

**THE REPUBLIC OF UGANDA**

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

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO.270 OF 2024**

**(ARISING FROM CIVIL SUIT NO.0902 OF 2022)**

**KANTITI EDWARD MBAZIIRA ::::::::::::::::::::::::::::::::::: APPLICANT**  
**(legal representative of James Kantinti)**

**VERSUS**

**1. LUMALA MOSES**

**2. TIMOTHY KAMYA**

**3. COMMISSIONER LAND REGISTRATION::::::::::::RESPONDENTS**

**BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING**

**Introduction;**

1. This was an application by way of Notice of Motion brought under Article 126 of the Constitution, Section 98 of civil procedure Act, Order 43 rule 4 and Order 52 rules 1,2 & 3 of the Civil Procedure Rules for orders that;



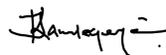
- i) That the decree and orders arising from the preliminary Objection in Civil Suit No.902 of 2022 be stayed pending Civil Appeal No.1313 of 2023.
- ii) That the taxation application Vide Misc. App No.816 of 2023 be set aside.
- iii) Costs of the application be in the cause.

**Background;**

2. The applicant being dissatisfied with the ruling on the preliminary objection in Civil Suit No.902 of 2022 filed Civil Appeal No.1313 of 2023 in the court of appeal. The respondent has since commenced the execution process by filing a taxation application for the bill of costs before the learned registrar vide Misc. Application No.816 of 2023, hence this application.

**Applicant's evidence;**

3. The application is supported by an affidavit in support deponed by the applicant which briefly states as follows;



- i) That I am an aggrieved party vide Civil Suit No.902 of 2022 where a ruling on the preliminary objection was delivered by this court.
- ii) That I have since then filed an appeal in the court of appeal vide Civil Appeal No.1313 of 2023 which has high chances of success.
- iii) That if the instant application is not granted, the appeal will be rendered nugatory.
- iv) That I have deposited Ughs 200,000 as security of the appeal.

**2<sup>nd</sup> respondent's evidence;**

4. The application is responded to by an affidavit in reply deponed by the 2<sup>nd</sup> respondent which briefly states that;

- i) THAT I was the 2nd defendant in High Court Civil Suit No. 0902 of 2022, which was dismissed by her Lordship Hon Lady Justice Aisha Naluzze Batala on 16 /10/ 2023 because the applicant (who was the plaintiff therein), was found to lack locus standi to sue as a Legal representative of his deceased father, James Kantinti).



- ii) THAT there are no orders to execute other than recovery of costs, but I have not applied for execution thereof, which makes this application premature, and/ or misconceived.
- iii) THAT the application for an order staying the Taxation hearing of my bill of costs under Taxation Application No. 816 of 2023 is not available, has been overtaken, as the hearing occurred on 13/2/2024, submissions already filed, and only pending Ruling.
- iv) THAT the Shs. 200,000/= which the applicant deposited with The Court of Appeal (while he was filing Civil Appeal (No. 1313 of 2023) was and remains security for costs of the appeal but not of this lower court.
- v) THAT the amount as shall be allowed in the pending Taxation Ruling will help court to determine what amount to be deposited as a condition or term for an order for stay of execution which the applicant has right to make at the appropriate time.



**Representation;**

5. The applicant was represented by Mr. Katongole Arthur of M/S Katongole & Co. Advocates whereas the 2<sup>nd</sup> respondent was represented by Mr. Seguya Samuel of M/S Sseguya & Co. Legal Consultants. The applicant and the 2<sup>nd</sup> respondent filed their affidavits and submissions which I have considered in the determination of this application.

**Issues for determination;**

- i) Whether the application discloses sufficient grounds that warrant stay of execution of the orders arising from the ruling on the preliminary objection vide Civil Suit No.902 of 2022?**
- ii) What remedies are available to the parties?**

**Resolution and determination of the issues;**

6. Counsel for the applicant in his submissions relies on the provisions of order 43 rule 4 of the civil procedure rules being the same order under which he brought the instant application, the wording of said provision states that **Appeals to the High court**



and specifically rule 4 states that ***An appeal to the High Court shall not operate as a stay of proceedings under a decree or order appealed from except so far as the High Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the High Court may for sufficient cause order stay of execution of the decree.***

7. Counsel for the applicant further relied on the decision in **Equity Bank (U)Ltd Vs Nicholas Were Misc. App No.604 of 2013** where the trial judge held that ***“the import of order 43 rule 4 is that an appeal to the high court does not operate as a stay of proceedings, rather any person who prefers an appeal from such a decision shall institute a stay of proceedings on such a sufficient cause being shown to court.”***

8. Counsel for the applicant further submitted that the conditions to rely on in the instant application are that;

i) Substantial loss may result to the party applying for stay of execution unless the order is made.

ii) That the application has been made without any unreasonable delay.



iii) That security has been furnished for the due performance of the decree.

9. Before I proceed with analyzing the conditions for the grant of an application for stay of execution pending an appeal, I will have this to say about the law under which counsel for the applicant moved court with in this application.

10. Counsel for the applicant relied on the provisions of order 43 and specifically rule 4 of the civil procedure rules, further counsel relied on the decision in **Equity Bank (U)Ltd Vs Nicholas Were(supra)**.

11. The wording of order 43 reads Appeals to the high court and the conditions stated under rule 4 to the same order apply to appeals to the high court, the entire order 43 applies to appeals to the high court and how the appeal will not operate as a stay of execution from decisions of the lower court to include the chief magistrate court contrary to the instant application where the decision was by the high court and the appeal lies to the court of appeal.

12. Further the decision in **Equity bank(u)ltd vs Nicholas(supra)** by my learned sister Lady Justice Elizabeth Kabanda of the high court of Uganda at Nakawa which was an application for stay of

execution of the decree arising from the decision of the chief magistrate court of Entebbe vide Civil Suit No.118 of 2010 where the learned trial judge relied on the provisions of order 43 rule 4 to have the said application granted.

13. The above referred decision is distinguished from the facts at hand, the instant application concerns a decision by the High Court which the applicant being dissatisfied with preferred an appeal to the court of appeal, therefore I find that the law under which counsel for the applicant relies on in the instant application is misconceived and misconstrued to the facts at hand.

14. An application for stay of execution pending an appeal is designed to preserve the subject matter in dispute so that the right of the appellant who is exercising his or her undoubted rights of appeal are safeguarded and the appeal if successful is not rendered nugatory.

15. The fact that there is no specific provision regarding stay of execution of a decree from the high court where the appeal lies to the court of appeal, this is an area where court exercises its inherent powers as stipulated under Section 98 of the Civil



Procedure Act Cap 71. **(See; Singh vs Runda Coffee Estates Limited (1966) EA)**

16. The conditions for court to consider in an application for stay of execution pending an appeal to the court of appeal were pronounced in the celebrated supreme court decision of **Lawrence Musitwa Kyazze vs Eunice Busingye S.C.C.A No.18 of 1990** and have been re-echoed in **Theodre Sekikubo and Others vs The Attorney General and others Constitutional Application No.03 of 2014** and these include;

- i) The applicant must show that he lodged a notice of appeal.**
- ii) That there is a serious and imminent threat of execution of the decree and if not stayed the said appeal will be rendered nugatory.**
- iii) Substantial loss may result to the applicant unless the application for stay is granted.**
- iv) That the application has been made without unreasonable delay.**



v) ***That the applicant has given security for the due performance of the decree or order as may ultimately be binding upon them.***

17. This honorable court will now proceed to qualify the above conditions in the instant case as follows;

i) The applicant must show that he lodged a notice of appeal;

**18.** This is a fact that is not disputed by the respondent that indeed a notice of appeal was filed by the applicant vide Civil Appeal No.1313 of 2023 and that the said appeal exists in the court of appeal. Therefore, I find that this condition is met by the applicant.

ii) That there is a serious and imminent threat of execution of the decree and if not stayed the said appeal will be rendered nugatory.

19. This a condition that the applicant has not elaborated about in his pleadings nor submissions, the applicant ought to have adduced evidence that there is imminent threat of execution of the decree that if not stayed the applicant's appeal would be rendered nugatory. Therefore, I do not find this condition met by the applicant in the instant application.



iii) Substantial loss may result to the applicant unless the application for stay is granted;

20. It is the submission of counsel for the applicant that the execution of the orders arising from the ruling of court will lead to loss to the applicant, however counsel for the applicant doesn't adduce any evidence of the loss that the order may cause to the applicant.

21. In arguing this condition, a party is supposed to elaborate to the court the loss he is to suffer due to the execution process, mere stating that the party may suffer loss is not enough to prove this condition.

22. Therefore, it is to the findings of this court that the applicant has not met this condition.

iv) That the application has been made without unreasonable delay;

23. It is the submission of the applicant that the ruling of court was delivered on the 13<sup>th</sup> of January 2023 and the application filed on 20<sup>th</sup> September 2023 within 7 days.

24. In reply counsel for the 2<sup>nd</sup> respondent submits that the ruling by this honorable court was delivered on the 16<sup>th</sup> of October 2023 not 13<sup>th</sup> January 2023 as alleged by counsel for the applicant and

that the instant application was filed on the 5<sup>th</sup> of February 2024 not 20<sup>th</sup> September 2023 as alleged by counsel for the applicant.

25. I concur with the submissions of counsel for the 2<sup>nd</sup> respondent that the ruling on the preliminary objection was delivered by court on the 16<sup>th</sup> of October 2023 by this court not on the 13<sup>th</sup> of January 2023 as alleged by counsel for the applicant. Further the instant application was filed on the 5<sup>th</sup> of February 2024 not the 20<sup>th</sup> of September of 2023 that's approximately 109 days from the date of the ruling.

26. The above facts speak to the delays under which the instant application has been made, therefore this condition has not been met by the applicant.

v) That the applicant has given security for the due performance of the decree or order as may ultimately be binding upon them.

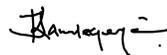
27. It is the submission of the applicant that the due performance of the decree can only be secured by the provision for security for costs.

28. In reply counsel for the 2<sup>nd</sup> respondent states that the applicant has never furnished any security for the performance of the decree and that the ugshs. 200,000 referred to under paragraph 9 of the

applicant's affidavit in support was not deposited as security for performance of the decree but rather security for costs pursuant to the Judicature Court of Appeal Rules vide the applicant's appeal in the court of appeal.

29. I find the submissions of counsel for the applicant non-applicable to the law in issue since the law requires for payment for due performance of the decree not security for costs. Therefore, I find that this condition has not been met by the applicant as well.
30. It is to the finding of this court that counsel for the applicant has not exhibited the grounds for the grant of an application for stay of execution pending an appeal to the court of appeal.
31. Therefore, the instant application lacks merit and it is hereby dismissed by this honorable court with no orders as to costs.

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**16/04/2024**

