

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS APPEAL NO.018 OF 2024
(ARISING FROM EMA NO.14 OF 2020 & CS NO. 170 OF 2005)

PATRICK SENYONDWA BUYINZA:.....APPELLANT

VERSUS

LUCY NAKITTO:.....RESPONDENT

(Suing through her lawful attorney Bunjo Francis)

BEFORE: HON. MR. JUSTICE TADEO ASIIMWE

RULING

This application was brought under Section 79 (1) (b) (2) & S.98 of the Civil Procedure Act (CPA) Order 50 rule 8 (CPR).

The applicant is seeking to set aside the Order of Execution issued by the Deputy Registrar on 13th February 2024, set aside the Order committing the Applicant to Civil Prison, set aside the Order of Eviction issued by the Registrar against the Applicant and Costs.

The application is supported by an affidavit sworn by Mr. Patrick Senyondwa Buyinza the Applicant dated 19/2/2024.



The grounds of the application as contained in the Notice of Motion and affidavit in support and briefly are that;

1. That the Learned Assistant Registrar erred in law and in fact when he disregarded the substantive application for an order of stay of execution pending appeal that was pending determination before the Honorable Judge and proceeded to grant execution orders to the Respondent.
2. That the Learned Assistant Registrar erred in law and in fact when he disregarded the substantive application for an order of stay of execution pending appeal that was pending determination before the Honorable Judge and proceeded to grant execution orders to the Respondent.
3. That the Learned Assistant Registrar erred in law and in fact when he disregarded Civil Appeal No. 462 of 2022 that was pending determination in the Court of Appeal and granted execution orders to the Respondent.
4. That the Learned Assistant Registrar erred in law and in fact when he relied on a defective affidavit of service of Court process and granted execution orders to the Respondent.
5. That the Learned Assistant Registrar erred in law and in fact when he failed to evaluate all the evidence of record and granted an eviction order and committed the Applicant to Civil Prison thus occasioning a miscarriage of justice.
6. That this Appeal has been made without any ordinate delay.

7. That it is in the interest of justice, equity and fairness that this Appeal is granted and the orders in EMA No. 14 of 2020 be set aside.

On the other hand, the Respondent opposed the application relying on an affidavit in reply was deponed by Mr. Damulira Pius dated 23/2/2024. The gist of his response is that the Application is frivolous, devoid of any legal merit and an abuse of Court process as the Applicant's earlier Applications (No. 1103/2018 & 1877/2020) were dismissed with Costs to the Respondent. That the orders of execution by the Deputy Registrar were properly issued in the absence of any order of stay that the Application is overtaken by events as the Execution Order is already effected and return filed in this Court. In addition, the Applicant has executed a consent where partial payment was paid and an undertaking to pay the balance was made. That the Applicant failed to show Court existence of an interim order during the execution proceedings hence the Registrar rightly issued execution orders.

At the hearing of this Application the Applicant was represented by Counsel Charles Nsubuga while Counsel George Muhangi appeared for the Respondent. Both Counsel made written submissions which I shall consider in this ruling.

RESOLUTION

I have considered the grounds of this miscellaneous appeal, the supporting affidavit and its attachments. I have also considered the arguments for both Counsel.