THE REPUBLIC OF UGANDA

IN THE HIGH COUR TOF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 367 OF 2022

(ARISING FROM EMA NO. 778 OF 2019)

(ARISING FROM MISC. APPLN. NO. 568 OF 2016)

(ARISING FROM MISC. CAUSE NO. 31 OF 2010)

NORAH SERWADDA :: APPLICANT

VERSUS

ANGELLA PETIT NANTEZA :::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

RULING:

This is an application brought by way of Notice of Motion under **Section 34 of the CPA, Section 98 of the CPA and Order 52 rules 1, 2 & 3 of the CPR.**

The applicant is seeking for orders that:-

(i) An order for stay of execution and/or cancellation of a Warrant of Attachment in execution of a decree and sale where the property consists of immovable property issued on the 23rd September 2019 vide EMA No. 778 of 2019.

(ii) The costs of this application be provided for.

The application is supported by the affidavit of the applicant who deposes inter alia:-

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(i) That the respondent's execution proceedings vide **EMA No. 778/2019** were barred in law and as a result prejudice the applicant herein.

(ii) That neither the applicant nor her lawyers were served with a notice to show cause in the said execution proceedings.

(iii) That the applicant intends to appeal against the decision of this Court vide **Miscellaneous Application No. 568 of 2016.**

(iv) That it is just and equitable that this application is granted.

In his affidavit in reply, Cornelius Henry Mukiibi deposes inter alia:-

(i) That he is an Advocate of the High Court.

(ii) That he had personal conduct of **Civil Suit No. 110 of 2007** and all the applications therefrom, and hence very familiar with the case.

(iii) That the application is frivolous, vexatious and devoid of merit.

(iv) That the application if prolix, argumentative, contains material falsehoods and should be struck out with costs.

(v) That the application is fatally defective, made in bad faith, and abuse of Court process, brought under the wrong provisions of the law and should be dismissed with costs.

(vi) That he is aware that the execution proceedings vide **EMA No. 778/2019** being handled by Elder & Hai General Agencies and Court Bailiffs are legal and in accordance with the law of execution of Court orders.

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(vii) That the applicant had earlier on applied for an interim stay of execution but the same was dismissed with costs to the respondent for lack of merit.

(viii) That the applicant and her advocate were duly served with the notice to show cause why execution should not issue vide **EMA No. 778 of 2019.**

(ix) That this Court issued a Warrant of attachment on the 2nd of March 2022 in order for the Judgment Creditor to realize the fruits of her litigation.

(x) That the current application is duplicitous and another way for the applicant to delay and/or deny the respondent/Judgment Creditor from realizing the fruits of the Judgment.

(xi) That he is aware that an intention to institute an appeal has never been a ground for applying for stay of execution.

(xii) That he is aware that the order of the trial Judge vide **Miscellaneous Application No. 568 of 2016** has never been appealed against and execution is valid and lawful.

(xiii) That the applicant has never appealed against the order from the ruling delivered by Justice G. Namundi on 30th August 2018.

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(xiv) That through the conduct of these proceedings, service of court process has always been effected on the respondent and her counsel.

(xv) That the current application by the applicant is overtaken by time and it is an abuse of court process and the time within which to appeal has since expired.

(xvi) That in the interest of justice the application should be dismissed with costs.

In his application in rejoinder **Ngira Theodoro Mugabe** a holder of Power of Attorney for the applicant deposes inter alia:-

(i) That the respondent's affidavit in reply contains gross falsehoods which warrants the same to be struck out with costs.

(ii) That paragraph 9 of the respondent's affidavit in reply is false as it stated that **Miscellaneous Application No. 1089 of 2019** was not dismissed for lack of merit but rather was only not granted because the warrant of execution had expired during the hearing of the application.

(iii) That the respondent and her advocate did not effect service of the notice to show cause why execution should not issue in EMA No. 778/2019 as the applicant had since changed her advocates who were never duly served and the affidavit of service being relied on by the respondent has no proof of service as there is no genuine signature of the respondent or her lawyers.

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(iv) That the applicant filed **M.A No. 32 of 2020** seeking leave of Court to appeal out of time which is yet to be fixed and this is a strong ground for applying for stay of execution.

(v) That it is in the interest of justice that this court grants the stay of execution.

Counsel for the applicant and counsel for the respondent filed written submissions the details of which are on record and which I have considered in determining this application.

The issue to determine now is whether an order for the stay of execution and/or cancellation of a warrant of attachment in execution of a decree and sale where the property consists of immovable property issued on the 23rd September 2019 vide EMA No. 778 of 2019 should be granted.

The respondent raised preliminary objections which I will first deal with.

The preliminary objection raised was that the affidavit in support and affidavit in rejoinder are fatally defective and as such should be struck out on the following grounds:-

(i) That the signature of the applicant in support is distinct and/or different from the signature on the Powers of Attorney signed by the applicant granting **Ngira Theodoro Mugabe** authority to represent the applicant in Court. That is was clear that the document was not authentic as it purports to be. The respondent cited the case of ***Goobi Rodney versus Nabunya Christine***

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(Civil Appeal No. 4 of 2007) [2011] UGHC 65 where it was held that "proof of handwriting may be done by an expert witness (Section 43 of the Evidence Act) or by a person acquainted with the handwriting of the author (Section 45 of the Evidence Act), but court may as an expert of experts make findings on handwriting without a handwriting expert.

He also cited the case of ***Premchandra Shenoi and another versus Maximor Oleg Petrovich – S.C.C.A No. 09 of 2003*** to buttress his submissions.

That the affidavit in rejoinder was deponed by Ngira Theodoro Mugabe and that paragraphs 2,6,7,8 & 9 of his affidavit in rejoinder do not disclose his source of information and yet the information therein is not within the direct knowledge of the deponent because he was not a party and/or participant in the proceedings prior to this application. The respondent cited the case of ***Eseza Namirembe versus Musa Kizito (1972) 1 ULR 88*** which case was originating summons and the application was dismissed amongst other reasons because the supporting affidavit did not set forth the plaintiff's means of knowledge or her grounds of belief and did not distinguish between matter stated on information and belief and those deponed to on the deponent's knowledge.

The respondent prayed that the affidavit in support and affidavit in rejoinder be struck out and the application dismissed with costs.

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In reply the applicant submitted that Ngira Theodoro is well versed with this matter from the beginning where he was supposed to be a witness for the applicant but the matter was settled through a consent. That therefore he knew all the information with direct knowledge.

There is a glaring difference on the way the applicant signed on the affidavit in support of the Notice of Motion and the Power of Attorney she granted to Ngira Theodoro Mugabe. On the Power of Attorney, she signed as **Norah S. Kibuuka** and had crossed out the name of Norah Sserwadda. On the supportive affidavit she signed as **Norah Sserwadda!** This therefore makes the supportive affidavit suspect. The above notwithstanding, this application was filed on the 21st October 2019. The consent Judgment was filed way back on 22nd July 2008. There was an application for review vide **Miscellaneous Application No. 568 of 2016** involving the parties herein which was determined on 30th August 2018. This application as brought over one year after. There is no evidence to show that there is an appeal against the said decision.

It is a requirement under **Order 43 rule 4 (3) (b) of the Civil Procedure Rules** that such an application should be made without unreasonable delay. I find that there was inordinate delay in instituting this application which is a clear abuse of court process.

Article 126 (2) (b) of the Constitution provides that Justice shall not be delayed.

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It is inconceivable that a party to a case can claim that he or she came to know about a verdict of his or her case for over one year! It is a duty of a party in a case to regularly check on the progress of his or her case. Like a gardener, once you have sowed a seed, you need to check on the progress of its growth regularly until harvest time. A litigant cannot sit back and simply wait to be informed about the progress of his or her case.

On the said ground alone, I find no merit in this application which I will dismiss with costs to the respondent.

HON. JUSTICE JOHN EUDES KEITIRIMA

~~JUDGE~~

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