

enforcing the judgement decree in civil suit No.914 of 2018 pending the determination of the application to review and set aside the exparte judgement.

- ii) Costs of the application be provided for.

Background:

2. The applicant files this application for temporary stay of execution pending determination of Misc.App No 2832 of 2023 for setting aside the judgement in civil suit No.914 of 2018 on grounds of non-service of summons to file a defence. The applicant/defendant in civil suit No.914 of 2018 which was determined on the 2nd of march 2021 by Justice Batema of the high court of Uganda at Mukono.
3. The applicant avers that he was served with summons to file a defence on the 21st of august 2019 for the said suit when the suit was still in the High court of Uganda at Mpigi, the applicant filed the written statement of defence in civil suit No.914 of 2018 on the 14th of September 2019 at Mpigi high court and he was never served with any hearing notices regarding the said suit.
4. Towards the end of 2022, the applicant was approached by a gentleman called Sebadawo Jonathan who claimed that his late father had land which formed part of the applicant's certificate of title and he wanted to find out how he could mutate the same, later the same gentleman Sebadawo Jonathan informed the applicant how he was no longer the registered

proprietor on his certificate of title of land comprised in Busiro Block 405-406 Plot 106 at Bukasa and that the certificate of title was now registered in the names of the respondents as per the search conducted.

5. The applicant's special certificate of title was cancelled and replaced by the respondent's certificate of title by the commissioner land registration under orders arising from civil suit No.914 of 2018 before Justice Batema N. of the high court of Uganda at Mukono, the applicant avers that he has never been served with any hearing notices by the high court of Uganda at Mukono regarding the same suit and execution is already ongoing hence this application.

Applicant's evidence;

6. The application is supported by an affidavit deponed by **Mr.Mugambe stephen** the applicant, which sets out the grounds of the application including the following;
 - i) That he was the defendant in civil suit No.914 of 2018 and that he was served with summons to file a defence when the suit was still at Mpigi high court.
 - ii) That the applicant filed his written statement of defence on the 14th of September 2019 at the high court of Uganda at Mpigi
 - iii) That after the filing of the written statement of defence, the applicant never received any hearing notices regarding the same suit.

- iv) That later on the applicant realized that his special certificate of title had been cancelled by the commissioner land registration from orders arising from civil suit No.914 of 2018 determined by Hon Justice Butema .N of the high court of Uganda at Mukono.
- v) That the execution proceedings are ongoing in the said suit and a warrant of arrest was issued against the applicant by court on the 7th of august 2023 which raises serious threat of execution.
- vi) That the applicant filed Miscellaneous Application No.2908 of 2023 for setting aside the said judgement in Civil Suit No.914 of 2018 for grounds of non-service.
- vii) That if this application is not granted, the pending application for reviewing and setting aside the exparte judgement will be rendered nugatory.
- viii) That this application has been brought without unreasonable delay.

Representation;

7. The applicant was represented by **Mr.Kizito Kasirye** of M/S Tumwebaze,Kasirye & Co. Advocates while the respondent was represented by **Mrs.Kyakwa Ruth** of M/S Luganda,Ojok & Co. Advocates The respondent did not file an affidavit in reply despite being served with the application, there is an affidavit of service and if the respondent had any objection to this application, he would have filed an affidavit in reply to guide this court in reaching its decision

therefore this matter stands uncontested. The applicant filed her affidavit in support and the submissions which I have considered in the determination of this application.

Issues for determination;

8. The main issue for determination is Whether the execution of the decree arising out of Civil Suit No.914 of 2018 against the applicant should be stayed pending the determination of an application for review and setting aside the judgement?

Resolution and determination of the issue;

9. An application for stay of execution pending determination of a substantive application for review and setting a side a judgement is temporary in nature till the determination of the substantive application and applicants should take note that temporary orders ought to be made only in compelling circumstances, to prevent defeat of justice, and strictly pending ascertained hearing of a substantive application by court.
10. The purpose for granting orders of this nature is to preserve the right of the applicant to have his or her application heard and to ensure that the main application is not rendered nugatory.

(See; Wilson Vs Church (1879) Vol 12 Ch. D 454)

11. The conditions of grant of an application for stay of execution which is temporary in nature pending a substantive application include the following; i) *That there is a substantive application pending in court*, ii) *That there is a serious threat of execution before the hearing*

*of the substantive application, iii) That if the application is not granted it would render the substantive application nugatory. (See; **Geofry Opio Vs Felix Obote & 2ors, Misc.App.No.81/82 of 2018 before justice Stephen Mubiru**)*

12. This honourable court therefore proceeds to resolve and determine the application in light of the above principles bearing in mind that the application stands uncontested given the fact that there is no affidavit in reply for the respondents, Parties should take note of the position of the law which states that where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, they are deemed admitted. (*See; Samwiri Massa v Rose Acen, [1978] HCB 297*)

13. The first condition is that there should be a substantive application pending before court, In the instant case, the applicant in his affidavit in support under paragraph 17 indicates that he filed a substantive application (Miscellaneous Application 2832 of 2023) to review and set aside the judgement in civil suit No.914 of 2018 from which the instant application emanated which application has never been determined and it is pending hearing before this court. I therefore find that this condition is established by the applicants.

14. The second condition is that there should be a serious threat of execution before hearing of the substantive application. The applicant avers in his affidavit in support of the application under paragraph 18 that there is a warrant of arrest that was issued against him by this honourable court on the 7th of august 2023 vide execution Misc. Application No.52 of 2023 for recovery

of Ugshs.78,415,000,000 which raises serious threat of execution before the determination of the substantive application. A Serious threat is not specifically defined but it depends on the circumstances of each case, in the instant application, I find that there is a serious threat of execution pending the determination of substantive application.

15. The third condition is that if the application is not granted, it will render the substantive application nugatory. This is the overriding objective when it comes to applications of this nature. I am of the view that the applicant having established the first two requirements, I find this requirement established as well. If this application is not granted to maintain the status quo, the substantive application to wit Miscellaneous Application No.2832 of 2023 will be rendered nugatory in my view.

16. In the premises, it is the finding of this honourable court that the application has merit and it is granted with the following orders.

- i) A temporary order to stay execution maintaining the status quo doth issue restraining the respondents from enforcing the decree in civil suit No.914 of 2018 pending the determination of the substantive application (Misc. Application No.2832) for review and set aside the judgement in civil suit No.914 of 2018.
- ii) Costs of this application shall abide the outcome of the substantive application.

I SO ORDER



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NALUZZE AISHA BATALA

JUDGE

6th /11/2023