

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL APPEAL NO. 071 OF 2016**

IBRAHIM BAMULESEYO & OTHERSAPPELLANTS

VERSUS

OSCAR ARIISARESPONDENTS

BEFORE: HON. MR. JUSTICE GODFREY NAMUNDI

JUDGEMENT

The appeal is against the Ruling of the Chief Magistrate Entebbe, wherein she rejected an application to set aside a Judgment in C/S 62/2011 and stay execution therein. The Appellants – who were Applicants challenged the said execution on grounds that there was appending suit over the same matter (C/S 342/2014) over the same subject matter. The Appellants claim the Chief Magistrate erred when she ordered execution in C/S 62/2011 when C/S 342/14 was pending in the high court over the same matter.

The background to this matter is that a summary suit was filed against the Appellants under C/S 62/2011. The appellants filed an application for leave to appear and Defendant. The said application was dismissed.

The Appellants then filed application 290/16 – Seeking to set aside the Judgment in C/S 62/2011 and to stay execution due to the pendency of the same matter in the High court under C/S 342/2014.

No reason is given why there was need to file a suit in the High Court over the same matter since it had already been adjudicated upon by a competent court. There is no evidence to suggest that leave to appeal against the decision in M/A 290/2016 (**Order 44 CPR** and **Section 76 CPA**) was obtained or that the Appellants ever tried to reinstate the dismissed application for leave to defend when the same was dismissed for lack of prosecution.

In the instant appeal, the Appellants are only challenging the Order by the Chief Magistrate allowing execution to proceed. They are not challenging the summary Judgment that was confirmed by the Chief Magistrate. If they are satisfied with the Judgment as they have not sought leave to appeal against it, what is the purpose of staying execution of the said Judgment?

If they are seeking to stay execution due to the pendency of a similar matter in the High Court, why would they file a similar matter in another court, the same having been determined by a competent court? And why or how would this court stay execution because of another suit which is not before it?

I do not buy the hair splitting arguments of the Appellants. This appeal is clearly an abuse of court process. It is unprofessional and unethical to say the least and it is a waste of courts time.

It is dismissed accordingly with costs to the Respondents.

GODFREY NAMUNDI
JUDGE
28/3/2017.