

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO. 14 OF 2016
(Arising out of Miscellaneous Application No. 15 of 2016)
(Also arising out of Civil Suit KAS – 00 – CV – CS – LD – 029 of 2011)

KASESE DISTRICT LOCAL GOVERNMENT COUNCIL...APPLICANT

VERSUS

BALUKU LUCIANO

MASEREKA JULIUS

BAMWIITE DAVID

EMMANUEL BUHAKA

MARAHU JULIUS

.....**RESPONDENTS**

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK

Ruling

The Applicant by way of Notice of motion instituted an Application under **Order 43 Rule 4** of the Civil Procedure Rules for orders that; execution of the Decree made by the Chief Magistrate’s Court of Kasese in the main suit be stayed pending the outcome of the Appeal that has been lodged by the Applicant and costs of the application. The Application is supported by the affidavit of Asaba Wilson who is the Assistant Chief Administrative Officer of the Applicant.

The grounds of the Application are;

1. That the Applicant’s Appeal in the High Court of Kasese vide Civil Appeal No. LD – 15 of 2016 shall be rendered nugatory if execution is not stayed.
2. That the Applicant will suffer substantial loss if the order of stay of execution is not made.
3. That the Application has been made without unreasonable delay.

Baluku Luciano in his affidavit in reply averred that, that him and the 2nd, 3rd, 4th and 5th Respondents sued the Applicant for trespassing onto their land in the chief Magistrates Court of Kasese and judgment was passed in favour of the Respondent. That after judgment was passed the Respondents applied for a decree and its execution and it was granted. That the

suit land belongs to the Respondents and the Application has no probability of success. Further that the Applicant has not furnished security for due performance of the decree. That the Application has been made in ordinate delay and is intended to waste Court's time and delay execution. That thus, the application should be dismissed.

Counsel Tukahirwa Joyce appeared for the Applicant and Counsel Ahabwe James represented the Respondents. Both parties agreed to proceed orally.

Order 43 Rule 6 of the Civil Procedure Rules provides that;

“No such security as is mentioned in rules 4 and 5 of this Order shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him or her in his or her official capacity.”

The Application was however, opposed on grounds that there was no substantial loss, no security, and unnecessary delay under **Order 43 Rule 4(3)** of the Civil Procedure Rules.

From the lower Court's judgement it is very clear that the Suit land is 4.6 Hectares. The Community Hall is occupying a small portion of the land, and the rest of the land is vacant. Community Hall can be saved off and the rest of the land be given to the Respondent to utilise and enjoy the fruits of their judgment.

Order 46 Rule 6 of the Civil Procedure Rules makes provision for security for costs before the hearing of the application.

Counsel for the Respondents submitted that it is the intention of the Applicant to delay the costs of judgment. Judgment was delivered in March, lodged an appeal in March but up to now has not shown any interest in moving the file, interest is to stay execution, no attempt on record to show that they moved Court to have the records, no valid grounds for stay of execution, and prayed that the Application be dismissed.

In the alternative, that if Court is inclined to stay execution, the Applicant pay 20M as general damages as ordered by Court and secondly, occupy the piece on which the community hall is and not the entire suit land.

In rejoinder Counsel for the Applicant submitted that the suit land is a subject of public interest and the Applicant is subject to benefit from **Order 43 Rule 6** of the Civil Procedure Rules. That Government includes both the Local and Central Government. That there is no inordinate delay by the Applicant and due diligence has been exercised. In regard to the 20M Counsel submitted that, this is subject of the Appeal and prayed that the order for stay of execution be granted and costs await the outcome of the Appeal.

Having attentively listened to the submission of both Counsel and the authorities read to me regarding stay of execution. I have taken into account the affidavits in support and affidavit in reply to the application. The grounds for stay of execution under **Order 43 Rule 4** are that;

“An appeal to the High Court shall not operate as a stay of proceedings under decree or order appealed from except so far as the High Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree: but the High Court may for sufficient cause order stay of the execution of the decree.”

Order 43 Rule 4(3) of the Civil Procedure Rules provides;

“3) No order for stay of execution shall be made under sub-rule (1) or (2) of this rule unless the court making it is satisfied—

(a) That substantial loss may result to the party applying for stay of execution unless the order is made;

(b) That the application has been made without unreasonable delay; and

(c) 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.”

“6) No such security as is mentioned in rules 4 and 5 of this Order shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him or her in his or her official capacity.”

Meaning that if one fulfils the above requirements, the Court can go ahead, and stay execution.

Counsel for the Applicant submitted that loss shall be occasioned to the Applicant because the 4.6 Hectares hosts the Community Hall, staff quarters within the premises, also the offices of the Speaker and in the interest of the public it would not look okay if the Respondents are granted vacant possession. Counsel for the Applicant went on to submit that be as it may, the suit land has only one title whose process started way before the Court proceeding started, and the title was obtained in 2013. Further, that the matter is on appeal with a high likelihood of success.

Regarding unnecessary delay, Counsel submitted that immediately the ruling came out, they wrote a letter to the Registrar for Certified copies and she has been following the matter except that the Registrar in Fort Portal went for a workshop and is now on leave, even the Judge was transferred and as such she could not do much.

On security, Counsel for the Applicant submitted that Government includes both Central and Local Government and as such cannot give security.

Counsel for the Respondent vehemently opposed the Application and stated that 4.6 Hectares is a very big portion of land, which even if the Community Hall and staff quarters are detached still the remaining piece of land should be given to the Respondent to enjoy the fruits of their litigation. Counsel further submitted that there would be no substantial loss to the Applicant.

On the issue of unnecessary delay, Counsel concurred that whereas the Respondent could have acted within time, it is intended to delay justice since Counsel is not even moved to neither have certified copies of the proceedings nor fix the matter for hearing.

On the issue of security, Counsel submitted that **Order 43 Rule 6** does not apply to Local Government but Central Government and in any case the Applicant would have deposited 20M before commencement of this Application as security.

Having considered the above submissions, I have come to a conclusion that Kasese District Local Government Council is an administrative body that houses many departments, offices, staff quarters and many others by evicting them and giving vacant possession to the Respondent would mean relocating offices, departments and many others to another location which would cost the local Government.

In the interest of justice, it would be very unfair in terms of costs and public opinion. Much as I agree with Counsel to a small extent that the Community Hall, staff quarters can still be detached and the remaining land be given to the Respondents to utilise it but how sure are we that the Respondent might not sell or destroy or tamper with the beauty and the environment of the place. In any case the matter is on appeal and any side can still win the case.

On the issue of unnecessary delay there is nothing on record to prove otherwise that the Applicant delayed. In any case the Registrar was not around and she is still not around, the Resident Judge was transferred and as such Counsel could not do much.

On the issue of security according to **Black's Law Dictionary**, Government is defined as Government including Local Government and as such **Order 43 Rule 6** Civil Procedure Rules covers Kasese District Local Government Council.

In a nutshell therefore, this application is granted, pending the determination of the appeal and costs shall abide the outcome of the appeal.
I so order.

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OYUKO. ANTHONY OJOK

JUDGE

24/06/16