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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 2359 OF 2021
(ARISING FROM CIVIL SUIT NO. 122 OF 2017)

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1.TAYEBWA JULIUS

2.ATUHAIRE JOLLY-----APPLICANTS

VERSUS

1.DAMALIE IRENE MBASEGE

2.ENG.PHILIP NYENJE

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3.JENNIFER MARRIET BUKIRWA N.

4.KYAZIKE MARGARET NSUBUGA

5.ELIZABETH C. NANTUBWE(DECEASED)

6.GRACE NANYANZI

7.ENG. SAMUSONI KIBUUKA

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8.THOMAS KIRABIRA

9.ENG.NASANAERI DDUMBA-----DEFENDANTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

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The Applicants, Mr. Tayebwa Julius and Ms. Atuhair Jolly brought this motion under sections 98 and 83 of the Civil Procedure Act, section 33 of the Judicature Act and order 43 rule 4 (1), (2) and (3) (a) and (b) of the Civil Procedure Rules seeking orders that;

1. Execution of the Judgment and decree in Civil Suits 121 and 122 of 2017 (consolidated) be stayed pending the final disposal of the Applicant's intended appeal.
2. Costs of the Application be provided for.

Grounds of the application

Both Applicants filed affidavits in support of the Application in which they averred that they are Plaintiffs in Civil Suit No.122 of 2021 in which they sued inter alia for a declaration that they are the lawful owners of a portion of land comprised in Kibuga Block 6 Plot 272 at Katwe measuring 2,62 acres, and that a certificate of title for the said land be issued.

The Court in that matter dismissed the suit and entered judgment against them on the counter claim.

They added that in particular, Court ordered that the 2nd to 9th Respondents are the lawful owners of the suit land and that they are trespassers on the land. The Court further issued an order of vacant possession to the 2nd to 9th Respondents and that all structures they erected on the land should be demolished. A copy of the judgment was attached and marked annexure A.

Both Applicants contended that they are dissatisfied with the whole judgment and orders of the learned trial Judge and intends to appeal against it. To that end, a notice of appeal and letter requesting for a record of proceedings were filed and served on the Respondent's advocates. A copy of the same were attached and marked annexure B and C respectively.

The Applicants further stated that they have been informed by their advocates that the intended appeal has high chances of success but upon implementation of the orders of Court, the Respondents will be at liberty to evict him from the property by demolishing the structures thereon. They added that the Respondents have already started delivering building materials such as sand and hard rocks ready to utilise the suit land. A photograph showing the same was attached and marked D. Therefore, there is an imminent danger

5 of execution which will make them suffer substantial loss and damage if a stay is not granted, hence this application.

The Applicants further stated that the Application has been made without reasonable delay and that they are ready to deposit security for the due performance of the decree
10 as may ultimately be binding on them.

7th Respondent's Reply to the Application.

In opposing the application, Eng. Samusoni Kibuuka who is the 7th Respondent in this matter admitted that the Honourable Court in Civil Suit No.121 and 122 of 2017 decreed
15 that the suit land belonged to the 2nd to the 9th Respondents. Apart from the Respondents being in possession of the suit land, the certificate of title is also registered in the names of the Respondents, therefore the Applicants have no interest therein. A copy of the certificate of title and a photocopy of the photos showing the same was attached and marked annexure 'A' and 'B' respectively.

20 The 7th Respondent also averred that the Applicants intended appeal has no merit and is an abuse of Court process. He further stated that this application is premature since no decree has been sealed by this Court, no application for execution has been filed as at the time of filing this reply and that the Applicants have not raised sufficient grounds to warrant its grant. He however averred that in case this Court is inclined to grant the
25 Application, then the Applicants should be ordered to deposit Ugx. 100,000,000/= as security for the due performance of the decree or order.

Rejoinder

30 Both Applicants filed affidavits in rejoinder to the reply. In his rejoinder, the 1st Applicant stated that much as the Court decreed that the land belongs to the 2nd to 9th Respondents, he is dissatisfied with the said decision. He further stated that even if the Respondents are the registered proprietors of the contested land and administrators of the estate of the late Cranimer Mugerwa, they had signed transfer forms in favour of the 1st Respondent
35 who sold the land in contention to him as her share in the estate.

5 The 1st Applicant further averred that the Respondents are not in possession of the
disputed land as they claimed vacant possession in their counterclaim in the main suit. A
copy of the defence and counterclaim was attached and marked RB. It was also his
avermment that though there is no decree filed in Court, he was informed by his lawyer that
he approved a decree which was presented by Counsel for the 2nd to 9th Respondents.
10 And immediately after that, the Respondent promptly delivered building materials such as
sand and hard rocks on the land which prompted him to file this application.

The 2nd Applicant reiterated the 1st Applicants averments in rejoinder.

15 **Representation**

The Applicants were represented by Mr. Obed Mwebesa from M/S Obed Mwebesa and
Associated Advocates while the 2nd – 9th Respondent was represented by Mr. Kenneth
Kajeke from M/S Kajeke, Maguru and Co. Advocates.

20 Both Counsel filed written submissions which I have considered.

Resolution

I have read the application for stay of execution filed by the Applicants and the Affidavit
in support as well.

25 The reply filed by the Respondents has also been perused. This is an application for stay
of execution and the Applicants have demonstrated that they have filed a Notice of Appeal
but they have not proved to the satisfaction of this Court as to what substantial loss they
will suffer. This is primarily because there is no pending application for execution of this
Court's judgment that has been filed by the Respondents.

30 And there is no evidence that the Applicant shall suffer substantial loss if this application
is granted. I agree with the Respondents that this application is highly speculative and
unnecessary at this stage. See **Gashumba V Nkudiye (Civil Application No. 24 of
2015) UGSC 7(23 April 2015)**

This application is therefore dismissed with costs to the Respondents.

Olive Kazaarwe Mukwaya

10 **JUDGE**

30th November 2022

Delivered by email to Counsel for the Parties.