

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
M.A NO.1779 OF 2022
(ARISING FROM MA NO.33 OF 2022 & C/A NO. 122 OF 2017)

SEKAMWA LIVINGSTONE:::::::::::::::::::::::::::::::::APPLICANT

VERSUS

KIRUMIRA MUHAMMAD:::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: HON. MR. JUSTICE TADEO ASIIMWE

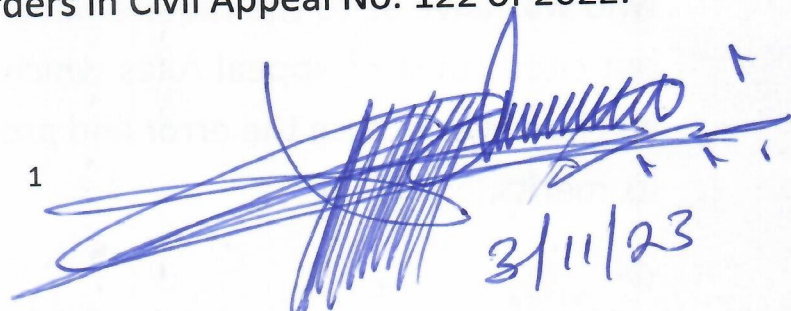
RULING

This application was brought under Rule 6 (2) (b), 42 and 43 of the Judicature (Court of appeal rules) Directions, article 126 of the constitution and section 11 of the Judicature act.

The applicant is seeking to stay the execution of the decree in civil appeal no. 122 of 2022 and costs of the application.

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

1. That the applicant has filed an appeal in the Court of Appeal against the judgment, decree and orders in Civil Appeal No. 122 of 2022.


3/11/23

2. That the applicant's intended appeal has a high probability of success and may be rendered with execution and/or other proceedings to give effect to the Court's Judgment.
3. That there is threat of execution by the respondent of the judgment, decree and orders in Civil Appeal No. 122 of 2022 in as far as the Applicant has been served with a notice to show cause.
4. That the applicant shall suffer more inconvenience than the respondents viz loss of property if the orders of this Court are enforced by the respondent yet the respondent shall suffer no loss if enforcement of the judgment is halted.
5. That in the interest of justice, this application ought to be granted to stay any proceedings subsequent to the High Court Judgment until the hearing and disposal of the applicant's intended appeal.

Further grounds are contained in the affidavit of Sekamwa Livingstone dated 31/10/2022.

The application proceeded expert as the respondent never filed a reply.

At the hearing, the applicant was represented by Counsel Arafat Businge holding brief for Yusuf Kagere. Written submissions were filed which I shall consider in this ruling.

RESOLUTION

I have considered the grounds of this application, the supporting affidavit and its attachments. I have also considered the arguments of counsel who was alive as to the requirements for the grant of stay of execution but cited court of appeal rules which are not applicable in this court. I will however excuse the error and proceed to resolve the application on its merits.

The position of the law is that for court to grant such an application, the applicant must meet conditions as set out under Order 43 r 4 (3) of the CPR which has been interpreted in a number of cases to include the following principles;

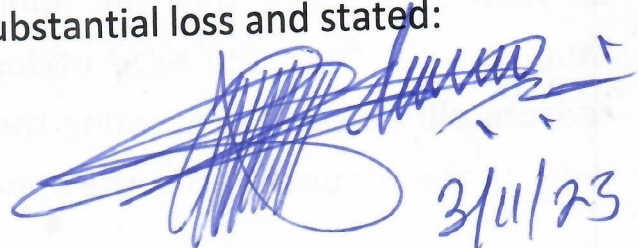
1. The applicant must show that he lodged a notice of appeal.
2. That substantial loss may result to the applicant unless the stay of execution is granted.
3. That the application has been made without unreasonable delay.
4. That the applicant has given security for due performance of the decree or order.
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 refusal would inflict more hardship than it would avoid.

I shall therefore go ahead to assess whether the above conditions were satisfied or met by the applicant in this matter.

From the evidence on record as can be ascertained from the pleadings and submissions, this court is satisfied that the applicant commenced appeal processes against the judgement of this court as evidenced by the notice of appeal. Therefore, the first condition is satisfied.

As regards the 2nd condition on the likely substantial loss, the applicant must plead and prove the said loss. It is not enough to plead alone.

Court in the case of **Pan African Insurance Company (U) Ltd vs International Air Transport Association High Court Misc. Application No. 86 of 2006** where the applicant merely stated that if the decree is not stayed the applicant will suffer substantial loss and stated:

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"The deponent should have gone a step further to lay the basis upon which court can make a finding that the applicant will suffer substantial loss as alleged. The applicant should go beyond the vague and general assertion of substantial loss in the event a stay order is not granted."

The Learned Judge also cited the case of **Banshidar vs Pribku Dayal Air 41 1954** where it was stated:

"It is not merely enough to repeat the words of the code and state that substantial loss will result, the kind of loss must be given and the conscience of court must be satisfied that such loss will really ensure"

In the same case it was further observed:

"The words 'substantial' cannot mean the ordinary loss to which every judgment debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case...substantial loss must mean something in addition to all different from that."

I am fully persuaded by the above decisions and I do find that in the present case the applicant has not demonstrated any loss that will be suffered which cannot be compensated in monetary terms. The applicant only argued that if this application is not granted the applicant shall suffer more inconvenience by losing property in an execution. This ground has not been proved.

The 3rd ground is on timely presentation of the application. The evidence on record indicates that the application was filed on 4 years and 8 months later from the date of Judgement. I find this to be **very unreasonable delay** in presenting the application. The 3rd ground fails as well. In the circumstances, the applicant has not satisfied this condition.

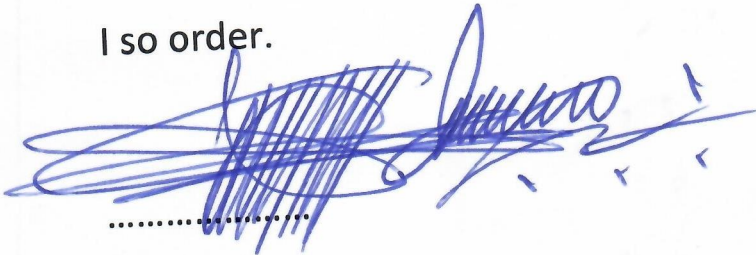
As regards the condition of likelihood of success, this court cannot meaningfully resolve this ground as it touches on the merits of the appeal. It is an appellate court to apprise the record and determine the premafacie case and not the trial court. Therefore, this condition should not be a basis for grant of stay in trial courts as doing so involves scrutinizing evidence which was already considered at Judgement writing.

With the above findings, it is not necessary to resolve the remaining grounds.

In conclusion, the applicant has not satisfied most of the conditions for grant of an application for stay of execution.

Accordingly, the application fails and it is dismissed with costs.

I so order.

A handwritten signature in blue ink, appearing to read 'Tadeo Asiimwe', is written over a dotted line. The signature is stylized with many loops and flourishes.

TADEO ASIIMWE

JUDGE

3/11/2023.