

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1493 OF 2022

5 **(Arising out of Civil Suit No.156 of 2014)**

EDWARD KASINZI alias GATSINZI:.....APPLICANT

VERSUS

1. HUSSEIN KISIKI NYAMYALO

2. MINSA NABAGABO

10 **3. NDUGA ABDUL:.....RESPONDENTS**

Before Hon. Justice Alexandra Nkonge Rugadya.

Ruling.

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** seeking an order to stay the execution of the decree and judgement in **Civil Suit No.156 of 2014**, pending the determination of the appeal against the decision of this court; and that costs of the application be provided for.

The application is supported by the affidavit of **Mr. Edward Kasinzi alias Gatsinzi**, and opposed by the affidavit in reply of Mr. Ndugga Abdul. No affidavit in rejoinder was filed by the applicant.

20 On 12th September, 2022, this court issued orders directing the applicant to effect service of the application, as well as the written submissions in support thereof upon the respondents by 16th September, 2022.

Counsel for the respondents by letter dated 3rd October, 2022 brought to the attention of court the fact that the applicant did not comply with the directives issued by this court, and that he did not serve the respondents with the application within the stipulated time.

Order 49 rule 2 of the Civil Procedure Rules stipulates that all other Court processes must be served in a manner provided for service of summons. Such processes include a motion on notice.

According to **Order 5 rule 16 of the Civil Procedure Rules**, proof of service of summons is by an affidavit of service, stating the time when, the manner in which summons was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery of summons.

Evidence of service of any court documents is by way of filing an affidavit of service and there appears none on the court file to indicate the exact date of service, if any, of the application upon the respondents.

35 In the absence of evidence that the application was served onto the respondents within the prescribed time, it is correct to state that the applicant did not comply with the orders of this court. It was also on

In the absence of evidence that the application was served onto the respondents within the prescribed time, it is correct to state that the applicant did not comply with the orders of this court. It was also on the account of the applicant's omission to serve the application that the respondents filed the affidavit in reply on 3rd October 2022, outside the time as directed by the court.

- 5 Accordingly, this application is dismissed for want of proper service.



.....
Alexandra Nkonge Rugadya

10 **Judge**

10th October, 2022

*Delivered by email
10/10/2022.*