THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA, AT KAMPALA

CIVIL APPLICATION NO. 12 OF 2010

(ARISING OUT OF CIVIL APPLICATION NO. 11 OF 2010)

BETWEEN

CHARLES NYANZI ::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. MARGARET NANYONGA
2. GODFREY SENYONGA ::::::::::::::::::: RESPONDENTS.

RULING OF BART M. KATUREEBE, JSC.

The applicant instituted this application by way of Notice of Motion under Rules 2(1), 6(2) (b), 42 and 50 of the Rules of this court seeking an interim order to "stay execution in ***Civil Appeal No. 42 of 2006" (CHARLES NYANZI –Vs- MARGARET NANYONGA and GODFREY SENYONGA) pending the hearing of the main application by which the applicant seeks a final order of stay of execution.***

The Notice sets out four grounds in support of the application, and is supported by the affidavit sworn by the applicant. The main thrust of the grounds is contained in ground No. 3 in the application and in paragraph 4 of the applicant's affidavit. The applicant alleges that there is imminent danger of execution against the applicant before the disposal of the main application for stay of execution and the appeal, since the respondents are surveying the disputed land and this would render the appeal nugatory. The applicant therefore prays to this court to exercise its powers under Rule (2)(2) of the Rules of this court to ensure that the interests of Justice are served.

The respondents filed an affidavit in reply sworn by MARGARET SSENYONGA, the first respondent. In that affidavit, the 1st respondent denied that any survey of the land in dispute had been done or was being envisaged as alleged in the applicant's affidavit. She deponed that in fact the Mailo Certificate of title for the land belonged to the Kabaka of Buganda and the land is under the management of the Buganda Land Board. She further deponed that she has occupied the suit land as a customary kibanja holder since

1956. She further stated that the respondents have not applied for execution of the Decree in the original High Court Civil Suit No. 208 of 2003, nor have they applied for, or filed any application for the execution of the Judgment of the Court of Appeal in Civil Appeal No. 42 of 2006. On the contrary, she alleges that it is the applicant who has been trying to make unlawful entries on to the land and this had forced the respondents to report the matter to police. She states that the application is only an attempt by the applicant to stop the respondents from using their kibanja and has no merit.

At the hearing, the applicant, who was present in court, was represented by Mr. Abaine Jonathan, while Mr. Lutakome represented the respondents. Counsel for the applicant reiterated the grounds contained in the application adding that there was danger that the respondents might sell the land in issue. This was vehemently denied by the counsel for the respondents who argued that in fact there was no order of the Court of Appeal to execute since the Court of Appeal had only made a declaration that the matters were res judicata. There were no applications for execution, and that the respondents were not

contemplating surveying or selling the land. Mr. Abaine conceded that there were no pending execution proceedings and that there was in fact no evidence that the respondents were planning to sell the land.

I must point out that as a single Judge, I would have no jurisdiction to hear an application for stay of execution. Tsekooko, JSC., stated in ***THE ADMINISTRATOR GENERAL –Vs- NATIONAL SOCIAL SECURITY FUND & 2 OTHERS*** (Civil Application arising from Misc. Application No. 1 of 2009) thus:-

> ***(Let me also appoint out that by virtue of sub-rule 2(b) of Rule 6 of the Rules of this court, applications for stay of execution are not supposed to be heard by a single judge of this court. However, over the last eight years or so, there has evolved a practice of such applications being heard by a single judge.....This practice is necessitated by the desire to do justice."***

In my view, this desire of the court to do justice must be based on convincing evidence before the court that there is imminent danger that the subject matter of the dispute might suffer irreparable harm or damage in the period before the main application for stay is heard by the full court. The court must be convinced that such harm or damage

would render the main application or indeed the appeal itself nugatory.

In this application, I note that the order of the Court of Appeal was declaratory that the matter was res judicata as had also been declared by the High court. There is no decree that was extracted for execution. No application for execution of the order of the court had been filed in any court. Although the applicant alleged that the respondents were surveying the land, this was denied in the affidavit in rebuttal, and there was no affidavit in rejoinder by the applicant. Furthermore, and as conceded by counsel for the applicant, there was no evidence that the respondents were about to sell the land. The averment by the 1st respondent in her affidavit that the land belongs to the Kabaka of Buganda has not been rebutted.

In the circumstances, I find no compelling reasons for me to grant the interim order. I am satisfied that the application is based on mere speculation, and has no merit.

I accordingly dismiss the application for an interim order with costs.

Dated at Kampala this 30th day of **July** 2010.

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Bart M. Katureebe
Justice of the Supreme Court