

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO. 5 OF 2013

*(Arising from Miscellaneous Application No. 4 of 2013, arising from Court of Appeal Civil Appeal No. 36 of 2010: Crescensio Mukasa v John Rwakamuranga & Ors.)*

YAKOBO M.N. SENKUNGU

JAMES KENTURA

JOHN RWAKAMURANGA

MISAKI RWAMPIGAaNE

GIRADESI KATONYA

YOHANA RWAKAARO

..... APPLICANTS

Versus

CRESCENSIO MUKASA .....

RESPONDENT

**RULING OF DR. KISAAYE, JSC.**

The applicants brought this application seeking for an interim order from the court to stay execution of the Decree issued in Court of Appeal Civil Appeal No. 35 of 2006, pending the determination of Misc. Application No. 4 of 2013. The

contended that his client had received information that the respondent was planning to execute the Decree, but they did not have any documentary evidence to back up this information.

Relying on the ruling in *Margaret Kato & Another v Nulu Nalwoga, Supreme Court Misc. App. No. 11 of 2011*, where this court stated that it is in the interest of justice to allow stay of execution pending the disposal of the appeal, counsel for the applicants prayed that the application be allowed.

Counsel for the respondent opposed the application and drew the court's attention to the respondent's affidavit in reply, which is on record. He argued that the application lacks merit because the applicants had failed to show any ground upon which the court should exercise its discretion to grant an Interim Order of Stay of Execution. He reiterated the two part test set by this court before it can grant an Interim Order for stay execution. He contended that this test requires court should be satisfied that an applicant has filed a substantive application and secondly that there is a serious threat of execution of the decree before the hearing of the substantive application for stay. He relied on the rulings in *Kitende Kalibogha & 2 Ors v Eleonora Wisemire, Supreme Court Civil Application No. 6 of 2010*, and *Hwan Sung Industries Ltd v Tajdin Hussein & Ors, Supreme Court Civil Application No. 19 of 2008*, to submit that the applicants have failed to satisfy both grounds. He contended that there is no averment in the Notice of Motion and in the Affidavit in Support of the Motion that there is a substantive application before this court for a stay of execution and that there was only submission from the bar that such an application exists. He contended that according to *Kitende* (supra), failure by an applicant to make this averment is a fatal omission which

