

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISC. APPEAL NO.0012 OF 2022
ARISING FROM EMA 0062 OF 2020
ALSO ARISING FROM CIVIL SUIT NO.11 OF 2011

HAJATI AJIRI NAMAGEMBE APPELLANT

VERSUS

LT.COL (RTD) KASHILINGI AHMED RESPONDENT

BEFORE HON. LADY JUSTICE FLAVIA NASSUNA MATOVU

RULING

This was an appeal against the decision of the Deputy Registrar that was passed on 11/11/2021. It was brought under the provisions of S.76 & S. 79 (1) b of the Civil Procedure Act and O.50 rr 1,3,4& 8 of the Civil Procedure Rules.

It was seeking for orders that;

1. The learned Registrar's decision refusing to evict the Respondent from the suit property comprised in LRV 305 Folio 21 Plot 65, Kampala Road be quashed and set aside having been issued in utter disregard of the law;
2. Execution of judgment and decree in HCCS No. 110 of 2011 be issued by the Respondent being evicted from the suit property and costs of the application be provided for.

It was brought by Notice of motion which was supported by an affidavit sworn by the Applicant. Grounds of the application were laid out in the Notice of motion and affidavit in support. Briefly the grounds were that;

- a) The learned registrar erred in law and in fact when she refused to grant execution of decree in HCCS No. 11 of 2011 and thereby occasioned a miscarriage of justice to the Applicant.

The Respondent was served with this application but did not file any affidavit in reply. He also did not appear for hearing on the scheduled date. The matter therefore proceeded ex parte and unopposed.

The Applicant filed written submissions in this matter. The court has carefully studied all the pleadings on record, the submissions by the Applicant plus the relevant law.

Background:

- I. The Applicant filed HCCS No. 11 of 2011 against the Respondent and two others way back on 2011.

Judgement was delivered in favor of the Applicant on 8/2/2019 in the following terms.

- The Applicant was declared legal and rightful owner of suit land comprised in LRV 305 Folio 21 Plot 65, Kampala Road;
- The Respondent to vacate the suit property with immediate effect and if he failed to vacate within a period of 30 days from date of judgement eviction shall ensue;
- The Respondent to pay mesne profits (outstanding rent) at the rate of Ug. Shs. 1.5 million per month from July 2004 to February 2019 which amounted to 262,500,000/=;
- The respondent to pay interest on the above at rate of 20% from date of judgement till payment in full;
- Permanent injunction was issued restraining the Respondent from interfering with possession of the suit property;
- The respondent to pay costs of the case to Applicant.

- II. The Respondent being dissatisfied with above decision lodged an appeal to Court of Appeal vide Civil Appeal No. 223 of 2019.

He also lodged an application for stay of execution pending the above appeal vide EMA No. 196 of 2019.

III. On 28/2/2020, the Respondent was granted a conditional stay of execution in the following terms;

- The Respondent must comply with the orders of court to vacate the suit property and must obey the order of permanent injunction
- Stay of execution in respect of pecuniary award and costs issued on condition that Respondent deposits into court Ug. Shs. 31.5 million within 30 days from date of ruling failure of which the order of stay of execution would automatically lapse
- Applicant not to sell or dispose of the suit property until disposal of the appeal.

IV. The Respondent did not comply with above mentioned orders and consequently the Applicant applied for execution of the decree.

On 11/11/2021, parties appeared before the Deputy Registrar on a notice to show cause why execution should not issue where upon the Registrar declined to issue execution.

The Applicant being dissatisfied with the decision of the Registrar lodged the instant appeal.

The issue to be decided by this court are;

- i. Whether the Registrar erred in law and in fact when she declined to issue execution of decree in HCCS No. 11 of 2011 and what are the remedies available?**

The Applicant maintained that the Registrar erred in law and in fact when she declined to grant execution of decree in HCCS No. 11/2011, because the Respondent had failed to satisfy the conditions for stay of execution given by court on 28/2/2020. Since the Respondent had failed to comply with the conditions for stay, the said stay had automatically lapsed and execution should issue.

After carefully studying the pleadings and record of proceedings I noted that the Deputy registrar declined execution on the grounds that the Respondent had filed an application for stay of execution in the court of appeal and that there was also a pending appeal and that if execution ensued, the application and appeal would be rendered nugatory.

I have however made the following observations.

The court already entertained application for stay of execution pending appeal and a conditional stay was granted on 28/2/2020.

The Respondent did not comply with the terms and conditions in the conditional stay.

He only filed another application for stay of execution in the court of appeal on 8/11/2021, one year and 8 months later, after the Applicant had applied for execution.

The Respondent has never complied with any order issued by court since the matter was decided in 2019. He first defied the decision of Hon Justice John Eudes Keitirima issued on 8/2/2019 and then also defied decision of Hon. Lady Justice Patricia Basaza issued on 28/2/2020. He is therefore not coming to court with clean hands. Any party who wants to benefit from court process must show that they are ready and willing to do what court orders them to do even if they are not in agreement.

Therefore, since the Respondent did not comply with terms and conditions in the conditional stay, the deputy registrar ought to have ordered execution to proceed. The pending applications in court of appeal were not tantamount to stay of execution.

The Respondent did not therefore show good cause as to why execution of decree in HCCS No. 11 of 2021 would not issue.

The deputy registrar therefore erred in law and in fact when she declined to issue execution in this case.

The learned Registrar's decision refusing to evict the Respondent from the suit property comprised in LRV 305 Folio 21 Plot 65, Kampala Road is therefore hereby quashed and set aside.

This application is therefore hereby allowed and it is hereby ordered that execution of decree in HCSS NO. 11 of 2011 should issue against the respondent unless there is any order from court of appeal staying the said execution.

The Respondent shall pay costs of this application.

Date at Kampala this^{24th} Day of^{October} 2022


FLAVIA NASSUNA MATOVU
AG. JUDGE.