

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO.2031 OF 2022**

*(Arising from Miscellaneous Application No.711 of 2022)*

1. **BAMWEYANA CHARLES**
2. **NAKAYENGA BENNAH**
3. **NDAGIRE ROBINAH**.....**APPLICANTS**

**VERSUS**

1. **SSIMBWA RICHARD**
2. **COMMISSIONER LAND REGISTRATION**.....**RESPONDENTS**

**Before Hon. Justice Alexandra Nkonge Rugadya**

**Ruling.**

The applicants through their lawyers, **M/s Kafeero & Co. Advocates** brought this application under the provisions of **Section 33 of the Judicature Act cap.13, Section 98 of the Civil Procedure Act cap.71, Order 43 and Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1** seeking orders that;

- a. **An order of stay of execution be issued against the respondents or anyone else claiming and/or acting for and on their behalf, restraining them from executing the order issued in Miscellaneous Application No.711 of 2022 arising out of Miscellaneous Cause No.105 of 2021 by way of vacating the caveat lodged on land situate at Kyadondo Block 250 plot 1330 land at Bunga and/or causing the applicants to pay UGX 30,000,000/- (Uganda shillings thirty million only) as ordered by court, pending the hearing and final disposal of the Appeal preferred by the applicants;**

- b. **Costs of the application be provided for.**

**Grounds of the application:**

The grounds of the application are contained in the affidavit in support of the 1<sup>st</sup> applicant, Mr. Bamweyana Charles. Briefly, that the applicants lodged a caveat on the land comprised in **Kyadondo Block 250 plot 1330 land at Bunga measuring approximately 12 decimals** (hereinafter referred to as the 'suit land') over which they claim a lawful protectable interest, forbidding the registration of any person thereon without their consent and that the 1<sup>st</sup> respondent filed **Miscellaneous Application No. 711 of 2022** which was decided in his favour, seeking among others an order that the said caveat was in defiance of the orders of this court in **Miscellaneous Cause No.105 of 2021**.



That it was held that the applicants' act of lodging the caveat on the suit land amounted to contempt of the court order arising out of **Miscellaneous Cause No.105 of 2021** yet based on the advice of his lawyers, the applicant believes that they cannot be held to be in contempt of court orders that they were not privy to and that being dissatisfied with the ruling and orders of this court in **Miscellaneous Application No.711 of 2022**, the applicants through their lawyers filed a Notice of appeal as well as a letter requesting for the record of proceedings.

That based on the advice of their lawyers, it is the applicants' belief that the said caveat does not violate the orders of court issued in **Miscellaneous Cause No.105 of 2021** because caveating the suit land was the only immediate remedy the applicants sought to protect their interest in the suit land as they were never made aware of the court order and only took action upon learning that the 1<sup>st</sup> respondent was in full gear to unlawfully and unjustly partake interest over the property.

Additionally, that while the intended appeal not only has merit, but also has a great chances of success, the 1<sup>st</sup> respondent has embarked on the process of executing the orders of this court in **Miscellaneous Application No.711 of 2022** and is already extracting an order.

That the intended appeal will be rendered nugatory if this application is not granted and that the refusal to grant the same will inflict greater hardship for all the affected estate beneficiaries who have a lawful claim over the suit property, before all pending litigation over the same is determined on its full merits.

Further, that this application is intended to protect the *status quo* of the suit property as there is an imminent threat posed by the respondent effecting the orders of court in **Miscellaneous Application No.711 of 2022** thereby rendering the appeal nugatory and that the applicants' right of hearing which this application also seeks to preserve shall be curtailed if the application is not granted.

That the applicants who are willing to abide by the terms and conditions set by this court will also suffer substantial loss if execution of the court order is not stayed while the respondents shall neither be prejudiced, nor will they suffer any loss if the application is granted, thus it only fair, just, equitable, and in the interest of justice for this application to be allowed.

Additionally, that the applicant has brought this application with no unreasonable delay and has also satisfied all the conditions for the grant of an order of stay of execution.

None of the respondents opposed this application despite having been served with the application as well as the submissions in support thereof. It follows therefore that the application stands unopposed.

**Consideration of the application.**

I have carefully read the pleadings, evidence and submissions of counsel for the applicant, the details of which are on the court record, and which I have taken under consideration in determining whether or not this application warrants the grant of the prayers sought.

The main issue for determination by this court is whether or not this application discloses sufficient grounds for stay of execution.

It is settled that it is the mandate of the High Court through its inherent powers under **Section 98 of the Civil Procedure Act cap.71** to grant a stay of execution of its decree pending an appeal, so as to





preserve the *status quo* pending an appeal. (See: **Francis M. Micah Vrs Nuwa Walakira (1992-93) HCB 88**)

The grounds for the grant of an order for stay of execution are provided for under **Order 43 Rules 1 and 4(3) of The Civil Procedure Rules SI 71-1** which states that;

- 5           ***The High Court may for sufficient cause order stay of execution of a decree pending an appeal before it where;***
- a) substantial loss may result to the party applying for stay of execution unless the order is made;***
- b) the application has been made without unreasonable delay; and***
- 10           ***c) security has been given by the applicant for the due performance of the decree.***

These grounds were further expounded in the case of **Lawrence Musitwa Kyazze Vs Eunice Businge, Supreme Court Civil Application No 18 of 1990** wherein the court set down the requirements that ought to be fulfilled by an applicant for stay of execution. They include;

- a. The applicant must show that he lodged a notice of appeal;***
- 15           ***b. That substantial loss may result to the applicant unless the stay of execution is granted;***
- c. That the application has been made without unreasonable delay;***
- d. That the applicant has given security for due performance of the decree or order as may ultimately be binding upon him.***

20           The first requirement that the applicant is required to fulfil is that he/she has filed a notice of appeal. the 1<sup>st</sup> applicant in his affidavit at *paragraph 8* states that being dissatisfied with the entire ruling and orders of this court in **Miscellaneous Application No.711 of 2022**, the applicants' lawyers filed a notice of appeal and a letter requesting for the record of proceedings. The applicant further attached a copy of the said notice of appeal marked **Annexure 'C'** which was lodged in the registry and endorsed

25           by the Deputy Registrar of this court on 30<sup>th</sup> August 2022.

A careful perusal of the Electronic Court Case Management System indicates that the said notice of appeal was indeed filed on 30<sup>th</sup> August, 2022 at 11:52am.

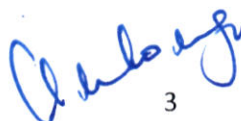
In the case of **Attorney General of the Republic of Uganda versus The East African Law Society & Another EACA Application No.1 of 2013**, it was held that;

- 30           ***'A notice of appeal is a sufficient expression of an intention to file an appeal and that such an action is sufficient to found the basis for grant of orders of stay in appropriate cases'.***

In this particular case, it is true that the applicants filed a notice of appeal within the stipulated timelines, and have since requested for a record of proceedings from this Court, but it is not clear

35           whether or not the same has since been availed.

Accordingly, I am satisfied that this ground has been satisfied.



**Substantial loss.**

Regarding the requirement to prove that substantial loss may be incurred by the applicants, reference is made to the applicant's affidavit in support, specifically *paragraph 12*, wherein the 1<sup>st</sup> applicant states that the 1<sup>st</sup> respondent has already embarked on the process of effecting or executing the orders of this court in **Miscellaneous Application No. 711 of 2022** as he is already extracting an order for the same. The Court of Appeal in the case of **P.K Sengendo vs. Busulwa Lawrence & Another CACA 207 of 2014** noted that,

*"if what was sought to be executed was payment of a sum of money, generally courts will deny stay. Reason being that money can always be returned. But where the subject matter was property capable of permanent alienation and therefore capable of causing the appeal preferred to be nugatory, for example, transfer, then court will exercise its discretion in favor of the applicant, so as to give benefit to the appeal to be attended to on its merits".*

In the present case, the subject matter being land that is capable of being transferred and disposed of, it is evident that substantial loss may occur if this order is not granted. There is a threat of the same being alienated by the respondents thereby rendering the appeal nugatory. Accordingly, the 2<sup>nd</sup> requirement has also been satisfied.

**Unreasonable delay**

The next requirement that the applicant is required to satisfy is the requirement that the application has been made without unreasonable delay. In **Ujagar Singh v Runda Coffee Estates Ltd [1966] EA 263, Sir Clement De Lestang, Ag. V.P** stated;

*' . . . It is only fair that an intended appellant who has filed a notice of appeal should be able to apply for a stay of execution . . . as soon as possible and not have to wait until he has lodged his appeal to do so. Owing to the long delay in obtaining the proceedings of the High Court it may be many months before he could lodge his appeal. In the meantime, the execution of the decision of the court below could cause him irreparable loss.'*

**(See also: Sewankambo Dickson versus Ziwa Abby High Court Miscellaneous Application number 178 of 2005)**

In the instant case, the applicant submitted this application on the Electronic Court Case Management Information System on 7<sup>th</sup> September, 2022 and the same was admitted and signed on 2<sup>nd</sup> December, 2022. The ruling against which the applicants intend to appeal against was delivered on 25<sup>th</sup> August 2022

The applicant also filed in this court **Miscellaneous Application No. 2108 of 2022** seeking leave to appeal against the orders of this court on 21<sup>st</sup> September, 2022 and the same was validated on 13<sup>th</sup> December, 2022. On 14<sup>th</sup> December, 2022, this court granted the application allowing the applicant to appeal against the orders of this court.

Accordingly, it is the finding of this court that the applicants indeed filed this application without unreasonable delay.

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**Security for due performance**

The applicant is also required to furnish security for due performance of the decree. Courts have however held that each case must be looked at according to its merits. The requirement for payment of security for costs is to ensure that a losing party does not intentionally delay execution while hiding under unnecessary applications.

**The Supreme Court in Musitwa Vrs Eunice Busingye CA No. 18/1990** advised that a party seeking a stay should be prepared to meet the conditions set out in **Order 43 rule 4(3)**. In the instant case, the 1<sup>st</sup> applicant in his affidavit in support clearly states that the applicants are willing to abide by the conditions of this court.

In the final result, I find that the grounds of the application are sufficiently strong and have been well substantiated to the level that would warrant this court to grant the orders sought in this application in the following terms;

1. **Execution of the ruling and orders of this court vide Miscellaneous Application No.711 of 2022 is hereby stayed pending the hearing and determination of the applicants' intended appeal to the Court of Appeal.**
2. **The applicants shall deposit 10% of the decretal amount in court as security for the due performance of the decree, within thirty (30) days from the date of this order.**
3. **If the applicant fails to deposit the security as ordered, execution shall ensue.**

**No orders as to costs.**



**Alexandra Nkonge Rugadya**

**Judge**

**7<sup>th</sup> February, 2023.**

*Delivered by mail  
Alexandra  
9/2/2023*