


THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO 95 OF 2024
(ARISING FROM MISCELLANEOUS APPLICATION NO 94 OF 2024)
(ARISING FROM HIGH COURT CIVIL APPEAL NO 70 OF 2010)
JOHN MATOVU MULINDWA & 19 OTHERS ::::::::::::::: APPLICANTS
VERSUS
1. NAIGA ROSEMARY
2. MASENGERE STEPHEN
3. MAGANDAZI LUBEGA ALOYSIOUS ::::::::::::::: RESPONDENTS

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA
RULING.

Introduction;

- 1. This application was brought by chamber summons under section 98 of the Civil Procedure Act, Cap 71, order 22 rule 23, order 22 rule 10 of the civil procedure rules S.I 71-1, Seeking orders that;
- ii) An order or stay of execution of the Decree and all orders arising out of civil Appeal No 70 of 2010 be issued against the Respondents pending the hearing and determination of Miscellaneous Application No 94 of 2024 for Review and setting aside of the Judgement and Decree of this Honorable Court in Civil Appeal No.70 of 2010.
- iii) Costs of the Application be provided for.

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Background;

2. That the Applicant is a sub clan head (Ow'essiga) titled as Mulindwa in the Ngabi Clan of the Kingdom of Buganda and the chairperson of the council of sub clan heads, under the leadership of the clan head Nsamba Aloysious Magandazi Lubega(head of Ngabi Can). The Applicant together with the 2nd to the 20th Applicants who are also sub clans and several other members of the clan are customary beneficial owners of land comprised in Kibuga Block 35 Plot 53 measuring approximately 1.06 acres situate at Mutudwe, Rubaga Division, Kampala City. Court on the 17th day of March 2023, issued a warrant of vacant possession/eviction from the property against the 3rd Respondent, to a Bailiff, a one Mpiriko Fredeick in execution of the Decree of the High Court in Civil Appeal No 70 of 2010.

3. The 1st and 2nd Respondents have subsequently and severally renewed the warrant of vacant possession. Further the Applicants got to know of the court proceedings and the intended eviction on the 2nd day of May 2023 when the District Security Committee convened at the locus to provide security guidelines for the eviction, the Applicants filed High Court Miscellaneous Application No 94 of 2024 for orders for review and setting aside of the decree in Civil Suit No 70 of 2010, against the 1st, 2nd and 3rd Respondents, hence this application.



Applicant's evidence;

4. The grounds of this application are set out in an affidavit in support deponed by Matovu John the first applicant which briefly states as follows;

- i) That the Applicant is a sub clan head (Ow'essiga) Mulindwa in the Ngabi Clan of the Kingdom of Buganda and the chairperson of the council of sub clan heads, under the leadership of the clan head Nsamba Aloysious Magandazi Lubega(head of Ngabi Can).
- ii) That the Applicant together with the 2nd to the 20th Applicants who are also sub clans and several other members of the clan are customary beneficial owners of land comprised in Kibuga Block 35 Plot 53 measuring approximately 1.06 acres situate at Mutundwe, Rubaga Division, Kampala City.
- iii) That this Honorable Court on the 17th day of March 2023, issued a warrant of vacant possession/eviction from the property against the 3rd Respondent, to a Bailiff, a one Mpiriko Fredeick in execution of the Decree of the High Court in Civil Appeal No 70 of 2010.
- iv) That the 1st and 2nd Respondents have subsequently and severally renewed the warrant of vacant possession.



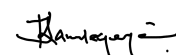
- v) That the Applicants got to know of the court proceedings and the intended eviction on the 2nd day of May 2023 when the District Security Committee convened at the locus to provide security guidelines for the eviction.
- vi) That the Applicants filed High Court Miscellaneous Application No 94 of 2024 for orders for review and setting aside of the decree in Civil Suit No 70 of 2010, against the 1st, 2nd and 3rd Respondents.
- vii) That in the event of the eviction, alienation of the land and resultant sale, the Applicants together with all the members of the Ngabi Clan will be prejudiced, condemned to suffer irreparable loss and mental anguish due to the loss of the clan property.
- viii) That if this application is not granted, the Decree in Civil Suit Appeal No.70 of 2010 shall be executed by the Respondent which shall render the Application nugatory.
- ix) That the Applicants stand to suffer gross injustice if this application is not granted.
- x) That the Application has been brought in good faith and without reasonable delay.

Respondent's evidence;



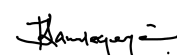
5. The application is responded to by an affidavit in reply deposed by Ms. Nabukalu Rita, the advocate who represented the 1st and 2nd Respondents which briefly states as follows;

- i) That the 1st and 2nd Respondents filed Civil Suit No. 005 of 2004 against the 3rd Respondent in the Chief Magistrates Court of Mengo for recovery of 2 rolls of barbed wires and poles or their monetary value, recovery of iron sheets, doors, windows removed from the destroyed house by the Applicant. an injunction restraining the Applicant from trespassing on the land of the late Edward Kasozi, general damages and costs.
- ii) That the trial Magistrate delivered his judgment in favour of the 3rd Respondent and held that the 3rd Respondent was entitled to stay on the suit land.
- iii) That the 1st and 2nd Respondent being dissatisfied with the Trial Magistrates decision filed Civil Appeal No. 70 of 2010 in the High Court which was ruled in favour of the 1st and 2nd Respondents and ordered that the 3rd Respondent to vacate the suit Kibanja.
- iv) That the 3rd Respondent was aggrieved with the decision of the High Court and appealed to the Court of Appeal vide Civil Appeal No. 110 of 2013 which dismissed the Appeal and upheld the decision of the High Court.
- v) That as the 1st and 2nd Respondent started the process of executing the decree in High Court Civil Appeal No. 70 of 2010, the



Applicants have filed an application vide Misc. Application NO. 94 Of 2024 seeking to set the Misc. Application aside an abuse of court process since the Court of Appeal upheld the decision in Civil Appeal No. 70 Of 2010.

- i) That the 3rd Respondent in a bid to frustrate the execution process filed Misc. Application No. 829 of 2022 which sought to stay the execution on grounds that he was the Ngabi Clan Head and that he and his family would suffer substantial loss if the execution was not stayed,
- ii) That Hon. Justice Bernard Namanya delivered his Ruling on 20th January 2023 wherein he considered the Judgment of the Court of Appeal and dismissed the Application for Stay of execution with costs to the 1st and 2nd Respondent.
- iii) That the Application vide Misc. Application No. 94 of 2024 has no likelihood of success since it is based on frivolous grounds and is merely intended to delay the Respondents from realizing the fruits of the Judgments in High Court Civil Appeal No. 70 of 2010 and Court of Appeal Civil Appeal No. 110 of 2013 since the Applicants have no interest in the suit property.
- iv) That the Applicants were not party to the proceedings in the Magistrates Court, High Court and Court of the Appeal.



- v) That being a Clan member does not give the Applicants an interest in the suit land.
- vi) That the execution proceedings are only against the 3rd Respondent who is the purported clan head.
- vii) That as a clan head, the 3rd Respondent failed to get an order for stay of execution vide Misc. Application No. 829 of 2022.
- viii) That the Applicants have not shown sufficient cause to be granted an order of stay of execution and the entire application does not satisfy conditions for grant of an order of stay of execution. That the Applicants will not suffer irreparable damage or injury if the Application for stay of execution is not granted as there is no appeal against the decision of Court of Appeal in Civil Appeal No. 110 of 2013
- ix) That the Applicants are not in possession of the suit land and will not suffer irreparable damage or injury if the execution proceeds.
- x) That the Applicants are not willing to furnish security for due performance of the decree.
- xi) That it is in the interest of justice that this Application is dismissed with costs to the 1st and 2nd respondents.



Representation;

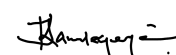
6. The applicants were represented by Mr. Matovu Ronald and Mugaga Everisto of MBS Advocates where as there was no representation from the respondents. Both parties filed their affidavits which I have considered in the determination of this application.

Issues for determination;

Whether the decree in civil appeal No.70 of 2010 can be stayed pending the determination of misc. application No.94 of 2024?

Resolution and determination of the issue;

7. Section 98 of the Civil Procedure Act gives the High Court inherent powers to take decisions which are pertinent to the ends of justice and an order for stay of execution is one of those.
8. It appears from the notice of motion that this application was brought under Section 98 of the Civil Procedure Rules, Order 22 rule 23 of the Civil Procedure Rules and Order 22 rule 10 of the same rules, Order 22 rule 23 provides as follows; "The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of the decree for a reasonable time to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the



execution of the decree, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued by the appellate court or if application for execution has been made to it.”

9. With due respect to learned Counsel for the applicants, this Order does not apply in the circumstances. The order can only be invoked at the instance of the judgment debtor where a decree has been sent to another court for execution. It allows such a court to which a decree has been sent to stay execution temporarily so as to allow the judgment debtor time to apply for relevant orders as he or she deems fit to the court that passed the decree or such appellate court in the matter. Simply put, the order is limited in its applicability to the judgment debtor and to that end it cannot be invoked by any other person in whichever capacity they hold out to be.
10. I need not restate order 22 rule 10 but the same does not also apply and it appears irrelevant in the instant application.
11. The remedy of stay of execution may be applied in several situations and one of the most common situations is an order for a stay of execution pending appeal other scenarios include stay of execution pending determination of another application for instance objector proceedings, setting aside a consent judgment and many others.



12. There is a plethora of authorities when it comes to stay of execution pending appeal but the same cannot be said when it comes to stay of execution pending determination of another application like it is in the instant case.

13. It is a settled position of law that court has inherent powers to order for a stay of execution. The supreme Court of Uganda in ***National Union of Clerical, Commercial and Technical Employees V National Insurance Corporation (NIC) CA 17 of 1993 (SC)*** held that: "...The question whether a court should invoke its inherent powers in a given case is a matter of the courts discretion to be exercised judicially and the availability of an alternative remedy or specific provisions is only one of the factors to be taken into account, but does not limit or remove the court's jurisdiction..." It is evident that the exercise of power to stay execution based on the court's inherent powers is one of judicial discretion. ***(See Peter Mulira v Mitchell Cotts Limited HCT-00-CC-MA-715 of 2009)***

14. In the **case of Imelda Nandaula v Uganda Development Bank Ltd HCCA No.47 of 1992** Byamugisha J (as she was then) observed that the principle of law to be followed in applications to stay execution is whether substantial loss would arise from not granting the same. Under paragraph 8 of the affidavit in support of the application by Matovu John, it is stated that the applicants in the event of eviction,



alienation of the land resultant sale, the applicants together with all the members of the Ngabi clan will be prejudiced.

15. In exercising its discretion, this court shall also take into account the availability of alternative remedies alongside other factors. In this matter, it appears that execution proceedings are likely to be issued or have even already been issued to property claimed to be property of third parties. In such circumstances, parties in most cases utilize the provision for objector proceedings to release their property from attachment. In this case the parties opted to apply to court to review its decision as an appellate court and set aside the judgment of the Court exercising appellate jurisdiction.

16. It is clear in this case that the Judgment of the High Court sitting as the first appellate court was appealed against in the Court of Appeal which later upheld the decision of the High Court however in all proceedings the applicants were never parties to any of them neither did they apply to be added at any stage.

17. This calls for this court to also consider the likelihood of success of the main application from which this application emanates. Under paragraph 11 of the Affidavit in reply to the application deposed by Nabukalu Rita it is stated therein that the application vide Misc Application No.94 of 2024 has no likelihood of success since it is based on frivolous grounds and is merely intended to delay the respondents from realizing the fruits of judgments.



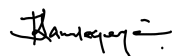
18. While desisting from determining the merits of the main application, the court may highlight a significant procedural or legal flaw that could render the main application futile from the beginning in other words dead on arrival in assisting it to determine the likelihood of success of such application.

19. In the instant case, the applicants seek to apply for review of a decision of the High Court sitting as an appellate court which decision was upheld by the Court of appeal in Civil Appeal No 110 of 2013. I believe such procedure is very strange and irregular at law.

20. Further, it is a principle of law that applications for review should be filed to the same court and or judge that made the decisions. (**See Re Dr John Chrizestom Kiyimba Kato Misc Cause No 29 of 1989**). I also need to emphasize that the High Court has no power to review its judgment given on appeal under any special jurisdiction. (**See Erimiya Serunkuma v Elizabeth Nandyose [1959] EA 127**)

21. In consideration of the foregoing, it is the finding of this court that the application before court lacks merit and the same is here by dismissed with costs of the application to the 1st and 2nd respondent

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

12/02/2024

