

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

10 {Coram: Dr. Kisaakye, JSC. and Dr. Odoki, Tsekooko, Okello &
Kitumba, Ag. JJSC.}

Civil Application No. 06 of 2014.

15 LUKWAGO ERIAS }
LORD MAYOR KCCA } Between APPLICANT.
KAMPALA CAPITAL CITY AUTHORITY }

20

..... Versus
1. THE ATTORNEY GENERAL
RESPONDENTS
2. KAMPALA CAPITAL CITY AUTHORITY

30 {Application by Notice of Motion arising from the decision of the Court of
Appeal
(Kavuma Ag. DCJ.) dated 31st March, 2014 in Civil Application No. 116 of
2014.}

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Ruling of the Court:-

Lukwago Erias, the applicant and the Lord Mayor of Kampala
Capital City Authority, (KCCA), instituted a Notice of Motion under
40 Rules 2 (2). 6 (2) (b), 42 (1) & (2) and 43 (1) of the Rules of this
Court seeking for the following orders, *inter alia*:—

45 a) A mandatory injunction allowing the applicant to
perform the functions of the office of the Lord Mayor,
Kampala Capital City Authority pending the
determination of the intended appeal be issued.

5 **b)** A temporary injunction restraining the Electoral Commission from organizing a bye-election for the position of the Lord Mayor, Kampala Capital City Authority pending the determination of the intended appeal be issued.

10 **c)** The Orders issued by the Hon. S.B.K. Kavuma, J.A., in Civil Application No. 116 of 2014 be stayed pending the determination of the intended appeal.

15 The Notice of Motion is supported by three affidavits. The first was affirmed on 01st April, 2014, by the applicant and the second was sworn by Hon. Medard Lubega Seggona. The third is a supplementary affidavit affirmed on 09th April, 2014, by the applicant explaining more about what happened after Kavuma Ag. DCJ's ruling in the Court of Appeal Civil Application No. 116 of 2014. The Attorney General (1st Respondent) and Kampala Capital City Authority (KCCA), (the second Respondent), oppose the application and have filed two affidavits. The first one was
20 sworn on 11th April, 2014, by Dickson Akena, an Advocate and the Supervisor of Litigation Services in the Directorate of Legal Affairs in KCCA. The second is a supplementary affidavit sworn on 23rd April, 2014, by Jennifer Semakula Musisi, the Executive Director of KCCA.

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Grounds in Support of Motion:-

The grounds in support of the application are detailed in the affidavit of the applicant. They are summarized in the Notice of Motion this way:—

30 **a)** The applicant has filed a Notice of Appeal and requested for typed and certified copy of proceedings and the ruling in the Court of Appeal Civil Application No. 116 of 2014 to enable him pursue the appeal.

b) The intended appeal raises serious and novel points of law for the determination of the Supreme Court and has higher chances of success.

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c) The orders of Hon. S.B.K. Kavuma, JA., as a single Justice are illegal in so far as they have the effect of reversing the decision of the High Court without jurisdiction.

10 **d)** If the orders of stay and injunction are not granted, the applicant shall suffer irreparable loss.

e) The balance of convenience is in favour of the applicant.

15 **f)** The orders of stay and injunction sought for are necessary for the achievement of the ends of justice.

Background:-

20 The Applicant was on 14th March, 2011, elected the Lord Mayor of Kampala Capital City Authority (KCCA) with 229,035 votes (i.e. 64.4% of the votes cast). He assumed office when he took oath on 20th May, 2011.

25 On 15th May, 2013, some KCCA Councilors lodged a petition with the Minister for the Presidency who is also responsible for Kampala Capital City Authority seeking for the removal of the applicant as Lord Mayor on grounds of abuse of office, incompetence and misconduct or misbehaviour. What followed is set out in the affidavit of the applicant. At the risk of being lengthy, and for the sake of setting out proper perspective of the background, we are
30 quoting paragraphs 4 to 19 of the applicant's first affidavit sworn

on 01st April, 2014 in support of the Notice of Motion. The applicant deponed as follows:—

5 **“ 4) THAT** *the Minister responsible for Kampala constituted KCCA Tribunal (2013) to investigate allegations against me pursuant to a petition of Councilors of Kampala Capital City Authority which released its report on 14th November, 2013.*

10 **5) THAT** *being dissatisfied with the proceedings and the report of the KCCA (2013) constituted to investigate allegations against me pursuant to a petition of Councilors of Kampala Capital City Authority for being tainted with gross irrationality, illegality, unfairness, malafide, procedural impropriety, bias, non observance of the rules of natural justice, error of law on the face of record, bad faith and ultravires the Petition, I filed Misc. Cause No. 362 of 2013 for*
15 *judicial review which application is still pending before the High Court with higher chances of success.*

20 **6) THAT** *I also filed Misc. Application No. 445 of 2013 seeking among others an interim injunction restraining the 1st Respondent herein, the Minister in charge of Kampala Capital City Authority, their agents and or servants, Councilors of Kampala Capital City Authority and all persons*
25 *acting under the authority of the 1st Respondent herein from proceeding with the vote for my removal from the office of the Lord Mayor, Kampala Capital City Authority until the final determination of Misc. Cause No. 362 of 2013, which application was fixed for hearing on 25th November, 2013 at 10:00am.*
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35 **7) THAT** *after being served with Misc. Application No. 445 of 2013, the Minister responsible for Kampala hastily called for an authority meeting slated for 25th November, 2013 at 09:00am. for purposes of deliberating or discussing the report with the purpose of voting for my removal from office of Lord Mayor Kampala Capital City Authority before Misc. Application No. 445 could be heard.*

40 **8) THAT** *in view of the above developments, I filed Misc. Application No. 454 of 2013 seeking among others an interim injunction restraining the 1st Respondent herein, the Minister in charge Kampala City Authority, their agents and*

or servants, Councilors of Kampala Capital City and all persons acting under the authority of the 1st Respondent from proceeding with the vote for my removal from the office of the Lord Mayor, Kampala Capital City Authority until the final determination of Misc. Application No. 445 of 2013.

9) THAT Misc. Application No. 454 of 2013 was heard and allowed with the orders indicated in the copy of the order attached hereto **and marked Annexure "EL1."**

10) THAT despite the existence of the said interim order, the Minister responsible for Kampala still held a meeting and purported to remove me from office of Lord Mayor Kampala Capital City Authority. **(See copy of the minutes attached hereto and marked Annexure "EL2.")**

11) THAT the above interim order was replaced by the Order of Hon. Justice Yasin Nyanzi delivered on 28th November, 2013 in Misc. Application No. 455 of 2013. **(See a copy of the Ruling attached hereto and marked Annexures "EL3.")**

12) THAT the Respondents disobeyed / defied the said interim order by declaring the seat of the Lord Mayor Kampala Capital City Authority, vacant and started organizing a by-election for the position on (SIC) the Lord Mayor Kampala Capital City Authority while Misc. Cause No. 362 is still pending thereby compelling me to file Misc. Application No. 94 of 2014 for inter alia, a temporary injunction restraining the Respondents from acting in contempt of court order till the final determination of Misc. Cause No. 362 of 2013.

13) THAT the ruling in Misc. Application No. 94 of 2014 was delivered by Hon. Lady Justice Lydia Mugambe on Friday 28th March, 2014 in the afternoon wherein she allowed the application and restrained the 1st Respondent herein and the Electoral Commission from organizing a by-election for the position on (SIC) the Lord Mayor Kampala Capital City Authority.

14) THAT following the order of Hon. Lady Justice Lydia Mugambe, I was allowed access to the office of the Lord Mayor Kampala Capital City Authority on 31/03/2014 and

was able to resume my duties as the Lord Mayor of Kampala Capital City Authority and while in my office, I received a telephone call from some journalist who was at the Court of Appeal and he informed me that Hon. Justice Kavuma was entertaining an application against me in the Boardroom and that he had been barred from attendance.

15) THAT I immediately instructed my lawyers to wit; Mr. Peter Walubiri, Hon. Abdu Kantuntu and Hon. Medard Lubega Seggona to proceed to Court and seek audience with the Court so that I can be represented and heard in the application.

16) THAT I was later informed by the Hon. Medard Lubega Seggona which information I verily believe to be the true that when he sought audience to be heard from the Hon. Justice Kavuma, he was denied audience on the ground that the application was ex-parte and Hon. Justice Stephen Kavuma adjourned the matter for a ruling in 15 minutes.

17) THAT Hon. Medard Seggona further informed me which information I verily believe to be true, that the Judge subsequently delivered a ruling at around 01:00pm. granting all the prayers sought. **(See a copy of the order attached hereto and marked Annexures "EL4.")**

18) THAT by virtue of the said order, I was restrained from performing my functions as the Mayor of Kampala Capital City Authority without being accorded a hearing and there is eminent threat by the Electoral Commission proceeding with organizing a by-election for the position of the Lord Mayor before the hearing and determination of Misc. Cause No. 362 of 2013 which will be rendered nugatory thereby occasioning me irreparable loss. **(A copy of the Electoral Commission programme is attached hereto and marked Annexure "EL5.")**

19) THAT being dissatisfied with the said ruling and order by the Hon. Justice S.B.K. Kavuma, JA., I have lodged a Notice of Appeal and requested for typed and certified copies of Proceedings and Ruling to enable me pursue my intended appeal but the same have not yet been availed to me. **(See copies of the Notice of Appeal and the letter requesting for typed and certified copies of**

proceedings and Ruling attached hereto and marked Annexures “EL6” and EL7” respectively).”

As mentioned earlier, Dickinson Akena and Jennifer Semakula
5 Musisi (the Executive Director of KCCA) each swore an affidavit in
reply. Musisi’s affidavit is brief. In paragraph two she swore that
on 01st April, 2014, she received a letter from the Attorney-
General (1st Respondent) advising suspension of KCCA Mayoral by-
election. In the 3rd paragraph, she deponed that on 23rd April,
10 2014, she also received a letter from the Secretary to the Electoral
Commission informing her that following the ruling of Lady Justice
Mugambe, the Electoral Commission has suspended the by-
election of the Lord Mayor. It is Mr. Akena who made a long
affidavit of 47 paragraphs challenging the application. We
15 consider it more convenient to first summarise the essential facts
set out in some paragraphs of that affidavit.

In paragraph 3, Akena deponed that the application was
incompetent and it was not properly before the Court and should
20 be dismissed. In paragraph 6, he deponed that on 17th May, 2013,
17 out of 35 KCCA Councilors petitioned the Minister responsible
for KCCA indicating their intention to pass a resolution to remove
the applicant from office. In paragraph 7 Akena deponed that on
05th June, 2013, the Minister set up a Tribunal chaired by Hon.
25 Lady Justice Catherine Bamugemereire to investigate the council’s
allegations against the applicant. That the applicant
unsuccessfully challenged the setting up of the tribunal by filing
High Court Miscellaneous Application No. 281 of 2013. On 14th
November, 2013, the Tribunal handed over its report to the
30 Minister recommending the removal of the applicant as the Lord

Mayor. In consequence the Minister convened KCCA meeting for sitting on 25th November, 2013. On that day (25th November), at 09:30am by a majority of 29 to 3 the Councilors resolved to remove the applicant from office of the Lord Mayor of KCCA.

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According to paragraph 16 of Akena's affidavit; before the meeting, the Attorney-General was served belatedly at 10:05am with a court interim order in HCC Miscellaneous Application 454 of 2013 barring the meeting of the KCCA Council. However that was too late because by then KCCA had already passed the resolution removing the applicant. In paragraphs 17, 18, 19, 20, 21, 22, 23; Mr. Akena refers to the various court proceedings and steps taken by various parties leading to the hearing on 31st March, 2014, of the Court of Appeal Civil Application No. 116 of 2014 by Hon. Kavuma Ag. DCJ., following which the learned Ag. DCJ issued an interim order staying execution and implementation of the Ruling and Orders of Lady Justice Lydia Mugambe pending the hearing of Court of Appeal Civil Application No. 115 of 2014.

20 In paragraph 40 to 45 Akena deponed as follows —

40) *That in reply to paragraph 22 of the applicant's affidavit and paragraph 6 of the applicant's supplementary affidavit, I know that the orders of the Hon. S.B.K. Kavuma are legal and were made in due discharge of his judicial function. I further know that the said order was issued by the Judge in his chambers and it did not have the effect of overturning the ruling and orders of Justice Mugambe.*

41) *I know that it is not true that the matter was heard ex-parte without any proof of urgency, and that on 31st March, 2014, the Solicitor General wrote to the Registrar of the Court of Appeal pointing out the urgency of the matter and the need to preserve the*

right of appeal.. (See a copy of the Solicitor General's letter to the Registrar Court of Appeal hereto attached and marked -Annexure E)

- 5 42) *That in reply to paragraph 25 of the applicant's affidavit, I know that there is no irreparable damage that the applicant will suffer in the unlikely event that the suit filed by him in the High Court is successful and further that in any case, the respondents can pay*
10 *damages to the applicant as prayed for in Miscellaneous Cause No. 362 of 2013.*
- 43) *That in reply to paragraph 26 of the applicant's affidavit, the balance of convenience favours the*
15 *respondents **since the Attorney-General has advised the Electoral Commission to suspend the said elections.***
- 44) *That in reply to paragraph 27 of the applicant's affidavit, I know that the applicant is simply using this*
20 *application to circumvent the rules of the Court of Appeal which require him to refer any dissatisfaction with the interim orders of Justice S.B.K. Kavuma to **be heard and determined by the Court of Appeal.***
- 45) *That if the application is granted the respondent shall be imposed by Court on an unwilling council which*
25 *overwhelmingly voted to remove him, in the absence of any substantial determination of the underlying legal*
30 *issues and this will cause irreparable damage in the management / administration of the capital city.*

Dissatisfied with the ruling of Kavuma, Ag. DCJ., the applicant first filed a Notice of Appeal intending to appeal against the ruling.
35 Thereafter, he instituted the Notice of Motion, the subject of this ruling.

The applicant was represented by Mr. Peter Walubiri, Hon. Abdu Katuntu, Messrs. Muyizi; J. Galisonga, A. Kiwanuka and Mr. C.
40 Katumba. The Attorney-General was represented by Mr. M.

Mwambutsya, I. Adongo, and Ms. C. Kunkunda, (all State Attorneys). Mr. C. Ouma represented the second respondent.

When the motion was called for hearing on 11th April, 2014,
5 counsel for the respondents raised a preliminary point of law in the form of an objection on the basis that the application was incompetent.

Mr. Mwambutsya, for the first respondent, was the first to submit
10 on the preliminary point of law. The learned State Attorney contended that the motion was wrongly before this Court and therefore it should be dismissed. He contended that the motion was incompetent, frivolous and an abuse of Court process and has no foundation. As we understood the learned State Attorney, he
15 contended that because the ruling of Kavuma, Ag. DCJ., was by a single Justice of Appeal, the applicant should have referred the matter to a panel of three Justices of the Court of Appeal instead of appealing to this Court. For this proposition he relied on Section 98 of the Civil Procedure Act, S. 12 (1) and (2) of the Judicature Act
20 and Rules 2 (2), 6 (2) (b), 42 (2), 43 (1) and 55 (1) and (2) of the Rules of the Court of Appeal. Further, the learned State Attorney argued that the ruling and the orders of Kavuma, Ag. DCJ., did not vary, reverse nor confirm a decision of the High Court. He argued that Justice Kavuma's order was an interim order to stay execution
25 for 21 days pending determination of the main application.

The State Attorney further contended that the intended appeal is incompetent and relied on the case of ***Elizabeth Robertson vs. Christina Wasliburn & Another, (Eastern Caribbean***

Supreme Court Claim No. BVIHCV 2011 / 0158), a case about a mandatory injunction following an interlocutory application. (That is a decision by a High Court Judge of Trinidad in the Caribbean). The State Attorney prayed that the application be dismissed. Mr. Ouma for the second respondent adopted the submissions of Mr. Mwambutsya.

Mr. Walubiri, counsel for the applicant, opposed the objection. He contended that the appeal was in this Court and is reflected in paragraph 19 of the applicant's affidavit. He relied on the decision of this Court in **National Housing & Construction Corporation vs. Kampala District Land Board & Chemical Distributers Ltd. (Supreme Court Civil Application No. 06 of 2001)**, where a similar preliminary objection was raised and overruled. Mr. Walubiri contended that the Notice of Motion is competent. He contended that Kavuma, Ag. DCJ., reversed the rulings of H/Wor. Waninda, a High Court Registrar, that of Hon. Mr. Justice Nyanzi a Judge of the High Court and of Lady Justice Mugambe, another Judge of the High Court. The learned counsel challenged Hon. Justice Kavuma's order preventing the applicant from performing his duties as Lord Mayor of KCCA.

Mr. Walubiri relied on Rule 53 (1) and (2) of the Court of Appeal Rules and contended that Justice Kavuma, Ag. DCJ., committed an illegality when he heard and granted orders of stay, injunction and others because under the said sub-rules, applications for injunctions are supposed to be heard and granted by a panel of three Justices of Appeal but not by one as was done in this case. He relied on **Makula International vs. His Grace Cardinal**

Nsubuga (1982) HCB 11 and on ***B. Kobusingye vs. Fiona Nyakana & G. Nyakana (Supreme Court Civil Appeal No. 05 of 2004)***. Mr. Walubiri further contended that Kavuma, Ag. DCJ.,

also decided matters which had not been placed before him.

5 Thus, although he heard a civil application arising from the ***High Court Misc. Application No. 94 of 2014***, which had been decided by Mugambe J., Kavuma, Ag.DCJ., made orders in respect of the ***High Court Misc. Application No. 454 of 2013***, an application which had been heard and decided by Nyanzi J. and
10 which was not before him. Mr. Walubiri relied on the decision of this Court in ***Komakech G. & Another vs. Okullo & Others (Supreme Court Civil Appeal No. 20 of 2010)*** to support his submissions that we should set aside the ruling and orders made with a court not properly constituted.

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Consideration by Court:-

On 11th April, 2014, after hearing arguments of counsel for the two sides on the preliminary point of law whether or not the Notice of Motion is competent, we were of the opinion that the Notice of
20 Motion was competent. We reserved our reasons for that opinion, which we now give.

The law governing applications for either injunctions, stay of execution, a stay of proceedings or a combination of them is set
25 out in Rule 6 (2) (b) of the Rules of this Court which reads as follows—

6 (2) "Subject to sub-rule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or stay execution but the Court may—

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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, or injunction or stay proceedings as the Court may consider just”

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Rule 72 has got three sub-rules. Sub-rule (1) which is most relevant here reads —

72 (1) “Any person who desires to appeal to the Court shall give notice in writing which shall be lodged in duplicate with the Registrar of the Court of Appeal.”

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Clearly there are two important elements which must be fulfilled before an application for stay or for injunction may be entertained, namely—

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- 1) There must be a valid Notice of Appeal in writing.**
- 2) It must be lodged in accordance with Rule 72 which means it must be lodged within the prescribed time.**

Except for the minor misdescription in the Notice of Appeal which was noticed and rectified during the hearing, there is no question about the lodging of the Notice of Appeal in time and properly. The case of **L. M. Kyazze vs. Busingye (supra)**, among many other authorities, support this view. Here the Notice of Appeal indicated it is an intended appeal to this Court against a decision of the Court of Appeal.

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Further, learned counsel for the applicant submitted first that Kavuma, Ag. DCJ., acted without jurisdiction when he in effect reversed the orders of Nyanzi, J., and of Mugambe, J., which were not the subject of the application which he heard. Counsel also submitted that the hearing of the matter by the learned Ag. DCJ was in disregard of Rule 53 (1) and (2) of the Court of Appeal Rules

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which require that application for orders for injunctions or stay of execution should be heard by three Justices of Appeal and not by a single Justice of Appeal as was done here. Sub-rules (1) and (2) (b) of Rule 53 read as follows—

5 **53 (1) Every application, other than an application included in sub-rule (2) of this rule, shall be heard by a single judge of the Court, except that any such application may be adjourned by the Judge for the determination by the Court.**

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(2) This rule shall not apply to

- (a)**
- (b) an application for stay of execution, injunction or stay of proceedings.**

15 These two sub rules (1) and (2) of rule 53 are clear. We do not have to explain save to emphasize that under these sub-rules, normally a single Justice of the Court of Appeal has no power to hear applications such as those heard by the learned Acting Deputy Chief Justice, with all due respect, i.e. for injunction or for
20 stay of execution or for stay of proceedings.

Counsel for the applicant relied on the decision of this Court in **Komakech Case (supra)** where this Court set aside a decision of the Court of Appeal which was made by two instead of the full
25 Coram of three Justices of the Court of Appeal when deciding an appeal. On the face of it, therefore, it was apparent to us that the applicant had a right of appeal on these matters particularly because the decision of the learned Ag. Deputy Chief Justice was made outside his jurisdiction and without giving any justifiable
30 reasons.

We summarily overruled the preliminary objection, and reserved reasons.

5 However, having heard and considered the full submissions of both counsel on the merits of the application, and subsequently reviewed the law applicable, we are of the considered opinion that ordinarily this Court has no jurisdiction to entertain an appeal from a decision of a single Justice of Appeal, given the express provisions of Section 12 of the Judicature Act.

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The right of appeal is a creature of Statute. There is nothing known in law as an inherent right of appeal. The legal foundation for application for stay of execution pending an appeal is the right of appeal to the proper court and the fact that a Notice of Appeal
15 has been filed in that court. Where a Notice of Appeal has been filed but the right of appeal does not exist, the Notice of Appeal is incompetent and cannot form the basis for an application for stay of execution pending appeal, as there is no pending appeal.

20 The right of appeal from the Court of Appeal to this Court is provided under Section 6 (1) of the Judicature Act as follows:—

“An appeal shall lie to the Supreme Court where the Court of Appeal confirms, varies, or reverses a judgment or order including an interlocutory order, given by the High Court in the exercise of its original jurisdiction and either confirmed, varied or reversed by the Court of Appeal.”

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The quorum of the Court of Appeal in Civil and Criminal matters is
30 provided in Articles 135 (1) in the Constitution as follows:-

“The Court of Appeal shall be duly constituted at any sitting if it consists of an uneven number not being less than three members of the Court.

5 While the quorum of the Court of Appeal is three Judges, Section 12 of the Judicature Act (Cap. 13) states as follows:-

10 ***“(1) A single Judge of the Court of Appeal may exercise any power vested in the Court of Appeal in any interlocutory cause or matter before the Court of Appeal.***

15 ***(2) Any person dissatisfied with the decision of a single Justice of the Court of Appeal in exercise of any power under Subsection (1) shall be entitled to have the matter determined by a bench of three Justices of the Court of Appeal which may confirm, vary or reverse the decision.”***

20 Rule 55 (1) of the Court of Appeal Rules provides that where a person is dissatisfied with the decision of a single Judge of the Court of Appeal, in a Civil matter, and wishes the order or decision to be varied, discharged or reversed by the Court, the applicant may apply for it informally to the Judge at the time when the
25 decision is given, or by writing to the Registrar within seven days after that date.

The Court of Appeal Rules provide instances where a single Judge may exercise its jurisdiction. This is provided in Rule 53 which
30 states that every application, other than an application included in Sub-rule (2) of this rule shall be heard by a single Judge of the Court. Among the applications excluded from being heard by a single Judge are applications for stay of execution, injunction or stay of proceedings under Rule 53 (2) (b).

However, a practice has developed where a single Judge or even a Registrar may hear an application for an interim order for stay of execution pending the hearing of the main application in urgent cases. Such interim orders are given in exercise of inherent power of the Court under Rule 2 (2) of the Rules of the Court of Appeal. In the present case, it seems that the learned Acting Deputy Chief Justice exercised jurisdiction under this rule to make the orders he made.

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The substantial issue is, therefore, whether a decision or order of a single Judge of the Court of Appeal is appealable to this Court. Our opinion is that such an appeal is not possible because of Section 12 (2) of the Judicature Act. The appropriate action the applicant can take is to refer the matter to a bench of three Judges of the Court of Appeal for review. That bench has power to vary, reverse or confirm the decision of a single Judge. Thereafter, the applicant can appeal to this Court against the decision of the three Judges of the Court of Appeal. Rule 2 (2) of the Rules of this Court providing for inherent powers of this Court to make such orders for achieving the ends of justice cannot be applied to override the clear provisions of the Judicature Act, which is the parent and superior law.

25 In any case the order of stay made by Kavuma Ag. DCJ., was an interim order pending the hearing of the main application of stay of execution of a full bench of the Court of Appeal. The Court of Appeal still has jurisdiction to set down the main application for hearing.

Decision and Orders:-

For these reasons, we hold that the application for stay of execution is incompetent, and it is accordingly struck out. We therefore do not find it necessary to deal with the merits of the application. We make the following orders—

1) We order that the matter be referred back to a bench of three Justices of the Court of Appeal to expeditiously hear and determine the application for stay of execution, as a reference from the decision of Kavuma, Ag. DCJ., sitting as a single Justice of Appeal.

2) We order that the status quo be maintained until the application is disposed of.

3) We make no order as to costs in this Court. We order that the costs of the application in the Court of Appeal abide the outcome of the reference.

Delivered at Kampala this21st..... day of ... August....., 2014.

**Dr. E. Kisaakye,
Justice of the Supreme Court.**

**Dr. B.J. Odoki,
Ag. Justice of the Supreme Court.**

**J.W.N. Tsekooko,
Ag. Justice of the Supreme Court.**

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**G.M. Okello,
Ag. Justice of the Supreme Court.**

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**C.N.B. Kitumba,
Ag. Justice of the Supreme Court.**