

The Republic of Uganda  
In the High Court of Uganda Holden at Soroti  
Miscellaneous Application No. 113 of 2022

*(Arising from Civil Suit No. 010 of 2016)*

|                                     |   |                   |
|-------------------------------------|---|-------------------|
| 1. Serere District Local Government | } | :..... Applicants |
| 2. Atingu Joseph                    |   |                   |
| 3. Ejangu Stephen                   |   |                   |
| 4. Okoja Sostine                    |   |                   |
| 5. Olinga Calvin                    |   |                   |

Versus

Omiat Moses :..... Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Introduction:

This application was brought by way of Chamber Summons under section 98 of the Civil Procedure Act, Cap 71 and Order 22 Rules, 26 and Order 52 Rules 1 and 2 of the Civil Procedure Rules SI 71-1 for orders that;

- a) The execution in Civil Suit No. 010 of 2016 be stayed pending disposal of appeal.
- b) Costs of the application be provided for.

The grounds of the application are set out in the application and enhanced in the supporting affidavits deposed by Atingu Joseph, the 2<sup>nd</sup> Applicant, Ejangu Stephen, the 3<sup>rd</sup> Applicant, Okoja Sostine, the 4<sup>th</sup> Applicant and Olinga Calvin, the 5<sup>th</sup> Applicant. The gist of the Applicants' case lies in paragraphs 3, 4, 5, 6 and 7 of the affidavits of the applicants which I shall reproduce for ease of reference;

- a) There is a pending Civil Appeal challenging the judgement and decree in Civil Suit No. 010 of 2016 delivered in favour of the respondent.

- b) The said appeal has a likelihood of success since the judgement and order being challenged was marred with grave irregularities.
- c) If the execution is not stayed, the applicants' appeal will be rendered nugatory.
- d) It is just and equitable to grant this application.
- e) That the suit land comprises a market and my residence and 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> applicants and we shall be rendered homeless vide judgement and decree in Civil Suit No. 010 of 2016 which was delivered in the respondent's favour.
- f) That the respondent is threatening to execute the said decree as per annexure 'A' to the affidavit.
- g) That the respondent has never lived or cultivated on the suit land and it would not be prejudiced in any way if this application is granted.
- h) That it is in the interest of justice that the status quo be maintained pending the determination of civil appeal pending before the court of appeal.

The application was opposed by the respondent in his affidavit in reply wherein, he stated that the application is incompetent, bad and barred by law, misconceived, unmeritorious and that the court shall be moved to strike it out with costs at the preliminary stage. For brevity, I shall reproduce paragraphs 5,6,7,8,9,10, and 12 of the affidavit in reply, that;

- a) The contents of paragraph 3 of the 2<sup>nd</sup> applicant's affidavit are false as the instant application has no likelihood of success at all due to incompetence and the judgement, the execution of whose decree it seeks to stay was well reasoned.
- b) The contents of paragraph 4 of the 2<sup>nd</sup> applicant's affidavit are false as the respondents have continued trespassing on the suit land and have extended their activities and areas of trespass on the suit land, in contempt of the court order in Civil Suit No. 010 of 2016, permanently restraining them from ever trespassing on the suit land.
- c) In reply to the contents of paragraph 5 of the 2<sup>nd</sup> applicant's affidavit, the purpose of issuance of Annexure "A" to the 2<sup>nd</sup> Applicant's affidavit in support was to emphasize the order of permanent injunction issued by the High Court against the applicants in civil suit No. 010 of 2016, in the hope that they would respect the same.
- d) In reply to the contents of paragraph 6 of the 2<sup>nd</sup> applicant's affidavit, the suit land is my family's customary land, which we have owned and worked upon for decades and the applicants' continued trespass on the same gravely prejudices me.
- e) In reply to the contents of paragraph 7 of the 2<sup>nd</sup> applicant's affidavit, the status quo is that the applicants are presently violating the permanent injunction and by this

application, they are seeking that this Honourable Court validates their contempt of the court's own orders.

- f) The interests of justice favor the dismissal of this application with costs.
- g) I pray that the applicants' application for a stay of execution pending determination of the appeal be dismissed with costs.

2. Representation:

The applicants were represented by Messrs. Ogire & Company Advocates while the Respondent was represented by M/s Kania & Alli Advocates & Solicitors.

3. Issues:

- a) Whether there is a proper case for grant of an order for a stay of execution?
- b) What are the remedies to the parties in the circumstances?

4. Resolution:

The Applicants and the Respondent filed written submissions. The applicant rejoined the submissions of the respondent. I thank the counsel for each party/parties and I have considered all the submissions accordingly.

The applicants brought the instant application by virtue of Section 98 of the Civil Procedure Act, Cap 71 which provides that;

**Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court**

The applicants thus are invoking the inherent powers of this court.

Furthermore, this application was brought under Order 22 rule 26 of the Civil Procedure Rules SI 71-1 which provides for stay of execution of a court decree

I also note that even though the applicant did not refer to Order 43 Rule 4(3) of the Civil Procedure Rules, it is trite that Order 22 Rule 26 of the Civil Procedure Rules which was cited by the applicants must be read together with Order 43 Rule 4 (3) of the Civil Procedure Rules which provides that;

**No order for stay of execution shall be made under sub-rule (1) or (2) of this rule unless the court making it is satisfied that;**

- 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.**



- c) Security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

I will examine the application to determine if the law as above has been duly complied with by the applicants.

- a. Issue one: Whether there is a proper case for grant of an order for a stay of execution?

The respondent in his submissions indicated that he intended in his Affidavit in reply to raise a preliminary objection to the application. The court finds paragraph 3 of the Affidavit in reply containing the respondent's intention to raise a preliminary objection.

Counsel for the respondent submitted that the application as filed for the 1<sup>st</sup> applicant, Serere District Local Government, by M/s Ogire and Company Advocates is incompetent for being a nullity because it was filed without the 1<sup>st</sup> applicant's instructions.

Counsel for the respondent submitted that there is no evidence on record whether by way of notice of instructions, notice of joint instructions or notice of change of advocates to prove that M/s Ogire and Company Advocates is duly instructed to act for the 1<sup>st</sup> applicant in this application.

Counsel further submitted that at the hearing of Civil Suit No. 010 of 2016, the 1<sup>st</sup> applicant was represented by the Attorney General who filed a Notice of Appeal on its behalf against the judgement and decree of this court after the judgement was delivered in the respondent's favour.

Counsel for the respondent further submitted that the Attorney General also filed an application for a stay of execution of the decree in civil suit No. 010 of 2016 vide Miscellaneous Application N0. 134 of 2022: Serere District Local Government versus Omiat Moses, which is pending determination by this Court.

Counsel for the respondent cited Section 6 of the Civil Procedure Act to buttress his objection. It provides thus;

**No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed.**

The Applicants in rejoinder and in response to the respondent's preliminary objection conceded that they had no instructions to represent the 1<sup>st</sup> applicant and that they did not state it anywhere that the law firm was representing Serere District Local Government. Counsel further submitted that the preliminary objection is misplaced and that the notice of appeal in this matter that was filed was signed by counsel for the 2<sup>nd</sup> – 5<sup>th</sup> applicants. That a notice of instructions was also filed in the Court of Appeal by the counsel for the 2<sup>nd</sup> – 5<sup>th</sup> applicants.

Upon perusal of the application and the affidavits in support of the 2<sup>nd</sup> – 5<sup>th</sup> applicants, I am strongly inclined to believe and I do find that counsel for the applicants indeed did not refer to the 1<sup>st</sup> applicant in any way but simply restricted the application to the 2<sup>nd</sup> – 5<sup>th</sup> applicants. The preliminary objection is overruled.

Furthermore, before I take leave of the matter, even when the instant application bears the 1<sup>st</sup> applicant, it did not file an affidavit in reply thereby excluding it from this application. The court has also on its own found that the 1<sup>st</sup> applicant separately filed HCMA 134 of 2022 between itself solely and the respondent and similarly praying for a stay of execution of the decree in High Court Civil Suit No. 010 of 2016. I will deal with each application on its own merits.

I wish to state that courts of law should not without good reason delay a successful party from enjoying the fruits of his or her judgement (see: *Membe vs Mayoga [2009]1 HCB 82*).

However, the court may be moved by a party to halt the execution process which is termed as a stay of execution, this instant application is such a move.

The applicants' counsel states in the submissions that Okoja Sostine, the 4<sup>th</sup> applicant in his supplementary affidavit in support of the application made it clear that upon the lawyer's advice which advice he verily believes to be true, the notice to show cause filed by the respondent in this court is premature since it is not in line with the Constitution (Land Evictions) (Practice) Directions, 2021 which requires a notice that has run for not less than ninety days.

However, upon my perusal of the record, such a supplementary affidavit was not filed in this matter and is not on record, I will, therefore, not consider it in resolution of the issue before me.

Also as already indicated, Order 43 Rule 4(3) of the Civil Procedure Rules provides for grounds upon which a stay of execution may be considered.

These grounds were further articulated in the case of *Lawrence Musiitwa Kyazze vs Eunice Busingye SCCA No. 18 of 1990* which are:



- a) The applicant must show that he lodged a notice of appeal
- 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 the due performance of the decree or order as may ultimately be binding upon him.

These grounds were also reiterated in the Supreme Court decision in the case of *Hon Theodore Ssekikubo and Ors vs The Attorney General and Ors Constitutional Application No. 3 of 2014* with the Court of Appeal in the case of *Kyambogo University vs Prof Isaiah Omolo Ndiege CACA No. 341 of 2013* further extended the list of the grounds to include;

- a) There is serious or eminent threat of execution of the decree or order and if the application is not granted, the appeal would be rendered nugatory.
- b) That the application is not frivolous and has a likelihood of success.
- c) That the refusal to grant the stay would inflict more hardship than it would avoid
- d) The Applicant must show that he lodged a notice of appeal.

I will examine each of the above grounds separately to establish whether the applicants have satisfied each of them so that a grant of stay can be preferred in their favour.

i. *The applicants must show that they lodged a notice of appeal:*

Counsel for the applicants in his submissions states that the applicants have shown that they appealed against the decision and orders in civil suit 010 of 2016. That they have nowhere to go if evicted. Counsel further submitted that two of the applicants are even above seventy years old so he invited me to imagine if, after the execution, the appeal turns out they are successful.

Also, the applicants in their affidavits stated that there is a pending civil appeal challenging the judgement and decree in Civil Suit No. 010 of 2016 delivered in favour of the respondent.

Counsel for the respondent in reply submitted that from the court record of Misc. Application No. 114 of 2022 of Serere District Local Government and 4 Others v Omiat Moses, there is no evidence that any appeal has been filed by the Applicants. That apart from casually mentioning that there is a pending appeal before the Court of Appeal, the 2<sup>nd</sup> to 5<sup>th</sup> Applicants have not adduced the record of proceedings or the judgment in Civil Suit No. 010 of 2016 to their affidavits in support of Notice of Motion to prove that they have good grounds of Appeal. Counsel cited the case of *Baguma Paul T/A Panache Associates V Engineer Karuma Kagiya High Court Misc. Application No. 460 of 2020* to support the inference that a

memorandum of appeal is helpful in deducing the likelihood of success of the appeal for a stay of execution to be granted.

My finding, upon perusal of each of the affidavits of the applicants, no such documentary evidence with the notice of appeal as alluded to by the applicants.

In the case of *Attorney General of the Republic of Uganda versus the East African Law Society and Anor EACJ Application No. 1 of 2013* which was cited with approval in *Equity Bank (U) Ltd vs Nicholas Were Misc. Application No. 604 of 2013* it was held that;

*“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.”*

Since the applicants have not provided the notice of appeal, the applicants 2<sup>nd</sup> -5<sup>th</sup> have failed to meet this requirement.

ii. *That substantial loss may result to the Applicants unless the stay of execution is granted:*

Counsel for the applicants in the rejoining submissions stated that substantial loss may result if the stay is not granted because all the applicants stay on the suit land and it is difficult for them to find alternative places of abode in a very short time, moreover that the applicants are likely to suffer irreparable damage if execution is done at this stage.

The applicants stated under paragraph 4 of their affidavits in support that the suit land comprises a market and the residences of the applicants and that the applicants will be rendered homeless vide judgement and decree in Civil Suit No. 010 of 2022 which was delivered in the respondent's favour. The applicants further stated under paragraph 5 of their affidavits in support that the respondent is threatening to execute the said decree.

The respondent in reply submitted that the applicants have failed to prove that they will suffer substantial injury if the application for stay of execution pending the determination of the appeal is not granted. That the Judgment of the High Court in Civil Suit No. 010 Omat Moses v. Serere District Local Government and 4 others of 2016 declares the Applicants as trespassers on the suit land. Counsel for the respondent further submitted that the same judgment declares the Respondent as the *bona fide* customary owner of the suit land and a permanent injunction was issued to that effect which the applicants have failed to comply with.



Counsel for the respondent submitted that the order of stay sought by the Applicants in the present application shall have the effect of enabling the Applicants to violate the order of permanent injunction decreed against them in Civil Suit No. 010 of 2016 which would be a perversion of the purpose of orders of stay of execution.

In the case of *Eriab Kabigiza vs Lawrence Sserwanja* [1975] HCB 199 it was held that;

*“The main criterion for staying execution should be whether the judgement debtor would suffer substantial loss if the decree was executed notwithstanding that the decree might subsequently be set aside”.*

Also, in the case of *Tropical Commodities Supplies Ltd and others vs International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331 substantial loss was described as;

*“Substantial loss does not represent any particular size or amount but refers to any loss, great or small that is of real worth or value as distinguished from a loss that is merely normal.”*

In this instant case, the applicants have argued that if the stay is not allowed, they shall suffer substantial loss and they stated in the affidavits that the suit land comprises a market and residences of the applicants and that the applicants who include two who are above seventy years old will be rendered homeless as per the judgement and decree in Civil Suit No. 010 of 2022 which was delivered in the respondent’s favour.

Counsel for the respondent, in reply, contended that the applicants were trespassers and were violating the permanent injunction issued in favour of the respondent the judgement and decree in Civil Suit No. 010 of 2022.

The courts of law do not without good reason delay a successful party from enjoying the fruits of his or her judgement. This is the position in *Membe vs Mayoga* [2009]1 HCB 82,

However, a court may be moved by a party to halt the execution process.

Counsel for the respondent submitted that if the order of stay sought by the Applicants in the present application is allowed it will have the effect of permitting the applicants to violate the court order of permanent injunction decreed against it in Civil Suit No. 010 of 2016 which would be a travesty of the purpose of orders of stay of execution as was pointed out in *Eriab Kabigiza vs Lawrence Sserwanja* [1975] HCB 199 as it was held that;



*“The main criterion for staying execution should be whether the judgement debtor would suffer substantial loss if the decree was executed notwithstanding that the decree might subsequently be set aside.”*

Also, that in the case of *Tropical Commodities Supplies Ltd and others vs International Credit Bank Ltd (In liquidation) [2004] 2 EA 331* which was also cited by the applicant, substantial loss was described as;

*“Substantial loss does not represent any particular size or amount but refers to any loss, great or small that is of real worth or value as distinguished from a loss that is merely normal.”*

With Hon. Justice Eva K. Luswata in *Walusimbi Mustafa versus Musenze Lukia HCMA No. 232 of 2018* observing that from the authorities studied, the Courts are still not in full agreement on what “substantial loss” should entail.

The Court in *Andrew Kisawuzi Vs. Dan Oundo Malingu HCMA 467/2013* found that;

*“...substantial loss cannot mean ordinary loss or the decretal sum or costs which must be settled by the losing party but something more than that the applicant should go beyond the vague and general assertion of substantial loss in the event a stay order is granted”*

On the other hand, Justice Ogola J (as he then was) in *Tropical Commodities Suppliers Ltd and Ors Vs International Credit Bank Ltd (In Liquidation) (2004)2 EA 331* opined that substantial loss does not represent any particular amount or size for it cannot be quantified by any particular mathematical formulae. It refers to any loss, great or small that is of real worth or value as distinguished from loss without a value or that which is merely nominal. It is my considered view then that, the Court ought to consider substantial loss claimed by an applicant in light of the particular facts raised by each case”.

Accordingly, the principle of the law to be followed in an application for stay execution is whether the substantial loss would arise from not granting the same and whether the dictates of justice demand so. See: *Nandaula vs Uganda Development Bank Limited HCCA No. 47/92*

In this instant case, the applicant has argued that if the stay is not allowed, it will suffer substantial and irreparable loss because of it being in physical possession of the land with developments thereon.

It is imperative for this court to re-state that the courts of law would not without good reason delay a successful party from enjoying the fruits of his or her judgement as was pointed out in *Membe vs Mayoga* (cited above), however, the court may be moved by a party to halt the execution process which is termed as a stay of execution, this instant application is such a move.

However, as was pointed out by Hon. Justice Musa Ssekaana in the case of *Mabu Commodities Limited versus Sophie Nakitende HCMA No. 530 of 2020*, an applicant for a stay of execution must demonstrate that the loss (if any) will not be capable of monetary atonement.

The learned judge went further to point out, and which I agree, that there seems to be a common thinking among litigants that court can grant a stay of every decree as an automatic right by alleging substantial loss which is wrong.

The court while exercising the discretion conferred to it under the law of stay of execution should duly consider that a party who has obtained a lawful decree/order should not be deprived of the fruits of that decree except for good and cogent reasons.

The substantial loss must be proved with cogent evidence in order for the court to be able to assess the impact and potential loss or handicap the company will suffer. In absence of any books of accounts of the applicant this court is not persuaded by mere statements that the company will suffer any substantial loss.

Whereas the applicants herein depose that they were in physical possession of the suit land, which has developments thereon, the applicants have already been declared trespassers by this court in the head suit and so whether they have developments on the land or not even the exact substantial loss would only arise if it is not capable of monetary atonement if the applicants appeal succeeded.

Accordingly, so long as the decree/order of this court in Soroti High Court Civil Suit No. 010 Omiat Moses v. Serere District Local Government and 4 others of 2016 is not set aside by a competent court, it stands good and is effective and should not be lightly taken so as to deprive the holder of the lawful decree/order of its fruits.

The decree/order passed by this court must be allowed to be executed. This will avoid the situation where every person aggrieved a judgment of the court to use the excuse of an appeal as a way of stopping the successful party from enjoying the fruits of litigation.



The applicant has not proved that it will suffer any substantial loss if the instant application is not granted. This ground is not proved.

iii. *There is a serious or eminent threat of execution of the Decree or order and if the Application is not granted the Appeal would be rendered nugatory:*

Counsel for the applicants submitted that it has always been the considered opinion which is contained in several judicial decisions that the results of a judicial decision should not be rendered nugatory. That it is important that when a party pursues his/her right of appeal the appeal should not be rendered nugatory. Counsel for the applicants stated that in the instant case, the threat to execute the orders of the court is real since a notice to show cause is already filed in this court.

Counsel for the applicants further submitted that the serious threat to execute is evidenced by the filing of the Notice to show cause by the respondent and that it is not necessary to pre-empt consideration of matters necessary in deciding whether to or not to the substantive appeal.

In their affidavits in support, the applicants stated under paragraph 5 that the respondent is threatening to execute the said decree as per annexure 'A' to the affidavit.

The court is unable to find the notice to show cause on the court record or as an annexure on the applicant's application and affidavits in support as alluded to by each of the applicants in their affidavits in support.

Counsel for the respondent did not submit on this ground but is inferred from his submissions, that though the respondent is not in physical possession of the land he states that the present *status quo* is that the respondent is the owner of the suit land and that the applicants are trespassers on the suit land.

He further submits that this *status quo* should obtain and subsist until such a time that an appellate court either distorts/disrupts it by overturning the decision of the High Court at Soroti in Civil Suit No. 010 of 2016.

The case of *Hwang Sung Industries Ltd vs Tadjin Hussein [2008] ULR 310* emphasized the requirement of serious eminent threat. Thus,

***"For a stay of execution to be granted, there should be a serious threat of execution before the hearing of the main application."***

While the applicants allude to a notice to show cause filed by the respondent to show a serious threat of execution, each of the applicants did not provide documentary evidence of the same to that effect. They have, therefore, not proved this ground for he who alleges must prove. In the premises, I find that the applicants have not satisfied this ground to the extent permissible by the evidence rules.

iv. The application has not been made without unreasonable delay:

Counsel for the applicants submitted that the applicants filed the application without much delay as required by law and that this was admitted by counsel for the respondent.

Counsel for the respondent in reply conceded in his submissions that this application was filed without undue delay.

In the case of *Ujagar Singh vs 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.”* (emphasis mine)

Since the judgement in High Court Civil Suit No. 010 of 2016 was entered on 15<sup>th</sup> June 2022 and the instant application was made on 22<sup>nd</sup> August 2022 and filed in court on the same day (22<sup>nd</sup> August 2022), I find that the application for stay of execution was made without unreasonable delay.

v. Refusal to grant the stay would inflict more hardship than it would avoid:

Counsel for the applicants submitted that the respondent has a judgement in his favour for orders that the applicants and any other persons claiming under them be permanently restrained from interfering with the ownership and possession of the suit land. Counsel further submits that at this moment, there is a threat of execution vide a notice to show cause which as per the court's finding each of the applicants failed to prove as they did not attach the same to their pleadings.



The applicants in their affidavits in support averred that they have nowhere to go if evicted. Counsel further submitted that two of the applicants are even above seventy years old so he invited me to imagine if, after the execution, the appeal turns out they are successful. Counsel submitted that if the execution is not stayed, the applicants' appeal will be rendered nugatory and that the said appeal has a likelihood of success since the judgement and order being challenged was marred with grave irregularities.

This ground can only be given life by the grounds of suffering substantial loss and serious or imminent threat of execution of the decree or order sought to be stayed.

The applicants have not proved suffering a substantial loss in addition to proving a serious threat of execution and yet substantial loss is hinged on a serious threat of execution.

I am therefore inclined to find and do find that this ground fails since the applicants have not demonstrated that a refusal to grant the stay would inflict more hardship than it would avoid.

vi. That the Applicant has given security for due performance of the decree or order as may ultimately be binding upon him:

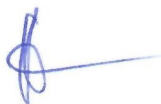
Counsel for the applicants did not submit on this but only in rejoinder in reply to counsel for the respondent's submission that the 2<sup>nd</sup> to 5<sup>th</sup> Applicants have neither undertaken to give security for the due performance of the decree as may ultimately be binding upon them nor actually given the said security as is mandatorily required of them before this Honourable Court can exercise its discretion in their favour.

Counsel for the respondent submitted that the instant application, therefore, falls short of the conditions for the grant of an order of stay of execution and this Court shouldn't issue the order of stay that they seek.

Counsel for the applicants in rejoinder submitted that the applicants have not given security nor undertaken to give any because security is supposed to be determined by the court and that for the respondent to assert that the applicants have not given or refused to give any is not fair.

Be that as it may, in the case of *Imperial Royale Hotel Ltd & 2 Others versus Ochan Daniel Misc. Application No.111 of 2012*, it was held that security for costs is not a condition precedent to the grant of stay of execution.

In conclusion, I find that the applicants have failed to meet all the grants precedent to grant a stay of execution.



Before I take leave of the matter, I wish to point out that; according to the Uganda Civil Justice Bench Book at page 253; a stay of execution only operates to prevent the judgement creditor from putting into operation the legal process of execution and does not affect any rights or remedies exercisable outside court reason for depriving a successful decree holder from obtaining the fruits of his judgement.

Furthermore, the case of *Wilson Mukiibi vs James Semusambwa Supreme Court Civil Application No. 9 of 2003* sums up the above requirements where it is stated that;

*“It is trite that an intention to appeal per se is not a ground for stay of execution and instituting an appeal does not operate as a stay of execution. A party seeking a stay of execution must satisfy the court that there is sufficient cause why the party with judgment should postpone the enjoyment of its benefits. It is not sufficient for the judgment debtor to say that he is vulnerable, because the successful party may take out execution proceedings. It must be shown that if execution proceeds there may be some irreparable loss caused.”*

From my consideration of all the grounds which an applicant of this nature must satisfy for a grant of stay of execution to be granted, I would find as overall that the applicant herein has failed to satisfy all of the grounds and as such I am not persuaded to deprive the respondent of the benefits of the judgment and decree of High Court which was found in his favour. Accordingly, this application for the grant of a stay of execution is found to lack merit and it is dismissed with costs to the respondent.

b. *Issue No. 2: What remedies are available to the parties in the circumstances?*

Since the application has been disallowed, there are no remedies for the applicants in the circumstances.

5. Orders:

- This application is dismissed.
- The costs of this application is awarded to the respondent.

I so order

.....  
Hon. Justice Dr Henry Peter Adonyo

Judge

16<sup>th</sup> March, 2023