

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0035 OF 2017
(Arising from High Court Civil Appeal No. 0029 of 2012)

OSMAN YUSUF **APPLICANT**

VERSUS

1. DRAMADRI JEOFREY	}	
2. IDRO GODFREY	}	
3. TABAN RATIB	} RESPONDENTS
4. CHANDIA MARGARET	}	
5. ANNA ISA	}	
6. MADRA FELICE	}	

Before: Hon Justice Stephen Mubiru.

RULING

I have perused the pleadings filed by both parties and considered the submissions of both counsel. Applications for stay of execution are governed by Order 43 r.4 of *The Civil Procedure Rules* or alternatively under rule 6 (2) (b) of *The Judicature (Court of Appeal Rules) Directions* (depending on the level of court that made the decision appealed). Under these provisions, where a notice of appeal has been lodged in accordance with rule 76 of the Rules or where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing from the decree, the court which passed the decree may on sufficient cause being shown order execution to be stayed.

The applicant has a duty to satisfy either the High Court, the Court of Appeal or the Court which passed the decree that sufficient cause exists for the grant of the stay. It must be shown that:- substantial loss may result if no order for stay is made, the application has been made without unreasonable delay and security has been given by the applicant for the due performance of the decree or order as may ultimately be binding on the applicant (the latter is a requirement if sought under O.43 rules 1 and 2 of *The Civil Procedure Rules*).

The applicant has not sought relief under Order 43 r.4 of *The Civil Procedure Rules*, rule 42 (1) (b) of *The Judicature (Court of Appeal) Rules* and has well invoked the inherent powers of this court under the provisions of section 98 of *The Civil Procedure Act*.

The applicant has attached a copy of the notice of appeal and letter requesting for a certified copy of the record of proceedings filed way back in 10th April 2017. There is no indication that he has made any follow up of the two steps as would be expected of a diligent appellant. There is no copy of a memorandum of Appeal attached to the application, yet an appeal in a civil matter comes into existence only upon the filing of a memorandum of appeal. There is no explanation as to why none has been filed to-date, six months after the notice of appeal was filed.

The other ground advanced is that the applicant will be evicted from the land yet there is a pending appeal and this will render the appeal nugatory. It is not refuted though that the respondents have neither applied for execution nor threatened to enforce the decree as alleged by the applicant. The decision sought to be appealed was in essence to the effect that the applicant was barred by limitation to obtain an order of eviction against the respondents since they had been adverse possession of the land which commenced sometime after 1979 but before 1986. Both the trial court and this court's decisions were based on the fact that it is the respondents in possession and not the applicant. The applicant therefore is not faced with any threat of eviction as alleged in his affidavit in support of the application and the submissions of his counsel.

The applicants' apparent dilatory conduct in pursuing the appeal remains unexplained. Moreover, the respondents have neither applied for execution nor moved to file and cause taxation of their bill of costs. There is no execution in progress that ought to be stayed and any order of the nature sought is speculative. In the final result, the applicant has not satisfied this court that there is any step that has been taken by the respondents such as would warrant a stay of execution. Consequently this application lacks merit. It is hereby dismissed with costs to the respondents.

Dated at Arua this 24th day of October, 2017

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Stephen Mubiru
Judge
24th October, 2017.