THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

CIVIL APPLICATION NO. 15 OF 2017

(CORAM: KISAAKYE; ARACH–AMOKO; MUGAMBA; TUHAISE; CHIBITA; JSC)

(An application arising out of Civil Application No. 11 of 2017 arising from Civil Appeal No. 17 of 2014)

BETWEEN

TAYEBWA ROBERT :: APPLICANT

AND

CRESENSIO MUKASA:: RESPONDENT

RULING OF COURT

This is an application brought by Notice of Motion under Rules 2(2), 6(2) (b), 42(1 and 2), 43(1) and 50 of the Judicature (Supreme Court) Rules, seeking the following reliefs:

(a) An order for stay of execution of the judgment and orders of this Court entered in Civil Appeal No. 17 of 2014 delivered on the 6th day of April, 2017 pending the disposal of Civil Application

No. 11 of 2017, seeking for orders to review the judgment entered in Civil Appeal No. 17 of 2014.

(b) Costs of this application.

The applicant swore an affidavit in support of the Notice of Motion. The respondent opposed the application and filed an affidavit in reply.

The background to this application as accepted by this Court is as follows:

The respondent brought HCCS No. 382 of 1987, in the High Court at Masaka in his capacity as the holder of letters of administration of the estate of the late Guisite Nakaima against Yakobo M. N. Senkungu, James Kenjura, John Rwakamuranga, Giradesi Katonya, and Yohana Rwakaaro, for orders that the certificate of title of Yakobo M.N Senkungu be cancelled. The ground for this prayer was that the names of the defendants were entered on the register fraudulently. Guisite Nakaima had died on the 13th day of June, 1941 leaving behind two pieces of land situate in Mawogola, namely Block 30, plot No. 1 at Kabagoma of about 641 acres and Block 31, plot No. 1 at Ntyazo of about 623 acres.

The respondent on obtaining Letters of Administration in 1986 sought to transfer the land into his name only to discover that the proprietorship of the said land had already changed. The certificate of title which was exhibited in court showed that on the 3rd day of August 1978, under instrument **No. MSK 54168,** one Peter Ssekasiko was

registered as proprietor with an alleged transfer form from the late Nakaima. Three months later, on the 27th day of November 1978, Ssekasiko transferred the land to one Eugene Ssonko under instrument **No. MSK 54497**. On the 25th January 1980, under Instrument **No. 60006,** the proprietorship changed to Yakobo M.N Senkungu.

In the course of hearing the suit at the High Court, the proprietorship of the suit land changed to Ezekiel Rwankanyuzi.

Various amendments to the pleadings were effected and in 2004, there was an application vide **Misc. Appl. No. 25 of 2004** to amend the plaint to join Mr. B. Nsereko and Mr. Ezekiel Rwankanyuzi as defendants to the suit. However, the application was dismissed by Mwangusya, J (as he then was) who ruled that the alleged fraudulent transactions of the two persons sought to be joined would easily be established through evidence adduced by the parties on the pleadings.

The learned judge who heard the suit held that the plaintiff had failed to prove fraud on the part of Yakobo M. N Senkungu who had transferred the title of Mawogola Block 30 Plot 1 to Ezekiel Rwankanyuzi under whom the applicants claim. He dismissed the suit on 31st January, 2006

Dissatisfied with the decision of the High Court, the respondent appealed to the Court of Appeal, vide Civil Appeal No. 35 of 2006 which reversed the decision of the High Court in favour of the

respondent. Being dissatisfied with the decision of the Court of Appeal, Yakobo M.N Senkungu, James Kenjura, John Rwakamuranga, Giradesi Katonya and Yohana Rwakaaro appealed to this Court, vide SCCA No. 11 of 2014, which upheld the decision of the Court of Appeal and dismissed the appeal with costs.

The applicants being aggrieved by the decision of this Court filed Civil Application No. 11 of 2014, for review. Civil Application No. 15 of 2017 for stay of execution and an application for an interim order pending the disposal of the substantive application were also filed. The application for interim stay of execution was granted pending disposal of this application.

At the commencement of the hearing, however Counsel for Kiganda John, prayed, and was allowed, to withdraw the application on behalf of his client. At the same time, Counsel for the remaining Applicant, Robert Tayebwa, prayed to withdraw the application against the 1st to 5th Respondents. The prayer was granted.

The instant application, therefore, is between Robert Tayebwa, Applicant, and Cresensio Mukasa, Respondent.

The grounds for this application were framed as follows:

a) The applicant has filed an application in this honorable Court vide **Civil Application No. 15 of 2017** seeking for orders for this honorable court to recall its judgment entered in **Civil Appeal No. 17 of 2014** delivered on the 6th day of April, 2017, for the

purposes of reviewing and, or correcting the errors on record and amending or otherwise varying the same for having affected the rights of the applicants unheard.

b) That the said application will be rendered nugatory if the orders sought herein, are not granted and execution is allowed to proceed.

c) That the said application for review has high chances of success in that:

(i) There is an error apparent on the face of the record arising from the obvious and rather inadvertent inconsistency in the judgment in **Civil Appeal No. 17 of 2014** and the final orders of the Court which affect the rights of the Applicant who was not party thereto thereby not warranting the orders in terms as granted.

(ii) There was an accidental slip or omission wherein the Court, inadvertently, in its judgment, in evaluating the chronology of the transfers and registered proprietors in respect of Block 31 plot 1 omitted to find that Yakobo Mukaaku Mutendwa Ssenkungu transferred the land to Ezekiel Rwankanyuzi who was registered on the certificate of title under Instrument **No. MSK 7121** on 24th/5/96 and therefore a registered proprietor whose proprietorship would not be ignored.

(iii) The accidental slip or omission to establish during evaluation of evidence that Ezekiel Rwankanyuzi was the

registered proprietor and owner of the land, yet a copy of his title had been exhibited on the Court Record by the parties thereto and forming part of the record of appeal to the Supreme Court, is a major omission, whose final judgment is bound to affect the Applicant's rights unheard and thus it ought to be corrected by this Honourable Court.

(iv) The applicant is a beneficiary of the estate of the late Ezekiel Rwankanyuzi as his son and has a beneficial interest in the property comprised in Block 31 plot 1 which they have occupied and possessed since 1996 without encumbrance save for the current threats arising out of the impugned judgment of this Honourable Court whose execution would affect their said interest unheard.

4. THAT the applicant will suffer irreparable damage/ loss if the order sought herein is not granted as he will be the subject of eviction from the land where he resides and derives his livelihood and the said land shall be alienated, transferred or otherwise dealt with by the respondents or their agents, in a manner that may be irrecoverable, before the determination of the application to review the decision of this Court in **Civil Appeal No. 17 of 2014.**

5. THAT there is a serious threat of execution as a warrant of execution arising out of the judgment and decree entered in **Civil Appeal No. 17 of 2014** has been issued.

6. That it is only just and equitable that the application be allowed.

The affidavit in reply, sworn by Cresensio Mukasa, the respondent, stated, *inter alia*:

(1) The decision of the Supreme Court is final and there is no right of appeal against such decision.

(2) The application for review is not concerned with the correction of errors arising from an accidental slip but is rather a disguised appeal and, therefore, has no likelihood of success.

(3) The applicant was never a party to the High Court Civil Suit, the appeal to the Court of Appeal and the appeal to the Supreme Court and hence has no *locus standi* to bring an application for stay of execution and review.

(4) The applicant is not, in the eyes of the law, a person aggrieved by the decision of the Supreme Court.

(5) The application is incompetent and untenable.

(6) The respondent is the registered proprietor of the suit land and is entitled to possession of the said land; consequently, the applicants' application is baseless.

(7) The land comprised in Mawogola Block 31 Plot 1 at Ntyazo, which the Applicants claim, is distinct and different from the land comprised in Mawogola Block 30 Plot 1 at Kabagoma in which they do not claim an interest.

(8) The applicants would not in any way be prejudiced if the application is not granted.

(9) The application is brought in bad faith to defeat and frustrate the execution of the decree in **Civil Appeal No. 17 of 2014.**

REPRESENTATION:

Mr. Fred Kato appeared for the applicant while Mr. Paul Kuteesa appeared for the respondent.

Both counsel filed written submissions which they adopted in their entirety at the hearing.

Learned counsel for the applicant submitted that the applicant seeks an order for stay of execution to preserve the *status quo* pending the disposal of the application for review, now pending before this court.

He submitted that the applicant has satisfied the grounds for the grant of an order for stay of execution namely:

1. The lodgment of an application for review in this court vide **Civil Application No. 11 of 2017**, with a high likelihood of success.
2. The application for review and appeal will be rendered nugatory if an interim order for stay is not granted.
3. The applicant will suffer irreparable damage if the stay is not granted.

Counsel for the applicant relied on the cases of **Theodore Sekikubo & Others vs. Attorney General, SCCA No. 6 of 2013**, and **Akankwasa**

Damian vs. Uganda, Constitutional Application No. 7 & 9 of 2011, in which this Court stated that for an application for stay, the applicant must establish that the appeal has a likelihood of success; or a *prima facie* case of the right of appeal, that the Applicant will suffer irreparable damage or that the Appeal will be rendered nugatory if the stay of execution is not granted and if the 2 above are not established, the court must consider where the balance of convenience lies.

He conceded that there is no Notice of Appeal but argued that in this case the application for review of the judgment vide **Civil Application No. 11 of 2017** should be read as being analogous to a Notice of Appeal because there can be no appeal against the orders of this Court. He relied on the case of **Kiganda John vs Tayebwa Robert, Yakobo Senkungu and Ors SCCA No. 16 of 2017**

He added that there is a serious threat of execution as deponed in paragraph 9 of the 2nd applicant's affidavit in support, in which he states that a warrant of execution arising out of the judgment and decree in **Civil Appeal No. 17 of 2014** was issued by the Court of Appeal.

Indeed, annexure "C" of the affidavit in support is a warrant of execution instructing Mwesigye Jackson, a Court Bailiff, to give vacant possession of the suit land to the respondent.

He also argued that the application was filed without undue delay.

On the likelihood of success of the application for review, counsel submitted that the applicant and his family are in possession of the suit land as beneficiaries and children of the late Rwankanyuzi Ezekiel who is indicated as the registered proprietor of the land in issue. He added that he was not party to the **Civil Appeal No. 17 of 2014**, and, therefore, cannot be condemned unheard. He thus submitted that this application falls within the ambit of rule 6(2) of the Rules of this Court and the considerations for the grant of stay as laid out in the cases of **Hon. Theodore Ssekikubo & Others vs. Attorney General** (supra) and **Akankwasa Damian vs. Uganda** (supra).

He further submitted that the Applicant would suffer irreparable damage or the Appeal rendered nugatory if the stay of execution was not granted. He premised his submissions of this point on the fact that there exists a warrant of execution of the orders of Civil Appeal No. 17 of 2014.

Lastly, Counsel submitted that on the balance of convenience, the Applicant and his family would be more inconvenienced if the stay was not granted. For this reason, he argued, the balance of convenience was in the Applicant's favour.

In response, learned counsel for the respondent opposed the application. He argued that the application has no merit and ought to fail because it is not supported by any provisions of the law.

He also argued that the application is based on rule 6(2) (b) of the Judicature (Supreme Court, Rules) Directions, which permits this court to grant an order of stay of execution where a notice of appeal has been lodged in accordance with rule 72 of this Court's rules and that the cases of **Hon. Theodore Ssekikubo & Others vs. Attorney General** (supra) and **Akankwasa Damian vs. Uganda** (supra) cited by the applicant reiterate this position.

He also relied on the case of **Belex Tours & Travel Ltd vs. Crane Bank Ltd, Misc. Appl. No. 21 of 2015**, where this court held that since there was no notice of appeal filed given that the applicants could not appeal against the judgment of this court similarly the instant application ought to fail on that ground alone.

Counsel further contended that even if the notice of appeal had been filed, the other considerations for the grant of an order for stay of execution had not fulfilled; that for instance there is no proof on record of the said application for review, and that counsel only submitted from the bar about the existence of the said application. Counsel further argued that the applicants' contention that the application for review has a likelihood of success has no basis and for this he relied on the case of **Belex Tours and Travel vs. Crane Bank** (supra) where it was held that it is not enough to merely state that the application has a reasonable likelihood of success but that the applicant must go further to show why he thinks that the application

stands a reasonable likelihood of success. Counsel contended that the applicant had failed to show this.

Counsel submitted further that the applicants have no *locus standi* to file this application since their benefactor is no longer the registered proprietor of the land in dispute. Counsel referred court to paragraph 7 of the respondent's affidavit in reply in which he deponed that he is the registered proprietor of the suit land and annextures "A" & "B" are certificates of title, Block 30 Plot 1 & Block 31 Plot 1 respectively, which are all registered in his names and that of Emmanuel Katorogo.

Counsel contended that the Applicant was heard in the High Court at Masaka in **Misc. Appl. No. 25 of 2004**, which was an application for leave to amend the plaint to join Mr. B. Nsereko and Mr. Ezekiel Rwankanyuzi as defendants to the suit but that the application was dismissed by Mwangusya, J (as he then was).

Counsel argued further that the respondent was not aware that the applicants were in possession of the disputed land and that whoever was in possession of the same got there through the eviction of the respondent pursuant to the High Court decision which has since been set aside by the Court of Appeal and subsequently by this court. He thus argued that the court cannot continue protecting the applicant's alleged interest in the suit land and possession thereof because the Supreme Court ruled otherwise.

On whether the applicant will suffer irreparable damage if the application is not granted, counsel argued that the applicant will not suffer any irreparable damage if the order for stay is not granted. He contended that the peculiarities of the case are that it's only fair to let the respondent, the successful party in **SCCA No. 17 of 2014,** enforce the orders of the court having suffered an eviction and dispossession from the suit land in 2006 pursuant to the High Court decision.

In rejoinder, counsel for the applicant reiterated his submissions and prayed the court to allow the application for stay of execution and for the costs to abide the outcome of the application for review.

CONSIDERATION.

The rules governing the grant of stay of execution in civil proceedings before the Supreme Court are well settled. They are based on Rule 6(2) (b) of the Judicature (Supreme Court) Rules. The provision reads:

"Subject to subrule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may—

(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 72 of these Rules, order a stay of execution, an injunction or stay of proceedings as the court may consider just." (Emphasis mine).

This Court has in various decisions labored to explain the principles governing the grant of stay of execution. Both counsel correctly relied on the cases of **Hon. Theodore Ssekikubo & Others vs. A.G & Others,** (supra) **Akankwasa Damian vs. Uganda,** (supra), **Eddie Kwizera vs. Attorney General, SC Const. Appl. No. 1 of 2020** & **Electoral Commission vs. Eddie Kwizera, SC Const. Appl. No. 3 of 2020,** where this court held that the basic requirements that must be satisfied by an applicant for the grant of an order for stay of execution are the following:

1. The applicant should have filed a notice of appeal and requested for certified copy of the judgment and proceedings to enable him or her file a memorandum of appeal.
2. The applicant must establish that the appeal has a likelihood of success or a *prima facie* case of his right of appeal.
3. The applicant must show that he/she will suffer irreparable damage or the appeal will be rendered nugatory if the stay is not granted.
4. The court should consider where the balance of convenience lies if the applicant fails to establish the 2nd and 3rd conditions.

Counsel for the Applicant, in his submissions, conceded that indeed there no Notice of Appeal pending before Court. He however submitted that the instant application being anchored on the application for review should be treated as analogous to a Notice of

Appeal or an appeal. He relied on the case of **Kiganda John and Tayebwa Robert vs Yakobo Senkungu and 5 others** (supra)

Indeed, counsel for the respondent correctly pointed out the fact that no notice of appeal has been filed in this court. This was also conceded by the applicant.

This formed the thrust of counsel for the respondent's argument that rule 6(2) (b) of the rules of this Court is inapplicable to the instant application and that it should be dismissed preliminarily for this reason. The applicant however, argued that although the foundation of this application for stay of execution was not a notice of appeal as required under rule 6(2) (b) of the Rules, the application for review should be treated as analogous to a notice of appeal.

It is important to determine whether under the circumstances of this case, the application for review should be treated as analogous to a notice of appeal under rule 72 of the Rules of this Court in order to bring the applicant's application under the operation of rule 6(2) (b) of the Rules.

This issue at hand is not unprecedented. The applicability of rule 6(2) (b) of the rules to applications for review brought under 2(2) of the rules was tested in the case of **Kiganda John & Tayebwa Robert vs. Yakobo M.N. Senkungu & 5 Others,** (supra). This was an application for

an interim order for stay of execution arising out of the same facts as the instant case pending the determination of this application.

Tumwesigye, JSC, stated as follows:

"The question as to whether the applicants' application for review of this court's decision in SCCA No. 17 of 2014 should be treated as a notice of appeal is key to the determination of the instant application for an interim order for stay of execution."

In that case, since it was found that the application for review stood a reasonable likelihood of success, it could be, and was, treated as a Notice of Appeal.

Rule 2(2) of the Judicature (Supreme Court) Rules, gives this Court wide discretion to make such orders as may be necessary to achieve the ends of justice or to prevent the abuse of its process.

It provides as follows:

"***Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay."***

This position was restated in the case of **G. Afro vs. Uganda Breweries Ltd, SCC Appl. No. 12 of 2008** where G.M Okello, JSC, held that under **rule 2(2)**

of the court's rules, the court has the power to make such orders as may be necessary for achieving the ends of justice and prevent abuse of the process of court.

The extent of this Court's powers of review was discussed in the case of **Livingstone Sewanyana vs. Martin Aliker, Civil Application No.4 of 1991(SC)**, where the court considered the power that was preserved in the then rule 1(3), now in rule 2 (2). This Court while relying on the case ***Lakhamshi Brothers Ltd. vs. R. Raja and Sons 1966 (EA) 313***, went on to clarify that –

"But rule 35 will not exhaust the inherent jurisdiction of the Supreme Court, otherwise Rule 1(3) would not have been necessary. The latter rule is there to provide for the many types of cases when the inherent jurisdiction will be necessary for the ends of justice"

"The jurisdiction of this Court to recall its judgment and correct or otherwise alter it, however, is not limited to the slip rule. It may also be exercised under its inherent power, which is set out in r.1 (3) (Emphasis mine).

This position has been reiterated in numerous decisions of this court such as: ***NPART v. General Parts (U) Ltd., Misc. Appln. No. 08 of 2000 (SC), Orient Bank Ltd. v. Fredrick Zaabwe & Anor, Civil Appln No. 17 of 2007, Isaya Kalya & 2 others vs. Moses Macekenyu Ikagobya, Misc. Appl. No. 28 of 2015, Otim Moses vs. Uganda, Misc. Appl. No. 14 of 2018.***

The Court will now determine the question as to whether the applicant presents a case that is fit and proper for the invocation of its inherent powers in rule 2(2) to treat the application for review as a notice of appeal which would bring the application into the ambit of rule 6(2) (b) of the Rules of the Court?

In dealing with this question, Tumwesigye, JSC in **Kiganda John & Anor vs. Yakobo M.N Senkungu** (supra) set the threshold. He stated:

"***The question as to whether the application for review should be treated as analogous to a notice of appeal must, as a necessary condition, be linked to deciding whether the application for review stands a reasonable likelihood of success***."

We shall now delve into the determination of whether the application for review has a likelihood of success.

The basis of the application for review vide **SCC Appl. No. 11of 2017**, is an alleged contravention of the right to be heard which is enshrined in Article 28 (1) of the Constitution which provides:

"***In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and an impartial court or tribunal.***"

The effect of noncompliance with Article 28 of the Constitution was discussed in the case of **Bitamisi Namuddu vs. Rwabugande Godfrey, SCCA No. 16 of 2014**. In that case, the Court held as follows:

"The fundamental right to a fair hearing is entrenched in our Constitution (see Article 44 of the Constitution). No person should be condemned unheard. Consequently, an ex parte judgement or decree is voidable at the instance of a party that did not attend court if that party shows that he or she had sufficient cause for not appearing at the hearing."

The import of this decision is that the right to a fair hearing envisaged under Article 28 is a non derogable right which goes to the heart of the validity of a judgment and decree. An alleged breach thereof, therefore, should be investigated by the Court because if it is indeed true, it makes the judgment voidable at the instance of the unheard party.

The facts at hand show that the applicant's father Ezekiel Rwankanyuzi was the registered proprietor of the suit land when the case started in the High Court. He was never party to the suit right from the trial Court to the 2nd appeal in this Court. His attempt to be joined as a party in the High Court was thwarted when Mwangusya, J, (as he then was) rejected the application to amend the plaint to join Rwankanyuzi him as one of co-defendants.

His name as registered proprietor was consequently struck off the register without giving him or his successors opportunity to be heard. This in itself went against provisions of Articles 28(1) and 44(c) of the Constitution.

It is upon this background that we find, just as was found by Tumwesigye, JSC, in **SCC Appl. No. 15 of 2017**, while granting the order for interim stay, that that the application for review stands a reasonable likelihood of success. It follows, therefore, that the instant application should be treated as analogous to a notice of appeal under rule 6(2)(b) of the rules of this court for the purpose of determining the application for stay of execution.

Counsel for the respondent relied on the case of **Belex Tours and Travel Ltd vs. Crane Bank, Misc. Appl. No. 21 of 2015**, to support his argument that this court cannot entertain the instant application because of the lack of a notice of appeal. In that case, this court rejected an application for stay of execution for failure to comply with rules 6(2) (b) and 72 of this court's Rules that require a notice of appeal to be lodged before the court can grant an order for stay of execution. That this case is still good law.

However, the case should be distinguished from the instant case. This is because in the former case, the applicant sought to adduce evidence to prove fraud which he, as the plaintiff in the trial court, had failed to bring to the attention of court till the determination of the 2nd appeal in this Court. The court found that he had failed to advance any special circumstances as to why the application for review should be regarded as a notice of appeal. In the instant case, the right to a fair hearing which is fundamental for the administration of justice is in issue. This court is, therefore, duty bound to make all necessary orders to ensure that the ends of justice are met.

Similarly, in **Katungulu John Matovu & Anor vs. Godfrey Rwabugande SCC Appl. No 4 of 2019**, the applicants had been registered as

proprietors of various subdivided plots of land from the land that was subject of litigation in the case of **Bitamisi Namuddu vs. Rwabugande Godfrey** (supra). This was done while the suit land was still subject to litigation. The decision in the aforementioned case had the effect of cancelling their titles. The applicants claimed to be *bona fide* purchasers for value without notice, a claim that was yet to be determined by a trial court. The applicants had indeed filed a case in the High Court to determine the legality of their alleged interests in the suit land.

However, they had also applied for the review of the judgment, stay of execution and interim stay of execution.

During the hearing of the application for interim stay of execution, counsel for the applicants sought court's indulgence to treat the application for review as being analogous to a Notice of Appeal as had been the case in **Kiganda John & Anor vs. Yakobo M. N Senkungu** (supra).

The Court refused to treat the application for review as being equivalent to a notice of appeal for the purposes of determining the application for stay of execution because it had found that the application for review had little or no likelihood of success.

From the foregoing, the principles governing grant of stay of execution arising out of an application for review brought under rule 2(2) of the rules of this court are as follows:

(i) Before a court can treat an application for review as analogous to a notice of appeal, the applicant should advance special reasons as to why such should be the case.

(ii) The consideration of other grounds such as the application for review being rendered nugatory and the existence of a serious threat of execution would all depend on the likelihood of success of the application for review.

Having found that the application for review has a high likelihood of success, we shall now consider the other grounds of the application for stay of execution.

On whether the application would be rendered nugatory if the order of stay of execution is not granted, we are alive to the duty of court to ensure that an intended appeal, if successful, is not rendered nugatory. (See **Hon. Theodore Ssekikubo & Others vs. Attorney General** (supra), the consolidated applications in **Eddie Kwizera vs. Attorney General,** (supra) and **Electoral Commission vs. Eddie Kwizera,** (supra).

Having equated the application for review to a notice of appeal envisaged under rules 6(2) (b) and 72 of the rules of this Court, we find that by necessary implication, this court is duty bound to safeguard the applicant's right to review, pending the disposal of the

application in **SCC Appl. No. 11 of 2017**. If successful, the review should not be rendered nugatory.

The applicant has been in possession of the suit land since 1996 to date. It is also his sole source of livelihood. Counsel for the respondent's argument that he was not aware that the applicant was in possession of the disputed land is untenable.

The applicant risks eviction from the suit land if the order for stay of execution is not granted, the Court of Appeal having issued a warrant of execution to Mwesigwa Jackson, a Court Bailiff, to deliver vacant possession of the suit land (Annexure "C") of the affidavit in support of the Notice of Motion is to this effect.

In our view, the conditions for the grant of an order for stay of execution have been satisfied.

We are, therefore, inclined to grant the order for stay of execution in order to preserve the *status quo* pending the disposal of the application for review of this Court's judgment in **SCCA No. 17 of 2014.**

In the result, we allow this application for an order for stay of execution of part of the decision of this Court's judgment in **SCCA No. 17 of 2014,** regarding property comprised in Block 31 Plot 1 pending the determination of the application for review vide **SCC Appl. No. 11 of 2017.**

Costs to abide the outcome of the application for review vide **SCC Appl. No. 11 of 2017.**

Dated at Kampala this ....22nd....day of ....July.....2022

Hon. Dr. Esther Kisaakye

JUSTICE OF THE SUPREME COURT

Hon. Stella Arach-Amoko

JUSTICE OF THE SUPREME COURT

Hon. Paul Mugamba

JUSTICE OF THE SUPREME COURT

Hon. Night Percy Tuhaise

JUSTICE OF THE SUPREME COURT

Hon. Mike J. Chibita

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

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(CORAM: KISAAKYE; ARACH AMOKO; MUGAMBA; TUHAISE; CHIBITA; JSC)

(An Application arising out of Civil Application No. 11 of 2017, arising from Civil Appeal No. 17 of 2014)

TAYEBWA ROBERT::APPLICANT

VS

CRESENIO MUKASA::RESPONDENT

RULING OF M.S ARACH-AMOKO, JSC (DISSENTING)

I have had the benefit of reading in draft the Ruling by the majority on the Coram and the one by my sister, Dr. Esther Kitimbo Kisaakye, JSC.

The background, the grounds and submissions by Counsel for the parties are ably summarised in those drafts.

I also agree that the Rule governing stay of execution is Rule 6(2) of the Supreme Court Rules. It provides clearly that:

> ***"Subject to sub rule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or stay execution, but the court may-***
>
> ***(a).....***
>
> ***(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 72 of these***

***Rules*, order a stay of execution, an injunction or stay of proceedings as the court may consider just."**

(Underlining is for emphasis)

This Rule has been the subject of interpretation and application by this Court in several cases including the cases of **Hon. Theodore Ssekikuubo and others vs Attorney General, SCCA No. 6 of 2013** and **Akankwasa Damian vs Uganda, Constitutional Application No. 7 & 9 of 2011** among others. In **Hon. Theodore Ssekikuubo and others vs Attorney General** (Supra), Court set out the conditions for grant of an application for a stay of execution namely that;

1) ***The application must establish that his appeal has a likelihood of success; or a prima facie case of his right to appeal.***

2) ***It must also be established that the applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.***

3) ***If 1 and 2 above has not been established, Court must consider where the balance of convenience lies.***

4) ***That the applicant must also establish that the application was instituted without delay.***

The Court further noted that the first and most important requirement is the filing of the Notice of Appeal by the intended appellant indicating his intention to appeal. As Rule 6(2) (b) explains, the institution of the appeal via a Notice of Appeal does not act as a stay of execution. In the absence of an order for stay

of execution, execution can still be conducted. But the pre-condition for the grant of that order for stay is a Notice of Appeal. In the absence of a Notice of Appeal, there is nothing to base an application for stay of execution.

Nowhere in the Supreme Court Rules is it stated that an application for review is synonymous or analogous to a Notice of Appeal. The decision in **SCCA No. 16 of 2017 Kiganda John and another vs Yakobo Senkungu,** was therefore in my view erroneous.

I wish to add that the decision in **Kiganda** (supra) was per incuriam; let alone a decision of a single Justice of the Court. It is therefore not binding on us.

Lastly, and following the above, I wish to emphasise that the Rules of procedure were made for the orderly conduct of Court proceedings. Until and unless they are amended, we are obliged to follow them to the letter.

In the circumstances and for the above reasons, I would agree with Hon. Justice Dr. Kisaakye, JSC that the application does not meet the conditions for the order sought. It should be dismissed with costs to the respondent.

Dated at Kampala this.....22nd.....day of.....July.....2022

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M.S ARACH-AMOKO
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

CIVIL APPLICATION NO. 15 OF 2017

[CORAM: KISAAKYE; ARACH-AMOKO; MUGAMBA; TUHAISE; CHIBITA; JJ.S.C.]

TAYEBWA ROBERT :: APPLICANT

V

CRESENSIO MUKASA :::::::::::::::::::::::::::::::::::: RESPONDENT

RULING OF DR. KISAAKYE, JSC. (DISSENTING)

This application was initially filed by two applicants, namely Kiganda John and Tayebwa Robert against six respondents namely Yakobo M. N. Senkungu, James Kenjura, John Rwakamuranga, Giradesi Katonya, Yohana Rwakaaro and Cresensio Mukasa. However, during the hearing of the application, Kiganda John withdrew from the application and the applicant also withdrew the application against the first to fifth respondents. Consequently, the Court struck off the first to the fifth respondents from this application, leaving only Tayebwa Robert (hereinafter referred to as the applicant and Cresensio Mukasa (hereinafter referred to as the respondent).
Although some parties were struck off, the pleadings remained as filed. I will consider these pleadings with necessary adjustments to only focus on the remaining parties, respectively.

The applicant brought this application under Rules 2(2) and 6(2)b of the Judicature (Supreme Court) Rules, among others, against the respondent is based on the following grounds:

1. *That the applicant has filed an application in this Honourable Court vide Civil Application No. ... of 2017 seeking for orders for this Honourable Court to recall its Judgment entered in Civil Appeal No. 17 of 2014 delivered on 6th April 2017, for purposes of reviewing and, or correcting the errors of facts on record and amending or otherwise varying the same for having affected the rights of the Applicants unheard.*

2. *THAT the said Civil Application No. ... of 2017 is still pending in this Honourable Court and the decision thereto, will be rendered nugatory if the orders sought herein are not granted, and execution is allowed to proceed.*

3. *THAT the applicants' Civil Application No. ... of 2017 pending in this Honourable Court for purposes of reviewing the decisions and orders of this Honourable Court has a high likelihood of success in that:-*
   a) *THAT there is an error apparent on the face of the record arising from the obvious and rather inadvertent inconsistency in the judgment in Civil Appeal No. 17 of 2014 and final orders of the court which affect the rights of the Applicant who was not a party thereto, thereby not warranting the orders in the terms as granted.*
   b) *THAT in the Judgment, there was an accidental slip or omission wherein the court inadvertently in its Judgment in evaluating the chronology of the transfers and registered proprietors in respect of Block 31 Plot 1, omitted to find that Yakobo Mukaaku Mutendwa Ssenkungu the 1st Respondent hereto transferred the land to Ezekiel Rwankanyuzi who was registered on the Certificate of Title under Instrument No. MSK 7121 on 24/5/96 and therefore a registered proprietor whose proprietorship would not be ignored.*

c) *THAT the accidental slip or omission to establish during evaluation of evidence that Ezekiel Rwankanyuzi was the registered proprietor and owner of the land, yet a copy of his title had been exhibited on the Court Record by the parties thereto and forming part of the Record of Appeal to the Supreme Court was a major omission, whose final Judgment is bound to affect the Applicant's rights to property unheard and thus it ought to be corrected by this Honourable Court.*

d) *THAT the Applicants are beneficiaries of the estate of the late Ezekiel Rwankanyuzi as his sons and have a beneficial interest in the property comprised in Block 31 Plot 1 which they have occupied and possessed since 1996 without encumbrance save for the current threats arising out of the impugned judgment of this Honourable Court whose execution would affect their said interest unheard.*

4. *THAT the applicants will individually and collectively suffer irreparable damage/loss if the order sought herein is not granted as they will be the subject of eviction from the land where they reside and derive all their livelihood and the said land shall be alienated, transferred or otherwise transferred or otherwise dealt with by the respondents or their agents, in a manner that it may be irrecoverable, before Civil Application No. ... of 2017 pending in this Honourable Court is heard and determined and the said application, which has not been fixed for hearing may take long to be heard and finally determined.*

5. *THAT there is a serious threat of execution as warrant of execution arising out of the Judgment and Decree entered in Civil Appeal No.*

17 of 2014 which is the subject of an Application for review of this Honourable Court, has been issued.

6. *THAT it is only fair, just, equitable and in the interest of justice that this Application be allowed.*

This application is supported by the Affidavit of Tayebwa Robert sworn at Kampala on 24th April 2017. The applicant annexed to his application the Judgment of this Court in Civil Appeal No. 17 of 2014, a photocopy of a Certificate of Title of land for Block 31 Plot 1 at Ntyazo and the warrant of execution arising out of Supreme Court Civil Appeal No. 17 of 2014.

The applicant was represented by Fred Kato of Alaka and Co. Advocates. The respondent was represented by Paul Kuteesa of M/S Arcadia Advocates. Both parties filed written submissions.

The applicant seeks for the following Orders from this Court.

1. *An order does issue staying execution and/or effecting of the decision and orders of this Honourable Court's Judgment entered in Civil Appeal No. 17 of 2014 delivered on 6th April 2017 until determination of Civil Application No. ... which is itself seeking for orders of reviewing Judgment entered in Civil Appeal No. 17 of 2014.*
2. *Costs be provided for.*

Parties' submissions

Counsel for the applicant contended that the law governing this application is set out in Rules 2(2), 35 and 42 of the Judicature (Supreme Court) Rules.

He contended that these rules empower this Court either on its own motion or at the instance of any interested person to correct any error

in a Judgment, at any time, to give effect to what was intended by the Court when it passed the said Judgment. and to also issue such orders that may be necessary for the ends of justice and prevent abuse of the court process. He relied on ***Kiganda John and Tayebwa vs Yakobo M.N. Senkungu & 5 Others, Supreme Court Civil Application No. 16 of 2017.***

Counsel for the applicant further relied on paragraphs 2, 3, 4, 5 and 6 of the Affidavit in support of the application and contended that Ezekiel Rwankanyuzi (hereinafter referred to as the applicant's father) was the registered proprietor of the suit land, although he never sued right from the High Court and in subsequent proceedings in the Court of Appeal and Supreme Court.

Counsel contended that it was from these proceedings that the Certificate of the Title of land belonging to the applicant's father was cancelled, without according him or his representative a hearing. He contended that it is the proceedings of Civil Appeal No. 17 of 2014 which had the effect of evicting the applicant and his family members from the land which they had occupied and possessed since 1996.

Counsel for the applicant contended that this Court in Supreme Court Civil Application No. 16 of 2017, taking into consideration of the record, found that the Applicants made out a case for review and had a reasonable likelihood of success.

On the other hand, counsel for the respondent contended that the law governing the grant of an order of stay of execution is set out in Rule 6(2) (b) of the Supreme Court Rules.

He contended that Rule 6(2) gives the Court discretion to grant a stay of execution where a notice of appeal has been lodged in accordance with Rule 72 of the Rules of this Court.

Counsel for the respondent contended that this Court has in a number of cases laid down the following principles to guide the exercise of discretion whether to grant a stay of execution:

i) *The applicant must establish that his appeal has a likelihood of success; or prima facie case of his right of appeal;*

ii) *That the Applicant will suffer irreparable damage or that the appeal will be rendered nugatory is a stay is not granted;*

iii) *If 1 to 2 above have not been established, the Court must consider where the balance of convenience lies.*

iv) *The Applicant must establish that the application was instituted without delay.*

Counsel contended that all the above principles were however applicable in cases where the Court is considering an appeal from the Court of Appeal to this Court. He contended that the principles are inapplicable to the present application. Counsel submitted that the authorities of ***Hon Ssekikubo & 3 Others vs A. G. & Others Supreme Court Constitutional Application No. 6 of 2013*** and ***Akankwasa Damian vs Uganda & 5 Others Constitutional Application No. 7 of 2011*** are distinguishable from the facts obtaining in this application.

He contended that the applicant's application does not satisfy the conditions for grant of an order of stay of execution.
Counsel contended that there is no threat of execution to warrant an order of stay of execution because this Court heard and dismissed Civil Appeal No. 17 of 2014. He relied on ***Hon Michael Mabike v The Law Development Centre, Misc. Civil Application No. 14 of 2015.*** He also contended that the applicants were never parties to the High Court Civil Suit, the appeals to the Court of Appeal and this Court,

hence the decree and order of the Court cannot be executed against parties that were never parties to it.
Counsel further contended that Rule 6(2) of the Rules of this Court is not applicable because it deals with an appeal from the Court of Appeal to the Supreme Court. He further contended that the first requirement in that rule is that there must a Notice of Appeal filed in this Court.

Counsel for the respondent contended that because Court cannot sit in Judgment of its own decision, similarly, it cannot grant a stay of its own order. Counsel relied on ***Belex Tours and Travel Limited v Crane Bank Limited Misc. Application No. 21 of 2015.***
Counsel further contended that in absence of an appeal, this Court is not vested with discretionary power to grant a stay of execution, simply because it cannot sit on appeal of its own orders.

Regarding the likelihood of success, counsel contended that the application does not stand a reasonable likelihood of success. He submitted that while the application is based on Rule 35(1) and 2(2) of the Rules of this Court, it is however not concerned with the correction of errors arising from an accidental slip. Rather, the applicant seeks from Court a reconsideration of the whole Appeal; admission of new evidence and that the Court overturns its previous decision, which all fall outside the Rules he relied on.

Regarding irreparable injury, counsel contended that the applicant will not suffer any irreparable injury, and neither will the main application be rendered nugatory if this application is not granted.
Lastly, counsel contended that the balance of convenience lies with dismissing the application. He contended and that public policy

demands that there should be a finality to Court proceedings and the decisions of this Court should be final.

Consideration of the application

I have had the benefit of reading in draft the majority Ruling in this Application. With due respect to my colleagues, I am unable to agree with their decision that we should allow this application and grant the applicant a stay of execution.

On the contrary, my decision is that this application should be dismissed with costs, for the reasons given in this Ruling.

This application was brought, among others, under rule 6(2)b of the Judicature (Supreme Court) Rules which provides as follows:

> "***6. Suspension of sentence, stay of execution, etc.***
>
> ***(2) Subject to subrule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may —***
>
> ***(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 72 of these Rules, order a stay of execution, an injunction or stay of proceedings as the court may consider just."***

It is clear under this Rule that a person seeking a stay of execution should have lodged a Notice of appeal in this Court. The applicant must have been a party who is aggrieved by the decision of the Court of Appeal.

A reading of the provisions of the Constitution, Judicature Act and the Supreme Court Rules all confirm the position that for a person to proceed to lodge an application under rule 6(2)(b) of the Supreme

Court Rules, the person must be either an appellant or intended appellant.

Secondly, it is also clear that the appeal must arise from a decision of the Court of Appeal. Neither the Constitution, the Judicature Act nor the Judicature (Supreme Court) Rules envisage a third party proceeding under Rule 6(2)b of the Judicature Supreme Court Rules.

In a bid to fit this application within the ambit of Rule 6(2)(b) of the Judicature (Supreme Court) Rules, the majority on the Coram have held that an application for review by a third party to review a Judgment, is analogous to a Notice of Appeal envisaged under Rule 6(2)(b) of the Supreme Court Rules. I note that Justice Tumwesigye reached a similar ruling when he was dealing with the applicant's application for an Order for interim stay of execution.

I strongly disagree with this distortion of clear provisions of the Constitution, the Judicature Act, and the Judicature (Supreme Court) Rules. This Court derives its Jurisdiction to hear appeals from decisions of the Court of Appeal from Article 132(2) of the Constitution. This Article provides as follows:

> ***"(2) An appeal shall lie to the Supreme Court from decisions of the Court of Appeal as may be prescribed by law."***

Similarly, section 4 of the Judicature Act also provides for the jurisdiction of the Supreme Court to hear appeals from the Court of Appeal as follows:

> ***"4. Jurisdiction of the Supreme Court***

An appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as are prescribed by the Constitution, this Act or any other law."

The right to appeal is exclusively granted to a person who has been a party to proceedings before the Court of Appeal. Secondly, that right is limited to matters that were canvassed before the Court of Appeal.

There are numerous decisions of this Court where we have stated these clear provisions of the law. That right does not and cannot by any stretch of imagination, extend to a non-party like the applicant. Prior to this application being made, an appeal from the Judgment in Civil Appeal No. 35 of 2006 was lodged by the dissatisfied parties in this Court. This was Civil Appeal No. 17 of 2014. This Court rendered its Judgment in this appeal on 6th April 2017.

Turning to the application under consideration, the applicant was not a party to the proceedings before the Court of Appeal and therefore cannot and did not lodge a Notice of Appeal in this Court. Therefore, his application under Rule 6(2)b cannot be sustained under the law and I decline to grant it.

Secondly, the applicant relied on Rule 35 of the Judicature Supreme Court Rules in his submissions. I note that he did not cite this Rule in his Notice of Motion.

The Judicature (Supreme Court Rules) specifically provide this Court with powers to correct its errors as follows:

"35. Correction of errors

(1) A clerical or arithmetical mistake in any Judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in an order, be corrected by the court, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the court when judgment was given."

Under this Rule, the Court can correct clerical or arithmetical mistakes or any error in its Judgments rising from accidental slip or omission. Secondly, the rule vests power in Court to correct errors before or after the Judgment has been embedded in an Order. Thirdly, the Court can act on its own motion or at the instance of an interested party.

I note that the rules do not define any interested person. The applicant having relied on this rule seeks to take benefit of this provision under the rule allowing "any interested person" to apply to Court for correction of errors in a Judgment.

While the rules leave it open for applicant to come in under this rule, this rule only allows correction of errors and does not extend to granting an application for stay of execution to a third party. As I have already discussed in this Ruling, this is governed by rule 6(2)b of the Supreme Court Rules. Therefore, this application cannot be sustained under Rule 35.

Let me now turn to consider whether the application for stay can be allowed under rule 2(2) of the Judicature (Supreme Court) Rules. This is one of the provisions under which applicant brought his application.

Rule 2(2) of the Judicature (Supreme Court) Rules provides as follows:

> ***"2. Application.***
>
> ***(2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay."***

This Court has on numerous occasions pronounced itself on its powers under Rule 2(2) of the Judicature (Supreme Court Rules) Directions. In ***Orient Bank vs Fredrick Zaabwe & Anor, Civil Application No. 17 of 2007***, this Court held as follows:

> "***It is trite law that the decision of this Court on any issue of fact or law is final, so that the unsuccessful party cannot apply for a reversal. The only circumstances under which this Court may be asked to revisit its decision are set out in Rule 2(2) and 35(1) of the Rules of this Court. On the one hand, Rule 2(2) preserves the inherent power of the Court to make necessary orders for achieving the ends of justice, including orders for inter alia-***
>
> > ***'...setting aside judgments which have been proved null and void after they have been passed...'"***

Similarly, in ***David Muhenda vs Humprey Mirembe, Supreme Court Civil Application No. 5 of 2012,*** this Court also held as follows:

"Under Rule 2 (2) of the Judicature (Supreme Court Rules) Directions S1 11-13, this Court has power to recall its judgment and make orders as may be necessary for achieving the end of justice."

Rule 2(2) provides for two scenarios when Court can invoke its inherent powers. These are:

a) Cases where the Court needs to make Orders necessary to meet ends of Justice.
b) To prevent abuse of the process of the Court

The Rule further provides that the powers of Court include power to set aside Judgments which have either been proven to be void after they have been made or preventing abuse of Court by delay.
Broad as the powers vested in this Court are, the Rule does not grant this Court powers to act without a legal basis or to act outside the Constitutional and statutory mandate that is vested in this Court.
Rule 2(2) sets down very clear conditions which an applicant must prove before the Court can invoke its inherent jurisdiction to make Orders sought by an applicant.

It my view that, the applicant still does not qualify to get a stay of the Orders of the Court issued in the Judgment for the following reasons. First, an application for stay of execution is specifically provided for under rule 6(2)b of the Supreme Court Rules. As I have already discussed, the applicant does not qualify under that provision. If the Court held that the applicant could obtain a stay under Rule 2(2), it would be endorsing the applicant's bid to circumvent rule 6(2)b which is a specific provision for granting a stay of execution and get the same order under rule 2(2) to grant an Order for stay of execution. The

applicant was already granted an interim stay of execution by Justice Tumwesigye, JSC (as he then was) under rules 2(2) and 6(2)b.

I have not come across a case where Court has invoked its powers to grant a stay of execution under this Rule. But even if it is arguable that this Court could invoke its powers to grant a stay of execution to meet ends of Justice or prevent abuse of process, my view of the applicant's grounds supporting his application for stay of execution, do not have merit.

In ground 3(d) of the applicant's Notice of Motion, the applicant claimed as follows:

> *"THAT the Applicants are beneficiaries of the estate of the late Ezekiel Rwankanyuzi as his sons and have a beneficial interest in the property comprised in Block 31 Plot 1 which they have occupied and possessed since 1996 without encumbrance save for the current threats arising out of the impugned judgment of this Honourable Court whose execution would affect their said interest unheard."*

Similarly, in ground four of his Notice of Motion, the applicant claimed that he would suffer irreparable damage or loss if a stay of execution is not granted. He contended that he will be a subject of eviction from the land where he stays and derives a livelihood because the land will be alienated or transferred or otherwise dealt with by the successful party in Supreme Court No. 17 of 2014

In essence, the applicant is moving this Court (through the window provided by Rule 35 and Rule 2(2) of the Supreme Court Rules, to hear his new claims vis a vis the suit land comprised in Block 31 Plot 1 compromising of about 623 Acres at Ntyazo.

This Court is not a Court of first instance, it is a second appellate Court which is constitutionally mandated to only hear appeals from the Court of Appeal. It does not have powers to sit as trial Court to hear fresh claims. The parties in Supreme Court Civil Appeal No. 17 of 2014 were Yakobo M. N. Senkungu, James Kenjura, John Rwakamuranga, Giradesi Katonya, Yohana Rwakaaro (appellants) and Cresensio Mukasa (respondent). The appellants appealed to this Court on the following grounds:

1. *" The learned Justices erred in law and fact when they held that the Appellants acted fraudulently in acquiring the Certificate of title to the suit land.*
2. *The learned Justices of Appeal erred in law and fact when they held that the Appellants were not bonafide purchasers without notice of fraud for the suit land.*
3. *The learned Justices of Appeal erred in law and fact when they granted prayers originating from an illegal claim.*
4. *The learned Justices of Appeal erred in law and fact when they failed to evaluate the evidence and shifted the burden of proof to the Appellants thus arriving at a wrong conclusion."*

This Court dismissed the appeal with costs to the respondent.
From the foregoing, there is no nexus between the applicant and the Judgment in Civil Appeal No. 17 of 2014 which he seeks to stay its execution. The respondent on the other hand was a party as the respondent and this Court found in his favour when it dismissed the appeal with costs to him.

The applicant has not shown any link to the appellants in Civil Appeal No. 17 of 2014 or any connection to the people mentioned in the warrant of execution to give vacant possession. This Court has

therefore no basis to assess the applicant's nexus to Block 31 Plot 1 at Ntyazo, and if this is the same land which he occupies currently. The nexus would come through Ezekiel Rwakanyuzi and it would connect through to the applicant as one of the parties who was given notice to give vacant possession.

A review of this warrant of Execution also shows that it was issued by the Court of Appeal and not this Court. This being so, the right Court to stay the warrant is the Court of Appeal, not this Court. This Court has no powers to order the Court of Appeal or any other lower Court to stay execution when no proceedings are currently pending before it in respect of the same matter.

In spite of the clear provisions of the law, the applicant nevertheless was erroneously granted an interim order for stay of execution by a single Justice of this Court. The applicant has already benefitted from this Order, to the detriment of the Judgment creditor. By granting him a Stay of Execution, this Court would be continuing with and endorsing this error.

The applicant has failed to bring himself under the inherent powers granted to the Court under Rule 2(2) of the Judicature (Supreme Court) Rules to order a stay of execution as may be necessary to achieve the ends of justice. I am left with no option but to conclude that the applicant was on a fishing expedition and intended to mislead this Court to grant him relief which is unknown in law and which he does not deserve.

In the circumstances, I have found no merit in this application as filed and argued. I would accordingly dismiss it with costs to the respondent.

I would further order that this Ruling be concurrently delivered with the Ruling in Civil Application No. 11 of 2017. This will enable the parties to get a full resolution of all their current applications before this Court.

ORDER OF THE COURT

By a majority of 3 to 2:

1) The application for stay of execution of the decision and orders of this Court made in **Supreme Court Civil Appeal No. 17 of 2014,** is granted pending the determination **Supreme Court Civil Application No. 11 of 2017** is allowed.

2) The costs of this application shall abide the outcome of the application for review in **Supreme Court Civil Application No. 11 of 2017**

Dated at Kampala this 22nd day of July 2022.

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JUSTICE DR. ESTHER KITIMBO KISAAKYE, JSC