

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

MISC. APPLICATION. 1976 OF 2021

*(Arising from a fresh suit- HCT-LD-CS- 980-2021 & dismissed suit no. 415 -
2019)*

ISMAIL SEBADDUKA:::APPLICANT

VERSUS

SWAIBU KYESWA & 9 OTHERS:::RESPONDENT

BEFORE: HON. MR. JUSTICE TADEO ASIIMWE

RULING

This application was brought under Order 22 r 23(1) Rule 26, Order 52 rules 1, & 2 of the Civil Procedure Rules (CPR) and Section 98 of the Civil Procedure Act (CPA) and section 33 of the Judicature Act.

The applicant is seeking for an order for stay of execution of the decree and orders arising from High court civil suit No. 415 of 2019 pending the determination of CIVIL SUIT NO. 986 OF 2021, restraining the respondents from proceeding with execution and costs of the application be provided for.

The application is supported by an affidavit sworn by the applicant of the applicant dated 25th October 2021.

The grounds of the application as contained in the notice of motion and affidavit in support and briefly are that;

1. That the applicant filed civil suit no. 986 of 2021 by way of a fresh suit arising from civil suit no, 415 of 2019 which was dismissed.
2. That the applicant the new suit has a high chance of success.
3. That both suits revolve around the same subject matter which is Land at Mulago Block 29 plot 293.
4. That the respondents have commenced execution proceedings against the applicant.
5. That it will be unjust if the respondents proceed with execution before real issues are resolved.
6. That the applicant will suffer substantial loss and irreparable damage if an order of stay is not granted.
7. That the fresh suit herein will be rendered nugatory if execution is not stayed
8. That the application is brought without delay.
9. That it is just and equitable that this application be granted. To the applicant.

On the other hand, the respondents opposed the application relying on the affidavit of Onesmus Mungenyi dated 3rd March 2022.



At the hearing of this application, Counsel Twesigeomuhangi Barnabus appeared for the applicant while Counsel Evans Tusiime & Kaweesi Kakooza represented the respondents.

Both counsel were directed to file written submissions which they did and I shall consider them in this ruling.

In his submissions the applicant's counsel relied on order 22 rule 26, section 33 judicature Act, and section 98 of the civil procedure Act submitting that the applicants filled civil suit no. 415 of 2018 against the defendants. That the same was dismissed with costs. That a fresh suit was filed and since the earlier suit did not settle the matter on merit. That the respondents commenced execution by filling an application for taxation bills. That it would be unjust for this honorable court to give the respondents leeway to proceed with execution of costs. That the rationale for this application for stay of execution is clearly meant to preserve the status quo in dispute so that the rights of the applicant in relation to the subject matter are determined on merits without intimidation or fear of being arrested for want of costs.

In response to the application, counsel for 4th, 5th, & 6th respondents argued at length that the application, is misconceived, defective, brought when ought in bad faith and intended to waste courts time and deprive the respondents the fruits of justice. That the application arises from a dismissed suit which has not been challenged by the applicant. That the fresh suit has nothing to do with a completed matter and the applicant shall suffer no injury when cost are paid for



concluded case. That there is no way a fresh suit will be rendered nugatory and the parties have nothing to execute in civil suit number 986 of 2021.

For the 7th & 8th respondents, counsel argued that the application was brought under a wrong law and therefore a non-starter bad in law and incompetent which should be dismissed with costs for failure to satisfy the grounds for stay.

RESSOLUTION

I have considered the grounds of this application, the supporting affidavit and its attachments. I have also considered the arguments for both counsel.

It is clear that the applicant is seeking for stay of execution basing on a pending fresh suit and dismissed suit.

The law

For court to grant applications of this nature, the applicant must meet conditions set under Order 43 r 4 (3) of the CPR which have been interpreted in a number of decisions to include the following principles;

1. The applicant must show that he lodged a notice of appeal
2. That substantial loss may result to the applicant unless the stay of execution is granted.
3. That the application has been made without unreasonable delay.
4. That the applicant has given security for due performance of the decree or order.
5. That there is a serious or eminent threat of a decree or order and that if the application is not granted the appeal will be rendered nugatory.

6. That the application and appeal are not frivolous and has a likely hood of success.
7. That refusal would inflict more hardship than it would avoid.

I shall therefore go ahead and assess whether the application meets the conditions as set down in the law.

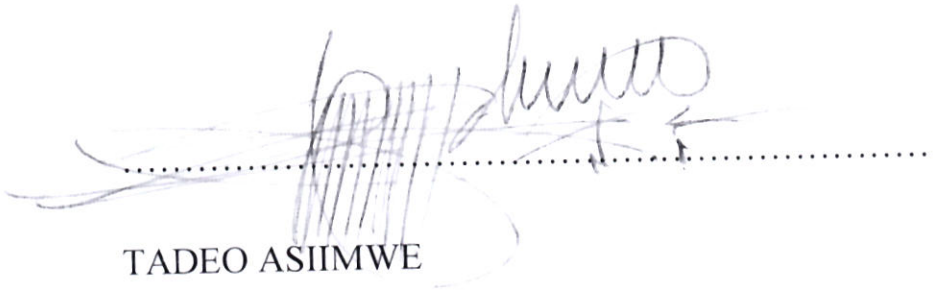
From the pleadings on record and submissions, it is clear the application was filed without any delay. However, perusal of both parties' pleadings, annextures and submissions does not show evidence of any appeal or application pending arising from a dismissed suit. Therefore the applicant has not challenged the decision of court in dismissed civil suit number 415 of 2019. The applicant chose to file afresh. By implication, this application arises from a non -existent suit and a fresh suit. The fresh matter can still be heard and determined even when execution is allowed to proceed since there no evidence that the respondent has attached the suit property. There are other modes of execution which will enable the respondent recover the money without interfering with the suit property.

In my considered view this application lacks merit for failure to meet the considerations for grant of stay. The application arises from a completed suit which has not been challenged in any court. The fresh suit has no bearing to execution process in a concluded suit.

For the above reasons, this application fails and it is dismissed with costs against the applicant.

I so order.

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A handwritten signature in blue ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line. The signature is stylized and somewhat obscured by a large, dark, scribbled-out mark.

TADEO ASIIMWE

JUDGE

14/10/2022

