

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.0228 OF 2024

(Arising out of Civil Suit No.0635 of 2020)

NABIMANYA NATHAN:.....APPLICANT

VERSUS

1. LAMECK NKANGA NSERIBETYA

2. MUSA NAMUKOKA:.....RESPONDENTS

10 Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

This application brought by motion under the provisions of **Section 33 of the Judicature Act cap. 13, Section 98 of the Civil Procedure Act cap.71, and Order 22 rules 23 (1), & 89 (1) of the Civil Procedure Rules SI 71-1** seeks an order staying the execution of the judgement and decree of this court in **Civil Suit No.635 of 2020** until the appeal is heard and determined; and for costs of the application be provided for.

Grounds of the application.

The grounds of the application are contained in the affidavit in support thereof deponed by the applicant, but briefly they are that sometime in 1992, the late Edward Rutagahweire, the applicant's father shifted with his family to Kyakamuli where they carried out livestock farming on the pieces of land that he had purchased including the suit land which was vacant at the time until sometime in 1992 when the applicant was approached by a one Yokana Nsubuga who claimed to be the owner of the suit land having inherited the same from his father, the late Yonasani Nseribetya and that he expressed the idea of selling the land to the applicant.

That the applicant then having agreed to purchase the suit land entered an agreement for sale of the same on 23rd May 1996, subject to the acquisition of letters of administration and that on 15th August 1996, Yokana Nsubuga showed the applicant a copy of grant of letters of administration indicating that he was the

administrator of the estate of the late Yonasani Nseribetya, and led the applicant to the lands office at Bukalasa where he showed the applicant the certificate of title for the suit land registered in his names as an administrator of the estate after which the transaction was concluded.

- 5 That the payments for the suit land were made to Yokana Nsububga on 14th August 1996, 23rd March, 1997, and on 26th March 1998, and that the applicant who took possession of the suit land sometime in August 1996 established his homestead thereon where he resides with his entire extended family to date, and has substantial developments thereon.
- 10 That in a bid to protect his interest in the suit land, the applicant lodged a caveat on the certificate of title on 24th April 1997 as he waited for the transfer of the certificate of title into his names as agreed with the said Yokana Nsubuga who has failed to transfer the same into the applicant's names, however the applicant has enjoyed peaceful occupation of the suit land from 1996 to 2020 without any interruption
- 15 from either the respondents or any other parties while he developed the same by building a permanent home, a dam, banana plantation, and a modern livestock and that the applicant had never met the respondents until sometime in 2020 when he was served with pleadings in respect of **Civil Suit No.635 of 2020** wherein the respondents claiming ownership of the suit land sued the applicant.
- 20 That this court in a judgement dated 20th October 2023 entered judgement in favour of the respondents and that the applicant being dissatisfied with the said judgement filed a notice of appeal to enable him exercise a right to a fair hearing, and right to appeal.

That the applicant filed several letters requesting for the certified copies of proceedings to enable him expeditiously prepare his appeal but the same has not yet

25 been availed to him.

It is his belief that he has plausible grounds of appeal with a high probability of success because the suit was time barred and was merely an attempt to resurrect an enforce an order that was no longer enforceable, and that the applicant will suffer

30 substantial loss that cannot be atoned for in damages considering he has resided on the suit land from which he derives sustenance with his family for over 27 years and that they will be evicted from the land and be rendered destitute.

That the respondents who have never been in physical or actual possession of the suit land will not be prejudiced if this application is granted, while the applicant is now suffering gross injustice as his livelihood has been severely affected by this court's decision thus it is not only just, but also equitable that this court stays all execution proceedings by the respondent pending the determination of the appeal.

In addition, that the applicant has brought this application in time, without undue delay and that there is an imminent threat of execution and the applicant's family will be evicted from the suit land in a period of three months as per the orders/judgement of this court if this application is not granted thereby rendering the appeal nugatory.

That the respondents shall not be prejudiced in anyway the grant if this application thus it is in the interest of justice that this application be allowed.

The 1st respondent filed an affidavit in reply opposing the application albeit out of time, and it is on account of the respondent's omission to file and serve the affidavit in reply within the timelines prescribed by this court that the applicant failed to file an affidavit in rejoinder.

In the circumstances, the respondents' affidavit in reply is hereby struck out, and this application therefore stands unopposed.

Determination by court.

I have carefully perused the evidence, and read the submissions of counsel, the details of which are on court record and which I have taken into account in determining whether or not this application discloses sufficient cause warranting the grant of the prayers sought.

Section 98 of the Civil Procedure Act cap.71 empowers this court to take decisions to meet the ends of justice, and an order for stay of execution is such an order. (*See: Singh vs Runda Coffee Estates Limited [1966] EA*).

In the case of **Lawrence Musiitwa Kyazze Vs. Eunice Busingye SCCA NO. 18 of 1990 (1992) IV KALR 55**, it was held that, an application for stay of execution pending appeal is designed to preserve the subject matter in dispute so that the right of the appellant who is exercising his/her undoubted rights of appeal are safeguarded and the appeal if successful, is not rendered nugatory.


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For an application for stay of execution such as the instant one to succeed, the applicant is required to demonstrate that he has lodged a notice of appeal; that substantial loss may result to the applicant unless stay of execution is granted; that the application has been made without unreasonable delay; that the applicant has given security for due performance of the decree or order as may ultimately be binding upon him. (***See the case of Hon Theodore Ssekikubo & others vs Attorney General & others Constitutional Application No. 003 of 2014***)

I shall therefore proceed to determine whether each of the above listed requirements have been complied with.

10 **a. Whether there is a pending appeal.**

In the case of ***Attorney General of the Republic of Uganda versus The East African Law Society & Another EACA Application No.1 of 2013***, court observed that a notice of appeal is a sufficient expression of an intention to file an appeal and that such an action is sufficient to found the basis for grant of orders of stay in appropriate cases.

The applicant in the present matter annexed a copy of the notice of appeal dated 30th October, 2023 which was lodged in this court on 31st October, 2023. ***See Annexure 'F' of the affidavit in support.*** Thus it is clear that the applicant satisfies this requirement.

20 **b. Whether or not substantial loss may result if the order for stay of execution is denied.**

Substantial loss cannot mean ordinary loss or the decretal sum or costs which must be settled by the losing party but something more than that. The applicant should go beyond the vague and general assertion of substantial loss in the event a stay order is granted. (***See: Andrew Kisawuzi Vrs Dan Oundo Malingu HCMA 467/2013***)

In the case of ***P.K Sengendo vs. Busulwa Lawrence & Another CACA 207 of 2014*** the court of appeal in its ruling observed that where the subject matter was property capable of permanent alienation and therefore capable of causing the appeal preferred to be nugatory, for example, transfer, then the court will exercise its discretion in favour of the Applicant, so as to give benefit to the appeal to be attended to on its merits.



In the present case, this court in its judgment issued a permanent injunction restraining the applicant herein from occupying and utilizing the suit land, and further directed the applicant to vacate the suit land within a period of 3 months.

5 It is evident from the onset that the orders of this court being self-executing constitute an imminent threat, and if left to stand without an express stay of execution, the permanent loss of property may be occasioned.

In light of the above, it is the opinion of this court that the applicant is likely to suffer substantial loss unless a stay of execution is granted.

c. Whether there was unreasonable delay.

10 In *Ujagar Singh v Runda Coffee Estates Ltd* [1966] EA 263, Sir Clement De Lestang, Ag. V.P stated;

15 ‘... It is only fair that an intended appellant who has filed a notice of appeal should be able to apply for a stay of execution . . . as soon as possible and not have to wait until he has lodged his appeal to do so. Owing to the long delay in obtaining the proceedings of the High Court it may be many months before he could lodge his appeal. In the meantime, the execution of the decision of the court below could cause him irreparable loss.’

20 (See also: *Sewankambo Dickson versus Ziwa Abby High Court Miscellaneous Application number 178 of 2005*)

25 The judgement of this court was delivered on 24th October 2023. The notice of appeal was filed on 30th October 2023. This application for stay of execution was filed 2 months later, on 31st January 2024. It is therefore evident that the applicant has been diligent in following up his matter, and filed this application without reasonable delay.

d. Security for due performance of the decree

The Supreme Court in *Musiitwa Vrs Eunice Busingye CA No. 18/1990* advised that a party seeking a stay should be prepared to meet the conditions set out in **Order 43 rule 4(3)**.

30 In the instant case, there is nothing in the pleadings, evidence or submissions indicating that the applicant is committed to furnish security for due performance or costs.



The requirement for payment of security for costs is to ensure that a losing party does not intentionally delay execution while hiding under unnecessary applications.

The applicant in the instant matter averred that she is prepared to security for due performance of the decree. In the circumstances, this court it is the opinion of this court that this application granted on condition that the applicant furnishes security for due performance of the decree.

Accordingly, this application is granted on condition that the applicant deposits in court **Ug.x 25,000,000/= (Uganda shillings twenty-five million only)** as security for due performance of the decree within a period of thirty (30) days from the date of this ruling.

Miscellaneous Application No.231 of 2024 for an interim stay of execution is hereby overtaken by events.

Each party to bear its own costs.

I so order.

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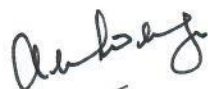
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Alexandra Nkonge Rugadya.

Judge

2nd April, 2024.

Delivered by email on 9/4/2024



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