

Five copies.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 1123 OF 2023
ARISING FROM HCCS NO.601 OF 2014 (Originally N0. 253 of 2001)

1. HANIFA SALIM

2. HANIFA SALIM

(s/a Administratrix of estate of the late

SALIM EGESHA)

..... APPLICANT

VERSUS

HUSSEIN SHAMBERESPONDENT

BEFORE HON. LADY JUSTICE FLAVIA NASSUNA MATOVU.

RULING

1. The applicant filed this application seeking for stay of execution of decree issued in HCCS. No. 601 of 2014 pending the hearing and determination of her appeal to the court of appeal, plus an order directing the respondent to pay costs of this application. It was brought under the provisions of 98 of the Civil Procedure Act, S. 33 of the Judicature Act and O.52 rr 1,2,&3 of the Civil Procedure Rules. It was brought by notice of motion which was supported by an affidavit sworn by the applicant. The grounds of the application were laid in the notice of motion and affidavit in support.
2. Briefly the grounds were that;
 - a) The applicant was not satisfied with the Judgment in HCCS. No. 601 of 2014 which was delivered on 9/5/2023. She consequently lodged a notice of appeal against the same.
 - b) The intended appeal raises substantial questions of law and has a high likelihood of success.


7/12/23

- c) There was a serious and imminent threat of execution of the said decree and if the application is not granted the intended appeal would be rendered nugatory.
 - d) The balance of convenience is in favour of the applicant who is in possession of the said property and the application has been made without delay.
 - e) The applicant was ready to furnish court with security for due performance of the decree as would be determined by court.
3. The Respondent filed an affidavit in reply by which he called upon the court to dismiss the application with costs. Briefly he maintained that;
- a) The instant application was premature, incompetent, bad and barred by law, misconceived, and unmeritorious.
 - b) The intended appeal had no likelihood of success.
 - c) The application was premature for having been filed before the respondent took any step towards execution.
 - d) Extraction of a decree without an application for execution doesn't amount to taking a step towards execution.
 - e) Should the court be inclined to grant this application, the applicant should be ordered to furnish security for due performance of the decree in the sum of Ug.shs. 50 million.
4. The Applicant filed an affidavit in rebuttal in which she maintained that the application should be allowed.
- Parties filed written submissions and this court has carefully studied all the pleadings on record, the submission of all parties plus the relevant law.
5. The issues to be decided by court are:
- a) Whether the application meets the requirements for grant of stay of execution.
 - b) What are the remedies available?

Issue 1

Whether the application meets the requirements for grant of stay of execution.

I must first of all note that the laws cited by the applicant in the instant application allow this court to entertain applications of this nature.

Courts have overtime come up with considerations to guide court in such applications. In the case of Lawrence Musiitwa Kyazze vs Eunice Busingye (Supreme Court Civil Application No. 18 of 1990), the Supreme court guided that before granting an application for stay of execution the applicant must show that;

- there is a pending appeal;
- substantial loss may result to the party applying for stay of execution unless the order is made;
- the application has been made without unreasonable delay;
- security has been given by the applicant for due performance of the decree or order as may be ultimately binding upon him or her.

In Kyambogo University vs. Prof. Isaiah Omolo Ndiege, (Civil Appeal No. 341 of 2013), the court added that the applicant must also show that there is a serious threat of execution of the decree and that if the application is not granted the appeal would be rendered nugatory.

In the case before court, the applicant maintained that whereas judgment was delivered on 9/5/2023, she was not satisfied with the same and accordingly lodged a notice of appeal and subsequently a memorandum of appeal and the same is still pending at the court of appeal.

She thus maintained that if this application is not granted, she will suffer irreparable loss, and the appeal would be rendered useless. She also maintained that there were serious threats by the respondent to execute since he had already extracted the decree in the said case which was a step towards execution.

Counsel for the respondent on the other hand did not dispute the fact that the applicant had lodged a notice of appeal. However, he maintained inter alia that the application was merely speculative and premature. There were no imminent threats to execute the decree, the respondent had not filed any application for execution

After carefully studying the pleadings, record of proceedings and submission of both counsel I have noted as follows:

Judgement in HCCS No.601 of 2014 was delivered on 9/5/2023, and the court made the following orders;

- a) The plaintiff (Counter defendant) should hand over vacant possession of a residential house on Kibuga Block 12 Plot 488 Mengo Kisenyi which was purchased from Thomas Katabalwa, under sale agreement dated 30th December 1986, to the counter claimant /defendant forthwith.
- b) The Counter claimant/defendant shall then sign the necessary documentation to complete the transfer of title processes for the agreement that was executed on 1/1/1996.
- c) The counter defendant/plaintiff shall pay Ug. Shs. 50 million to the counter claimant /defendant as general damages for breach of contract.
- d) The counter defendant/plaintiff shall pay interest on (c) above at court rate from date of judgment till payment in full.
- e) The counter defendant/ plaintiff shall pay costs of the case to the counter claimant/defendant.

Counsel for the respondent consequently extracted a decree in respect of the said judgement which was endorsed by court on the same day.

The applicant being dissatisfied with the said judgment lodged a notice of appeal on and subsequently a memorandum of appeal. The said appeal is still pending at the court of appeal

From all the above it is clear that the applicant has filed an appeal which is yet to be disposed of. However, it is not automatic that when a party appeals against a

decision of court, he or she must stay execution. As rightly indicated in the authorities cited above, the applicant must also show that substantial loss may result to her unless the order is made; the application has been made without unreasonable delay; and that security has been given by the her for due performance of the decree or order as may be ultimately binding upon him or her; and above all she must also show that there is a serious threat of execution of the decree and that if the application is not granted the appeal would be rendered nugatory.

In the instant case counsel for the applicant submitted that there are threats to execute because the respondent had extracted a decree.

With all due respect, merely extracting a decree without more, is not in itself proof that there are threats to execute. Counsel for the respondent simply moved to extract a decree as a successful party in accordance with the provisions of O.21 r. 7 of the Civil Procedure Rules.

The procedure for execution of court decrees is clearly set out under O. 22 of the Civil Procedure Rules. O. 22 rr 7 and 8 provide that whoever desires to execute a decree has to apply to court to execute the same. There is nothing to show that the respondent has made any application to execute the decree in the suit. Apparently, he has not taken any steps to execute the decree in accordance with the rules. The respondent has not even filed bill of costs for taxation. There is also no evidence to show that the respondent has threatened to evict the applicant from the suit land.

There is therefore nothing on record to show that the respondent has taken steps to execute the orders issued by court. There is therefore no evidence that there is an impending or imminent threat of execution.


I do agree with counsel for the respondents that this application is not only speculative but also premature. There are no threats to execute, there is no pending application for execution, no steps have been taken by the respondent to implement the court decision and therefore there is nothing for this court to stay.

I therefore find that this application does not meet the requirements for grant of stay of execution and accordingly resolve the 1st issue in the negative.

Issue 2: What are the remedies available?

Having found as above this application hereby fails and the same is accordingly hereby dismissed with costs to the respondent.

Dated at Kampala this day of 2023.



FLAVIA NASSUNA MATOVU.

JUDGE

