

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT GULU

MISCELLANEOUS APPLICATION NO. 82 OF 2015

(Arising out of CS 075 of 2008)

OLOYA JOHN JARAMOGI:.....APPLICANT

VERSUS

1. OKIRWOTH FLORENCE

2. LACAN MAKWO J.B. STEPHEN:..... DEFENDANTS.

RULING OF HON. LANDY JUSTICE MARGARET MUTONYI

The Applicant filed this application by way of Notice of Motion under the Provisions of 0.43 r 4(1)(3) (4) and (5) and S.98 of the Civil Procedure Act, seeking for Stay of Execution against the Applicant pending the disposal of the Appeal case in the Court of Appeal, Civil Appeal No.158/2014.

The Notice of Motion is accompanied by the affidavit of Oloya John Jaramogi dated 25/6/2015. The gist of the application is that the Respondent having been the successful party in CS. No. 075/2008 have since formally applied to this Honourable Court to execute the requisite decree and a warrant of arrest was duly issued against the Applicant dated 14/5/2015.

This is of course a clear testimony of their desire to execute the decree. In interim Stay of Execution was issued by the Registrar vide MA. 83/2015.

Perusal of the proceedings reveal that J. Henry Kunya an Advocate of the High Court personally served the Respondents.

Ms. Okirwoth Florence was served on 7/10/2015 while Mr. Lacan Makwo J. B was served on 11/11/2015 as per the affidavit of service dated 7/12/2015.

The Respondents neither replied to the Notice of Motion nor filed written submissions. Service of process is the procedure by which a party to a law suit or application gives an appropriate notice of the legal action to another.

Once of Respondent has been duly served with the Court documents, he or she must respond. If the Respondent fails to do so, the Applicant may quickly be able to obtain the relief he or she is seeking unless it is barred by law.

In the instant Application, there is no legal impediment standing in the way of the Applicant. It is also trite law that once a party is duly served and does not take any step to respond to the pleadings the presumption is that they are conceding to the pleadings.

In the results I agree with the submissions of the Applicant's Counsel and (1) grant the Application for Stay of Execution of the Decree under Civil suit No.75/2008 pending determination of Court of Appeal case No. 158/2014.

2. Direct that the proceedings in HCT-02-CV- CS-0075/2008 be transmitted to Court of Appeal Kampala without further delay.
3. No costs are awarded.

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Margaret Mutonyi
Judge
17/5/2016

24/6/2016

Ruling delivered in the presence of Michael Okot holding brief for Moses Oyet
The rest absent.
Agnes – Court Clerk.

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Henry Twinomuhwezi

Assistant Registrar

24/6/2016