

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO. 07 OF 2013
(Arising from Revision Cause No.05 of 2012 of the High Court of Uganda)
(Itself Arising from Civil Suit No. 384 of 2008 of the Chief Magistrate's
Court of Entebbe)**

NALWOGA GLADYS

::::::::::::: APPLICANT

VERSUS

1. EDCO LIMITED

2. GEORGE RAGUI KAMONI

::::::::::::

RESPONDENTS

RULING OF HON. MR.JUSTICE JOSEPH MURANGIRA

The applicant through her lawyers M/s Ssekaana Associated Advocates & Consultants brought this application for stay of execution of the judgment in civil suit no. 384 of 2008 and the ruling of revision cause no.5 of the 2012 pending the determination of the appeal, now pending in the Court of appeal of Uganda.

The respondents through their lawyers Kimuli & Sozi Advocates filed an affidavit in reply and opposing this application.

The revision cause no. 5 of 2012 was disposed of by another Judge Hon. Percy Night Tuhaise on a preliminary point of law. And when this very application went back to her for hearing, the said Judge declined to handle it for reasons not know to me. The file was then fixed before me for hearing.

After a length brainstorming by counsel for the parties about the legality of this application before Court; I ordered the parties to file written submissions. Both counsel gracefully filed in Court written submissions and relied on a number of authorities in support of their respective cases.

The purpose of the application for Stay of Execution pending appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising his/her undoubted right of appeal are safe guarded and the appeal if successful, is not rendered nugatory. See **Lawrence Musiitwa Kyazze vs. Eunice Busingye SCCA NO. 18 of 1990 [1992] IV KALR 55.**

The conditions for granting Stay of Execution pending appeal are mainly two;

- a) Whether there is an arguable appeal.
- b) Whether the appeal would be rendered nugatory if such application is not granted.

In an application for Stay of Execution pending appeal, the court has to review proceedings and yet not prejudge the appeal so as to make sure that it is not lightly interfering with the order of the Court but on the other hand preserving the status quo so that the appeal will not be rendered nugatory.

Similarly, on an application for Stay of Execution pending appeal, the Court should avoid saying anything that indicates a concluded view as to the merits of the action; on fact or law, because the Ruling is the subject matter of the appeal and will have to be heard and dealt with thereafter.

It is not for the trial Court or the Court appealed from in an application for stay of execution pending appeal to consider its own decision to find out whether it was probably wrong, and to assess the chances of the appeal against its decision succeeding.

Guided by the above principles, the application in this matter is intended to preserve the status quo which is the subject of the appeal.

The applicant and all the beneficiaries of the Estate of the late Micheal Weraga are said to be occupying about 18 acres of land which they say is their Kibanja and the respondents or their successors in title have attempted to evict them from the said land.

The respondents contend that execution was completed or concluded in 2010 but the applicant's affidavit in rejoinder paragraph 3 indicates that they are in possession.

In addition, paragraphs 5 and 6 of the affidavit in rejoinder also show that lawyers Kasirye, Byaruhanga & Co. Advocates sought to renew the warrant of execution and indeed Court had issued a fresh warrant on 30th April 2012 but it was only recalled after a complaint was lodged.

It is apparently clear that no execution was ever concluded and the respondents and their agents have resorted to illegal means without the sanction of Court.

The applicant is interested to prosecute her appeal and has high chances of success and she has fulfilled all the requirements without delay. *See Annextures "K", "L1", "L2", & "L3"*. In the case of **Hwang Sung Industries Ltd Vs Itajdin Hussein 2 Rainbow Foods Ltd and Nizar Hussein the Supreme Court Civil Appeal No. 79 of 2008** (Court held that once an appeal is pending and there is a serious threat of execution before hearing the appeal Court intervenes to serve substantial justice. Also in the case of **Abundant Life Faith Church of Uganda Vs J.B. Walusimbi** the Court of Appeal in Civil appeal No. 38 of 2004 Court considered the conditions, which always applies for stay of execution whereby the applicant has fulfilled all them.

It is my considered opinion that the applicant's appeal will be rendered nugatory when they are evicted from this suit land and they will be rendered homeless and their property including pine trees on 5 acres, grave yards will be destroyed in the process as evidenced in the affidavit in support of this application.

The appeal before the Court of Appeal has arguable points of law as can be seen from the grounds of appeal in the Memorandum of Appeal (Annexure K).

In the case of **Joyce Muguta Vs Idah Herura Supreme Court of Uganda Civil Appeal No. 09 of 2006 Judges** observed that there was a pending appeal and stayed the execution to serve better justice for both parties. The same Court in **Civil Appeal No. 2 of 2006: Idah Iterura Vs Joyce Muguta** emphasized that once an appeal has been filed the Court may order a stay of execution.

In conclusion, I have considered the affidavits evidence adduced by the parties and the submissions by both counsel for the parties, and I make a finding that this application has merit. Accordingly, therefore, this application is allowed in the orders being sought therein with costs in the cause.

Dated at Kampala this 29th day of May, 2013.

sgd
MURANGIRA JOSEPH
JUDGE