



**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
MISCELLANEOUS APPLICATION 263 OF 2023
(ARISING FROM HCT-050-CV-CA-CS NO. 40 OF 2016)
(ARISING FROM MBR-00-CV-CSNO. 046 OF 2018)**

TUMUSIIME LAWRENCE ----- APPLICANT

VERSUS

AMUTUHAIRE FRANCIS----- RESPONDENT

BEFORE: Hon. Justice Nshimye Allan Paul M.

RULING

BACKGROUND

This Application was brought by way of a Notice of Motion under Section 98 of the Civil Procedure Act Cap 71, Order 43 and Order 51 Rules 1,3 and 6 of the Civil Procedure Rules (CPR) SI 71-1 seeking orders that;

1. An order of Stay of taxation of the respondent's Bill of Costs in taxation application 122 of 2022 pending the determination of Civil Appeal no 253 of 2020 filed at the Court of Appeal.
2. An order of stay of execution of the decree in Civil Appeal no 40 of 2016 pending the determination of Civil Appeal no 253 of 2020 filed at the Court of Appeal.
3. The costs of this Application.

The Application is supported by an affidavit in support and a supplementary affidavit all deponed by the Applicant.

GROUND

The grounds as stated in the notice of motion are;

1. The respondent lodged Civil Appeal 40 of 2016 which was allowed overturning the judgement in Civil Suit 46 Of 2010 in which the applicant was a successful party.
2. The applicant being dissatisfied with the judgment in Civil Appeal no 46 of 2016 filed Civil Appeal no 253 of 2020 in the Court of Appeal at Kampala against the whole decision and the said appeal is pending determination by Court of Appeal.

3. The dispute between the parties is land at Kakondo Village and the respondent is in full possession and occupation which does not prejudice him in any way.
4. That the respondent on 8/12/22 filed taxation application no 122/2022 and there is likelihood after taxation to commence the process of execution of a decree being challenged in the Court of Appeal.
5. That the applicant will suffer substantial loss if taxation of the bill of costs and execution is not stayed pending the determination of Civil Appeal no 253 of 2020.
6. That the appeal lodged by the applicant has merit with a high chance of success and the applicant will suffer irreparable injury if execution is not stayed.
7. That it is in the interest of Justice, fair and equitable that the application is allowed, taxation of the respondents Bill of Costs which has effect of commencing execution of the decree after issuance of the taxation certificate be stayed pending determination of Civil Appeal no 253 of 2020.

SUBMISSIONS

The applicant filed written submissions on 19/12/2023. The respondent neither filed an affidavit in reply nor submissions despite being served as stated in the affidavit of service of Tumukunde Brighton filed at the Registry on 24/11/2023.

Applicant's submissions

It was submitted for the Applicant that being dissatisfied with the judgement of the High Court at Mbarara vide Civil Appeal no 40 /2016, He filed an appeal in the Court of Appeal vide Civil Appeal 253 of 2020 pending hearing before a panel of Justices of the Court of Appeal.

Counsel submitted that the order to stay the taxation of the bill of costs in High Court at Mbarara vide Civil Appeal no 40 /2016, was overtaken by events, so they now seek the order to stay of execution. The applicant submitted that the conditions for stay of execution are stipulated in order 43 rule 3 CPR and were also articulated in the case of Lawrence Musiitwa Kyaze Vs Eunice Busingye SCCA no 18 of 1990.

He contended that he filed a notice of appeal ad memorandum of appeal, which is an expression to show that an appeal was filed in the Court of Appeal, stating that conferencing was completed in May 2022. He added that the application for stay of execution has been brought without delay and if it is not granted, he would suffer substantial loss resulting from execution of the costs taxed as UGX



13,869,900/=. He prayed that an order for stay of execution be granted pending hearing of the Civil Appeal 253 of 2020.

DETERMINATION

In principle the High Court may for sufficient cause order stay of execution of a decree as is stipulated in Order 43 Rule 4 of the Civil Procedure Rules. The Supreme Court in determination of **HON .SSEKIKUBO & 3ORS V ATTORNEY GENERAL & 4 ORS (CONSTITUTIONAL APPLICATION NO. 06 OF 2013)** laid down conditions a court ought to consider in an application of this nature as follows:-

1. That a notice of appeal has been filed and steps have been taken to prosecute the appeal
2. The intended appeal raises triable issues with a strong likelihood of success.
3. Applicants will suffer irreparable damage if their application is not granted.
4. The balance of convenience favours the grant of the application.
5. That the application was instituted with out delay.

The evidence on court record contained in paragraph 3 of the affidavit in support shows that the applicant lodged a notice of appeal, Memorandum of appeal and filed a letter requesting for proceedings (see annexure A2, A3 and A4 to the affidavit in support). It is also the applicant's evidence that he has been served with a notice to show cause why execution should not issue (see annexure A10 to the supplementary affidavit)

In my analysis I find that the applicant filed an appeal in the Court of Appeal vide Civil Appeal 253 of 2020 and has taken steps toward its determination. It is therefore in the interest of justice that an any execution be stayed pending the determination by the Court of Appeal.

I therefore order that

1. This application is granted.
2. The execution of the decree in High Court Civil Appeal No 40 of 2016 is stayed pending the determination of Civil Appeal No. 253 of 2020 by the Court of Appeal.
3. No order as to costs is made.

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NSHIMYE ALLAN PAUL M.

JUDGE

05-04-2024