THE REPUBLIC OF UGANDA

IN THE SUPEME COURT OF UGANDA

AT MENGO

CIVIL APPLICATION NO.11/2009

BETWEEN

FLORAH RAMARUNGU…….APPLICANT

VS

DFCU LEASING CO. LTD.:::::::::::::::::::::::::::::: RESPONDENT

(An application arising from a judgment of the Court of Appeal at Kampala in Civil Appeal No. 60 of 2007 and an undated Ruling of Ruhinda Ntengye, Esq., Registrar, Court of Appeal, in Civil Application No. 20 of 2009).

RULING OF TSEKOOKO, JSC.

This application has been brought by Florah Rwamarungu, the applicant, through the firm of Kakuru & Co. Advocates, by a Notice of Motion under Rules 2(2), 6(2) and 42 of the Rules of this court seeking for an order of stay. According to the notice of motion, the applicant wants:-

> *"An Interim Order doth issue staying the order of the Court of Appeal in dismissing Civil Appeal No.6o of 2007 and staying the ruling in the High Court Misc. Appln. No. 115 of 2007 arising out of Civil suit No.753 of 2006 until the hearing and determination of the substantive application of stay of execution pending appeal herein."*

With respect I think that this type of pleading is bad. It was during the hearing and through my probing of applicant's counsel when I was informed by counsel that the order sought is a "stay of execution which has an injunctive affect".

Be that as it may, the applicant sets out five grounds in the notice of motion to support it along with affidavit sworn by her. In summary she wants a stay because:

- she has filed a notice of appeal;
- the appeal has great likelihood of success ; and
- she will suffer irreparable loss and gross injustice if the application is not granted.

The respondent replied through an affidavit sworn by Mr. Kenneth Akampurira, advocate, opposing the application and in effect asserting that the application has neither merit nor basis.

The background to this application is interesting as gathered from the pleadings filed herein and the statements from the bar by both Mr. Kenneth Kakuru, counsel for the appellant and from Mr. Kabiito Karamagi, counsel for the respondent. I am aware that this is neither a trial of the suit nor the substantive application for stay. However, because of the nature of the application and because of the opinion I intend to express on the role of the Registrar of the Court of Appeal I risk being lengthy in giving the facts.

It seems Yusufu Rwamarungu, the husband of the applicant, got a loan from the respondent for which his two omnibuses were the security. Yusufu Rwamarungu was unable to clear the loan which became a debt amounting to shs.172,356,530/= by 26/7/2005. For some reason, he instituted HCCS No. 613 of 2005 against the respondent in the Commercial Division of the High Court. On 20th December, 2005, the two present counsel for the parties entered a consent decree by which it was agreed, in paragraphs 3 and 4 thereof, that-

3 *The two buses Reg. Nos. UAE 946N and UAE 956N – shall be advertised for sale----------.*

4 *The land comprised in LRV 1113 Folio 19 Nyabushozi, Block 52 plot 2 Ruyonza Kasana, Kinoni shall be advertised for sale in the press providing for thirty (30) days' return period.……..”.*

On 29th September, 2006, Registrar of the High Court (by warrant of attachment and sale) authorized a Mr. Mupeera Anthony, a Court Bailiff, to sell the suit land. The husband of the applicant who had become the judgment-debtor was ordered to surrender the land title. On 30/10/2006, by a written agreement of that date, the court bailiff sold the suit land to one Muhumuza Crescent Kamunyu at Shs.61,000,350/=. It would seem from the statement from the bar made by Mr. Kakuru, that when Yusufu Rwamarungu pledged the suit land he did not obtain the consent of his wife, the applicant, who apparently resided in the matrimonial house on the suit land. Subsequently, she instituted High Court Civil Suit No.753 of 2006, seven months after the sale of the suit land. In the suit, she is alleged to be challenging the validity of the mortgaging and the auctioning of the suit land. Thereafter and on the basis of that suit, she instituted an unsuccessful application in the High Court apparently seeking for a temporary injunction. She then appealed against the decision of the High Court (declining to grant temporary injunction) to the Court of Appeal. The appeal (No. 60 of 2007) was dismissed by the Court of Appeal on 20/2/2009. Thereafter she filed in the same Court two applications for stay of execution of the High Court order which dismissed her application for an injunction. One of the applications (No. 20 of 2009) sought an interim order of stay of execution while another described as the main application (No.19 of 2009) sought for substantive orders of stay. The latter is still pending in the Court of Appeal. The Registrar of the Court of Appeal heard and dismissed application No. 20 of 2009 and refused to grant an interim order. He opined that:

> *"……there are no proceedings in this Court and consequently no notice of appeal has been lodged in accordance with rule 76 of this Court rules. The Court is therefore incompetent to entertain this application.----------.*

…….I strongly believe that the application for an interim order and the substantive application where there are no proceedings in this court ought to have been filed in the Supreme Court----it is dismissed.……”.

Before I consider the merits of the application I must first make observations on the ruling of the learned Registrar of the Court of Appeal.

During the hearing, I asked both counsel whether the learned
Registrar had powers to hear such applications and make consequential orders as he did.

Mr Kakuru stated that the Registrar had no such powers. I notice first that both Court of Appeal Civil Application No. 20 of 2009 which the Registrar dismissed and the remaining Court of Appeal Civil Application No. 19 of 2009 were filed in Court of Appeal on 10/3/2009, about14 days after Civil appeal No. 60 of 2007 was dismissed by the Court itself. I expected the Registrar to have been aware of the disposal of that appeal. I think that under Rules 12, 13, and 15 of the Rules of that Court the Registrar is expected to look at documents before accepting them. Why did his Registry register the two applications if they were irrelevant? Why did the Registrar not seek directions from the Head of the Court of Appeal or a Justice of the Court of Appeal before entertaining the application?

Secondly, there is apparently growing a habit in the Court of Appeal whereby a Registrar of that Court hears applications for stay of execution of an order of that court and parties are either verbally or by a ruling, such as the one under review, directed to apply for the stay in this Court.

In this case the learned Registrar opined that the Court of Appeal was “*incompetent to entertain this application*” because there were no pending proceedings in the Court. I am not aware of any law or rule of practice which empowers a Registrar of the current Court of Appeal in this country to make such orders. Further, by virtue of rule 2(2) of the Court

of Appeal Rules that Court has inherent power to act even if a judgment has been made to prevent injustice to a party. Rule (2)(2) reads:

> *"Nothing in the Rules shall be taken to limit or otherwise affect the inherent power of the court,----------, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside any judgments which have been proved null and void after they have been passed, and shall be exercised to prevent abuse of the process of any court caused by delay."*

In my view where a registrar makes a lawful order in the Court of Appeal, a party dissatisfied with his order can apply for a reference to a single Judge of the Court. Moreover in cases like this one where a party may apply to either the Court of Appeal or to this Court for some order, that party ought to start with an application in the Court of Appeal first: See **Rule** 41 of the **Rules of the Supreme Court,** the case S.Ct. Civil Application No.18 of 1990 – **L. M. Kyazze Vs Busingye**.

Reference of Registrar's decision to Judges of the same Court are intended to expedite disposal of contentions within the Court since the procedure is less formal. It helps internal cleansing, so to speak.

I think it is improper for a Registrar of the Court of Appeal to make a final decision that a party cannot file an application for stay in that court. In any case it is trite that a court, such as the Court of Appeal, has inherent powers to stay its own orders. One of the reasons in support of this view is that such a court is best suited to make the order for stay because it is better acquainted with the facts of the case than the superior appellate court. As I think that hearing of applications such as this is conducted as if it is an appeal and though I am not sitting in normal appeal against the Registrar's ruling, the ruling of the Registrar of the Court of Appeal appears to me to be a nullity and should be regarded as such.

Merits of the Application.

Mr. Kakuru, argued mainly that even if the house was sold before the suit from which the present proceeding emanate was instituted, it is proper to grant a stay of execution since the applicant is still living in the house. He argued that if stay in not granted, the main application in this court for stay of execution will be rendered nugatory and the applicant will be evicted from the matrimonial home. He further argued that if stay is not granted, the main suit which seeks to remedy the actions of the applicant's husband in mortgaging the suit property will be rendered nugatory. He prayed that costs should abide the main application. For the Respondent, Mr. Kabiito opposed the application. He submitted that the suit land was sold on 30/10/2005 following a court warrant arising from a consent judgment in a suit instituted by the husband of the applicant. The applicant filed the present suit seven months after the sale of the suit land. So an interim order which can only be granted in compelling circumstances can not be granted here. He relied on two rulings of this court by Mulenga JSC, as he then was, which include **Stanbic Bank (U) Ltd Vs Atabya Agencies – Civ**. Application No. 31 of 2004. He further contended that the suit property is now in the hands of a third party who is not a party to these proceedings.

He also argued that both the order of the High Court and that of the Court of Appeal which upheld the former are not executable and so there is nothing to stay. Learned counsel submitted that after the Registrar's ruling the applicant should have referred that ruling to a Justice of Appeal or should pursue Court of Appeal Civil Application No. 19 of 2009, instead of coming to this Court. He prayed for the application to be dismissed with costs. In a short rejoinder, Mr. Kakuru maintained that because the applicant is still in occupation of the suit property, the status quo should be maintained.

Rule 6(2) (b) under which the application was made reads, in so far as relevant, as follows:

> *"……..the institution of an appeal shall not operate……..to stay execution, but the court may-*
> *(a)……..*

(b)…..in any Civil proceedings, where a notice of appeal has been lodged in accordance with rule 72 of these Rules, order a stay of execution, an injunction or stay of proceedings as the court considers just."

It is common ground that the suit from which these proceedings emanated has not been disposed of. It is cause listed for hearing on 31/8/2009. The applicant sought a temporary injunction in the High Court presumably to maintain the status quo. I have not seen the ruling of the High Court dismissing that application but it is agreed by both Mr. Kakuru and Mr. Kabiito that the application for temporary injunction was rejected apparently because the court was satisfied that there was no evidence of irreparable loss and that there was no status quo to maintain since the suit land had been sold and transferred some seven months earlier to a third party who was not a party to the suit. An appeal against that particular ruling to the Court of Appeal was also rejected and that Court upheld the reasoning of the High Court. That appeal and the intended one to this Court are interlocutory appeals. I do not appreciate how the two orders can be executed and therefore how a stay of the same can be granted.

With respect I am not persuaded by the arguments of the applicant. There is no evidence to justify my interference with the opinions of the trial judge which was upheld by the Court of Appeal to the effect that the applicant has not proved that she will suffer irreparable loss if the status quo is not maintained. There are no compelling circumstances to justify the issuing of an interim order of stay of execution even if it is possible to execute. The mere statement from the bar by counsel for the applicant that she is in occupation of the house is not sufficient in as much as the same house was sold to a third party long before she filed her suit and the purchaser of the house is not a party to the suit.

I decline to grant the order. I dismiss the application with costs.

Delivered at Mengo this 8th day of July, 2009.

J. W. N. TSEKOOKO.

JUSTICE OF SUPREME COURT.