judge erred in law and fact when he disregarded the rule of Pendens and as result held that civil suit no.003 of 2020 was wrongly filed thus occasioning miscarriage of justice to the appellants.
- ix. The learned trial Judge erred in law and fact when he exercised judicial powers vested in him with material partiality and irregularity when he held that civil suit No.003 of 2020 was frivolous, vexatious

and an abuse of court process and dismissed it with costs thus occasioning miscarriage of justice.

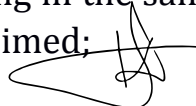
11. Order 39 rule 2 of Civil Procedure Rules provides for stay of proceedings; it states;

“Where a Plaintiff has instituted two or more suits, and under the provisions of rule 3 of Order 1 of these Rules the several Defendants could properly have been joined as co-Defendants in one suit, the Court, if satisfied upon the application of a Defendant that the issues to be tried in the suit to which he or she is a party are precisely similar to the issues to be determined in another of the suits, may order that the suit to which the Defendant is a party be stayed until the other suit shall have been determined or shall have failed to be a real trial of the issues.”

12. From the above provisions, three elements must be proved for court to stay its proceedings that is: - That the Plaintiff instituted more than one suit against several Defendants, including the applicant; that the Defendants could be properly joined in one suit; that the issues to be tried in the suit to which the applicant is a party are similar to the issues to be determined in another of the suits; ((see: **Nkalubo v Mukoome [2021] UGHCLD 6**)

13. As far as this case is concerned, whereas the subject matter to be dealt with in both HCCS No.024 of 2020 and Civil Appeal No.120 of 2022 is the same, the plaintiff only instituted one suit against the defendants and rather it is the 2nd defendant and a one Namayanja Denziranta who instituted HCCS No.003 of 2020, M.A No.619 of 2021, and Court of Appeal Civil Appeal No.120 of 2022 against the plaintiffs; in essence, the defendants in both suits are not the same; as the 1st and 3rd defendants in the instant suit are not reflected amongst the parties in the civil appeal. That being the case, Order 39 rule 2 of the Civil Procedure Rules is not applicable to the circumstances surrounding this case;

14. Section 6 of the Civil Procedure Act provides that no court shall proceed with the trial of any civil suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title where the suit or proceeding is pending in the same or any other court having jurisdiction in Uganda the relief claimed;



15. Stay of proceedings pending appeal being the temporary suspension or halting of a lower court's proceedings by direction or order awaiting the conclusion of an appeal is at court's discretion as well where there is sufficient cause in the interest of justice; for it is not mandatory for court to stay its proceedings.

16. In the Kenyan case of **Kenya Wildlife Service Vs James Mutembei (2019) eKLR**, Gikonyo J held that:

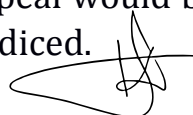
"Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent".


17. In **Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000** Ringera J, (as he then was) stated that: -

"As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously".

I hold the same view because one should not be denied a right to be heard because some other party feels that the decision of appeal may affect the trial at a lower level unless the facts and the parties are the same; simply because the subject matter is the same should not give a window for persons who believe the issues are related to delay hearing of a specific case;

18. The true purpose of a stay pending appeal is to ensure that the orders which might ultimately be made by the Court of Appeal are fully effective; as court will focus on whether the appeal would be rendered nugatory and whether the appellant would be prejudiced.



19. I have carefully examined the grounds of appeal I have not seen reference to this CS No. 24/2020; the applicant/defendant after pursuing the appeal according to the grounds as stipulated may apply to join this civil suit; it is my considered view that the ruling in MA 619/2021 was majorly on the CS 23/2020 so the appeal is equally premised;
20. An application for stay of proceedings should be in good faith; I have considered the genesis of the complaints in this suit and my honest view is that there is an element of wishing to delay which is not in the interest of justice; court can not bow to delays occasioned by parties who may benefit if a matter is not expeditiously heard to conclusion; that can not be substantive justice; (see: *Intro Shipping Ltd V. Logos Trading NV, 2002, 14 NWLR (PT.788) P. 570*).
21. **Section 33 of the Judicature Act**; provides that: - "The High Court shall in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that so far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicity of legal proceedings concerning any of those matters avoided."
22. The defendants caveated the plaintiffs' petition for letters of administration in 2019; this is an estate of a person who died in 1969; matters to do with the administration of estate of the deceased should not be delayed unreasonably since the estate is bound to go to waste;
23. Where there is an opportunity to determine what constitutes the estate, who are the beneficiaries and who should administer it, the whims of a few individuals should not bog down the process; In the interest of justice, and in exercise of this court's inherent powers under **section 98** of the Civil Procedure Act and in exercise of powers granted this court by section 33 of the Judicature Act; HCCS No.24/2020 should in the interest of substantive justice pursuant to article 126 of the Constitution; not be delayed any further; I find no merit in this application for stay of proceeding in HCCS No.024 of 2020;
24. Before I take leave of the matter; I must state that halting proceedings is a serious issue which should be properly brought before court not by a mere oral application and without legal backing.
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25. The oral informal application for stay of proceedings in HCCS No.024 of 2020 pending the determination of Court of Appeal Civil Appeal No.024 of 2020 is dismissed with costs to the plaintiffs/respondents.



Ketrah Kitariisibwa Katunguka

Judge

16/02/2023

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