

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**MISCELLANEOUS APPLICATION No. 051 of 2018**

**(Arising from HCT – 01 – CV – CA – 010 OF 2016)**

5 **(Arising from KAS – 00 – CV – LD – CS – 059 of 2008)**

**1. KARAMAGI STEPHEN GLEN**

**(Administrator of the Estate of**

**Isingoma Geoffrey)**

10 **2. RWABUHINGA MICHAEL** .....**APPLICANTS**

**VERSUS**

**JOHN KAMBA.....RESPONDENT**

**BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE**

15 **Ruling**

This Application is brought under **Section 33** of the Judicature Act, **Section 98** of the Civil Procedure Act, **Order 22 Rule 26** and **Order 52 Rule 1** and **2** of the Civil Procedure Rules for orders that execution of judgment, decree, and orders of this Court in HCT- 01 – CV – CA – No. 010 OF 2016 be stayed pending the determination of Court of Appeal Application  
20 No. 210 of 2018 for leave to appeal out of time and costs of the application to be provided for.

This application is supported by the affidavit of the Applicant, Karamagi Stephen Glen the first Applicant which reads in Paragraph 2 that on the 10<sup>th</sup> day May 2018, the Court delivered judgment in HCT – 01 – CV – No. 010 of 2016 in favour of the Respondent. He states in  
25 paragraph 3 that they were not given notice as to the date of judgment.

He further states in paragraph 4 that after realizing that the judgment had been delivered against them, they filed through their lawyers an application for leave to appeal out of time under Court of Appeal Miscellaneous Application No. 210 of 2018 which is pending determination before Court of appeal and has high chances of success and a copy of the application was annexed on this application and marked “A”.

Under paragraph 5, he states that he was informed by their lawyer that a letter requesting for true fixture of the application No. 210 of 2018 had been filed with Court of appeal and the said copy was annexed on this application and marked “B”.

He stated under paragraph 6 that if this application is not granted, execution is likely to ensue and Miscellaneous Application No. 210 of 2018 for leave to appeal out of time could be rendered nugatory.

In reply, Counsel for the Respondent, Mr. Bwiruka Richard submitted that on 10/5/2018, the High Court of Fort Portal delivered judgment in HCT – 01 – CV – CA – 010 OF 2016 in favour of the Respondent and that when he went to Court on 29/6/2018, he realized that judgment had been delivered on 10/5/2018 on which date he was not given notice.

That he filed through his lawyers an application for leave to appeal out of time in Court of Appeal vide Miscellaneous Application No. 201 of 2018 which is pending determination before Court of Appeal and has high chances of success. That the Respondent is demarcating the said land into portions which is evidence of intended disposition and is also shifting boundary marks with intention of confusing the original ownership.

That if the application is not granted, execution is likely to ensue and Miscellaneous Application No. 210 of 2018 will be rendered nugatory.

Counsel for the Respondent made reference to the affidavit in reply by the Respondent emphasis was on paragraphs 4, 5, 6, 7, 8, and 9. The said paragraphs are reproduced herein below;

4. That the Applicants being the Appellants in HCT – 01 – CV- CA – 010 of 2016 were always aware the appeal was on going and their argument that they were not given notice for judgment is an afterthought.

5. That the application in the Court of Appeal for leave to appeal out of time has no merit but only intended to delay justice and to deny the Respondent the fruits of litigation and the same has no chances of success.

6. That it is not true that the Respondent is demarcating the suit land and shifting boundary marks as alleged.

7. That he has never taken any person to the suit land for inspection as alleged but he is in effective possession of the land.

8. That the Applicants do not show which loss they will suffer if the application is not granted.

9. That the Applicants have not shown sufficient cause for stay of execution.

Counsel for the Respondent referred to the case of **Pan African Insurance Company Ltd versus Lata, H.C.M.A 86 of 2006** where Court held that the discretion to grant a stay of execution can be granted if there are special circumstances and good cause to justify stay. It was also submitted that the Applicants are only contemplating execution to issue against them and that there is no evidence to that effect.

This Court has considered the submissions of both sides in this application for stay of execution pending application for leave to appeal out of time to the Court of appeal. In the case of **Lawrence Musitwa Kyazze versus Eunice Businge, Civil Application No. 18 of 1990**, in which the Supreme Court held that;

“Parties asking for a stay” should meet conditions like:

1. The Applicant 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.”

On whether the appeal has a likelihood of success or not, that will be considered by the Court of appeal in the Application for leave to appeal out of time. (Court of Appeal Miscellaneous Application No. 2010 of 2018).

5 On irreparable damage, Counsel for the Applicants has submitted that there are threats to sell the suit land as the Respondent has started demarcating the land and different people have been seen on site inspecting the land in question. Counsel for the Respondent on the other hand stated that it is not true that the Respondent is demarcating the suit land and shifting boundary marks as alleged but instead the Respondent was in effective possession.

10 Counsel for the Respondent concluded that the Applicants are contemplating execution to issue which has not been done. From the above submissions on both sides, it is not clear who is in effective occupation as Counsel for the Applicants has also stated that if this application is not granted, the Applicants will suffer irreparable damage as they are the ones who have been in occupation for a long period of time.

15 In such circumstances, since the application was brought to this Court without delay, and as land does not move anywhere a part from changing hands, I do hereby allow, this application. I order that the status quo be maintained whereby the same should not be sold or transferred to any other third party by the Respondent till the Application for leave to appeal out of time by the Court of Appeal has been determined.

20 Counsel for the Applicants is however warned to be vigilant in having the said Application No. 2010 of 2018 in Court of Appeal fixed and heard within reasonable time. Costs of this application to be in the cause.

20<sup>th</sup> December 2018

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25 **WILSON MASALU MUSENE**

**JUDGE**