

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1494 OF 2022

(Arising out of Miscellaneous Application No.1493 of 2022)

(All arising from Civil Suit No.156 of 2014)

EDWARD KASINZI alias

GATSINZI:.....APPLICANT

VERSUS

1. HUSSEIN KISIKI NYAMAYAALWO

2. MINSA NABAGABO

3. NDUGA ABDUL:.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

Introduction:

The applicant by way of motion under the provisions of **Section 33 of the Judicature Act Cap.13, Section 98 Civil Procedure Act Cap.98 cap.71 and Order 52 rules 1 & 3 of the Civil Procedure Rules SI 71-1** filed this application seeking an interim order to be issued against the respondents, their agents and assignees in title to stay the execution of the decree and judgement in **Civil Suit No.156 of 2014** pending the determination of the main application and that costs of the application be provided for.

Grounds of the application:

The grounds upon which this application is premised are contained in the affidavit in support of the application deposed by the applicant. He states *inter alia*, that the respondents instituted **Civil Suit No.156 of 2014** against him for orders of cancellation of the special certificate of title of land comprised in **Buruli Block 219 plots 13 & 16 LRV 1840 Kidudula**



Estate Land at Kamunina that he had obtained; recovery of land, general and aggravated damages. The matter was heard and judgement entered in favour of the respondents on 2nd September, 2022.

That being dissatisfied with the judgement of this court, the applicant through his lawyers lodged a Notice of Appeal, requested for the certified copy of the record of proceedings and filed an application for stay of execution of the decree and judgement pending the determination of the appeal. That the appeal has high chances of success since there are serious questions of law and fact to be determined.

In addition, the applicant averred that there is eminent threat of execution as the respondents are already applying to the commissioner land registration to have the applicant's title cancelled and that upon learning of the delivery of the judgement, the respondents and their agents descended onto the suit land, cut the applicant's trees and threatened his workers with immediate eviction and that it was the Police's intervention that saved his developments on the land.

That the applicant is likely to suffer irreparable loss if the interim stay of execution, which has been brought without undue delay, is not granted as the appeal shall be rendered nugatory therefore it is just, fair, equitable and in the interest of justice that this application is allowed.

The 1st and 2nd respondents opposed the application through their joint affidavit in reply deposed by Mr. Hussein Kisiki Nyamayaalwo who stated *inter alia* that not only is the instant application premature, frivolous and lack merit, but the same should be dismissed with costs and that filing an appeal and a letter requesting for a typed record of proceedings does not automatically entitle the applicant to stay of execution.

That the main application **Miscellaneous Application No.1493 of 2022** has not been fixed for hearing as the same has no date and is doomed to be dismissed with costs against the applicant and that the intended appeal has no merit because the grounds raised by the applicant are set to be rejected.

The 1st & 2nd respondents also denied having applied to the Commissioner Land Registration to have the applicant's title cancelled, and that they have not yet applied for execution of the orders of this court, or taken any steps for that matter to execute the same and as such, there is no execution to be stayed.

In addition, that the respondents have not been to the suit land, never cut any trees or threatened any of the applicant's workers with eviction and that the police reference adduced by the applicant is not correct since it does not even indicate the Police station where the file is being handled or the fact that the respondents are suspects.

Further, that even though the applicant has not mentioned the irreparable loss he will suffer; the fact that he is not the rightful owner of the suit land will not be changed, even on appeal therefore he cannot claim irreparable loss over land that he does not own, and over which court has issued a permanent injunction stopping the applicant from using the land.

5 In rejoinder, the applicant stated that filing a notice of appeal and a letter requesting for a copy of the typed record of proceedings show that he has a serious intended appeal, and that although the main application is pending fixing and hearing, the applicant's lawyers have made numerous follow-ups to have the application that was filed on ECCIMIS scheduled for hearing and that the same might be rendered nugatory if this application is not granted,

10 That the applicants might have moved the Commissioner Land Registration to cancel the certificate of title and that the applicant's farm is at risk of being attacked by the respondents' agents yet this court ordered that the same be protected as was seen at the visit to the *locus*.

That the applicant's appeal has merit since the same is based on grounds, clearly showing the areas in which the trial judge erred in fact and law.

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Representation:

The applicant was represented by ***M/s Ahamya & Co Advocates*** and ***M/s Kob Advocates***, while the 1st and 2nd respondents were represented by ***M/s Kaganzi & Co Advocates (Kampala branch)***. Both counsel filed written submissions in support of their respective clients' case, as directed by this court.

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Consideration of the application by court.

I have carefully read the pleadings, evidence and submissions of counsel, the details of which are on court record and which I have taken into account to determine whether or not this application satisfies the conditions warranting the grant of the prayers sought herein.

25 The Supreme court in the case of ***China Henan International Cooperation Group Co. Ltd vs Justus Kyabahwa Miscellaneous Application No.30 of 2021*** held that:

30 ***"The consideration for the grant of an interim order of stay of execution or interim injunction is whether there is a substantive application pending and whether there is a serious threat of execution before hearing of the substantive application. Needless to say, there must be a notice of appeal."***

The above criteria were enunciated in in the case of ***Zubeda Mohamed & Anor vs Laila Walia & Anor Civil Reference No. 07 of 2016*** wherein court summarised the conditions as:

35 ***"In summary, there are three conditions that the applicant must satisfy to justify the grant of an interim order;***



1. **A competent Notice of Appeal;**
2. **A substantive application;**
3. **A serious threat of execution.**

(See also: **Hwang Sung Industries Ltd vs Tajdin Hussein & others, Supreme Court Civil Application No.19 of 2008**)

In the instant case, it is not in dispute that a Notice of Appeal in respect of **Civil Suit No.156 of 2014** was lodged by the applicant through his lawyers. According to the Electronic Court Case Management Information System, the applicant's Notice of Appeal was filed in this court on 6th September, 2022 and the same was received by the Court of Appeal of the same date as per **Annexure 'A'** of the applicant's affidavit in support.

In addition, there is a substantive application vide **Miscellaneous Application No.1493 of 2022** for an order of stay of execution of the decree and judgement of the High Court in **Civil Suit No.156 of 2014**, pending the hearing and determination of the appeal.

On the question as to whether there is serious or eminent threat of execution of the decree or orders, it was brought to the attention of this court that the respondents are applying to the Commissioner Land Registration to have the applicant's title cancelled and that when the respondents got to know of the judgement delivered on 2nd September, 2022, the respondents and their agents descended on the suit land, cut down the applicant's trees and threatened his workers with immediate eviction. (refer to paragraphs 10 & 11 of the affidavit in support.)

That it took the intervention of the Police to save the applicant's developments on the land, claims which the respondents however refuted. The applicant did not adduce any evidence in proof of any of the above averments. However, it is trite that once an order is issued it must be executed, unless a stay of that order is issued by court.

In the circumstances, the order for the interim stay of execution of the decree issued in **Civil Suit No.156 of 2014** sought by the applicant is necessary to preserve the prevailing *status quo* until the substantive application for stay of execution is heard and determined.

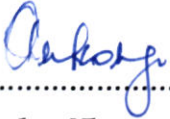
Consequently, the application succeeds in the following terms:

- a. **An order for interim stay of execution of the decree and judgement of this court issued on 2nd September, 2022 is hereby granted, pending the determination of the main application, vide: Miscellaneous Application No.1493 of 2022;**
- b. **An interim injunction doth issue restraining the respondents from alienating or disposing of, or creating third party rights and or interfering with the status quo in respect of the suit land, until determination of the aforesaid substantive application;**

c. No orders as to costs.

I so order.

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Alexandra Nkonge Rugadya
Judge

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19th September, 2022.

Delivered via email



19/09/2022