

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-MA-CS-0162-2023
(ARISING FROM CIVIL SUIT NO.083 OF 2010)

MAJID BATAMBUZE.....
APPLICANT

VERSUS

JOYCE
ATARO.....**RESPONDENTS**

Misc.Appln- Application for Stay of Execution.

Held: Application NOT granted.

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

RULING

This Ruling follows an Application brought under **Section 14,33,38 and 39 of the Judicature Act Cap 13 , Section 98 of the CPA and Order 52 rules 1,2 and 3 of the CPR SI 71-1** seeking for orders that:-

1. The execution of the Decree and or Orders arising from the Judgment and orders against the Applicant in **Consolidated Civil Suit No. 83 of 2010** be stayed until determination of the Appeal.
2. Costs of the suit.

The grounds upon which this Application are that:-

1. That the High Court entered judgment in **Civil Suit No. 83 of 2010** in favour of the Respondent where the Applicant was Plaintiff against the Respondents.
2. That Court entered Judgment against the Applicant on the 11th October 2022.
3. That the Respondents are in the process of executing the Orders in **Civil Suit No. 83 of 2010**.
4. That Notice of appeal challenging the judgment and Orders of Hon. Lady. Justice Dr. Nabisinde in **Civil Suit No. 83 of 2010** was filed and served.
5. The Respondent is likely to execute the orders arising from the Judgment, as she has taken out a Notice to Show Cause why execution should not issue.

6. The pending Appeal has a likelihood of success and if stay is not granted, the Applicant will be gravely prejudiced.
7. That this Application has been made without unreasonable delay.
8. That if the stay is not granted and the Appeal is successful the result of the Appeal shall be rendered nugatory.
9. That it would be just and equitable for the court to grant this application for stay of Execution until the final determination of the main Appeal.

The above stated grounds are reiterated in the Affidavit in support of the Application deponed by **Majid Batambuze**, the Applicant, the gist of which are that :-

1. That himself together with Richard Ocen were sued by the Respondent herein, in the high court vide **Civil Suit No. 83 of 2010**.
2. That on 11th day of October 2022 the learned justice of the High Court gave judgment in favour of the Respondent herein.
3. That being dissatisfied with the decision of court and orders in **Civil Suit No. 83 of 2010** he had since filed a Notice of Appeal challenging the same (**A copy of the Notice of Appeal is hereby attached and Marked A**).
4. That on the 31st day of October 2022, through his lawyers, M/S. Galisonga & Co. advocate we requested for a typed record of proceedings in order to prepare the record of appeal which he served on the Respondent herein and proceed with the Appeal which have not been availed to him yet. (**A copy of the letter is attached and marked B**).
5. That on the 7th day of June 2023 his lawyers wrote a second letter to follow up on the request for proceedings but the same is yet to be answered and proceedings to be availed. (**A copy of the follow up letter is hereby attached and marked C**).
6. That he filed **Miscellaneous Application No. 33 of 2022 on 22 February 2023** for stay of execution and the same is yet to be heard on merits. (**A copy of the application is hereby attached and marked D**).
7. That property the subject of execution is not his and not registered in his names as per now and the registered proprietor is not a party to the suit nor party to Execution proceedings. (**A copy of the land title is by attached and Marked E**).
8. That execution was issued and a Notice to Show Cause why execution should not be issued was issued by this court and there is eminent

threat with a pending execution in its final stage. **(A copy of the Notice to show cause is hereby attached and marked F).**

9. That the Appeal has a high probability of success and if stay is not granted, it will rendered nugatory
10. That this Application has been made without unreasonable delay.
11. That it would be just and equitable for the court to grant this Application for stay of Execution until the final determination of the main Appeal.

The Respondent **Joyce Ataro** filed an Affidavit in Reply in which he deponed that:-

1. She was never served with **Misc. Application No 162 of 2023 arising out of Civil Suit No. 83 of 2023**, which is an Application for Stay of Execution pending the Applicant's Appeal as per the Applicant's submissions dated 5th January 2024.
2. The only Application she was served with is **Misc. Application No. 33 of 2023 arising out of Civil Suit No 083 of 2010** still for Stay of Execution filed by the Applicant and she made a response to that said application and submissions accordingly; in this regard, the Applicant on the issue of service of **Application No 162 of 2023** is misleading court.
3. In **Misc. Application No. 33 of 2023 arising out of Civil Suit No 083 of 2020**, she presented to court that as per the Judgment and Decree, execution had partly taken place and she was already in physical possession of the suit property, but what was only pending is recovery of the awarded damages of 246,000,000 plus costs which has not yet been taxed.
4. However, when the Applicant established that she had already enforced the Judgment and taken physical possession of the suit land, caused for the cancellation of all entries on the certificate of title and was reinstated back on the certificate of title, he withdrew **Misc. Application No 33 of 2023** which Application was for stay of execution and chose to only have **Misc. Application 305 of 2023 arising out Civil Suit No 2023** to be determined by court. **(see copies of all applications filed by the applicant on court record)**
5. **Misc. Application No 305 of 2023, Misc. Application No 33 of 2023 all arising out of Civil Suit No 083 of 2010** are the only Applications the Applicant effected service on her through her lawyers which she accordingly responded to but not **Application No. 162 of 2023**

6. The Applicant is misleading court, that while he filed his appeal, he has only filed **Misc. Application No. 162 of 2023** to have a Stay of Execution pending his appeal and there is no other Application which is similar / related to this one that had already been filed by him or determined and she did not respond to it either. This is just an abuse of court process and court should be pleased to dismiss it accordingly.
7. Be it as it may, **Misc. Application No 162 of 2023** is the same as **Misc. Application No 33 of 2023 arising out of Civil Suit No 083 of 2010** for Stay of Execution; and in response to this application before court, execution has partly already taken place, she is in physical possession of the suit land and the certificate of title for the suit land is already in her name(s) as per the Judgment, was registered on the title on the 6th day of June 2023 under Instrument Number JJA-0034278 (**attached hereto is a copy of the certificate of title which is in her name currently marked as "A" for the suit land as proof of execution**).
8. While this Application came up for hearing, and schedules were given to make a response to the Applicant's allegations / claim from November 2023, she has been in poor health condition, and the only thing she could think about was to first fight for her dear life. (**Attached hereto are some of my medical records marked as B"**).
9. There is no threat amounted to the Applicant in terms of arresting him, she having obtained her certificate of title and being in physical possession of the land, if a stay of execution is to be granted in this matter, she prayed that the Applicant provides security for costs before the Order is granted worth 246,0000,000/= because the Appeal has no chances of success, she has spent close to 18 years in endless litigation and the Applicant wants to take advantage of this by even further delaying justice.
10. Once security for costs is furnished before court, this will compel the Applicant to pursue his case in the Appellate Court without any delay and once he losses, she can be in position to recover because the Applicant has taken court for granted which she prayed court to take judicial notice of.

REPRESENTATION

When this Application came before me for hearing, the Applicant was represented by Counsel Galisonga of M/S. Galisonga & Co Advocates, while the Respondent was represented Asasira Kiyonga of M/S. Kiyonga. B.

Asasira & Co. Advocates. Both parties were directed to file Written Submissions and they have all complied. I have analyzed the same and relied on them in this Ruling.

THE LAW

Section 14 of the Judicature Act, cap 13 reads that:-

“Jurisdiction of the High Court

(1)The High Court shall, subject to the Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or this Act or any other law”.

Section 33 of the Judicature Act

“General provisions as to remedies

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided”.

Section 38 of the Judicature Act Cap 13

“Injunctions

(1) The High Court shall have power to grant an injunction to restrain any person from doing any act as may be specified by the High Court.

(2) Where an injunction is granted restraining any person from acting in any office in which he or she is not entitled to act, the High Court may declare the office to be vacant.

(3) Where before, at or after the hearing of any cause or matter, an application is made for an injunction to prevent a threatened or apprehended waste or trespass, an injunction may be granted, if the High Court thinks fit—

(a) whether or not the person against whom the injunction is sought is in possession under any claim of title or claims a right to do the act sought to be restrained under any colour of title; and

(b) whether the estates claimed by the parties or any of the parties are legal or equitable.

Section 39 of the Judicature Act Cap 13

“Practice and procedure

(1)The jurisdiction vested in the High Court by the Constitution, this Act or by any other enactment shall be exercised in accordance with the practice and procedure provided by this or any other enactment or by such rules and orders of the court as may be made or existing under this Act or any other enactment.

(2)Where in any case no procedure is laid down for the High Court by any written law or by practice, the court may, in its discretion, adopt a procedure justifiable by the circumstances of the case”.

Section 98 of the CPA

“Savings of inherent powers of court.

Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.

And

Order 52 rule 1 and 3 of the Civil Procedure Rules provide for the procedure that an Application of this nature must take.

RESOLUTION OF THE APPLICATION

It was submitted by learned counsel for the Applicant that the grounds of the Application are set out in the Application and the supporting affidavit and they prayed that this court adopts and relies upon. That the Respondent's counsel was duly served with the copy of the Application and the supporting affidavit on the 3rd / August/2023. **(Received copy is attached hereto).**

Further, that on the 25th /10/2023, when the matter was fixed for hearing, in the absence of the Respondent, Counsel Mujooma Abdullah holding the brief of Counsel Kiyonga Asasira conceded that service had been fully effected unto the respondents counsel and prayed for extension of time within which to file the respondent's affidavit in reply to the application.

That out of courtesy, this Honorable court agreed and allowed the Respondent time of up to the 8th / Nov/2023 within which to file and serve the

Respondent's affidavit in reply, however this time has also expired and none of the Applicants' known Counsel have received any response to the Application from the Respondent or her counsel and neither is any filed on the court record.

That it is undisputed law that failure by the respondent to file affidavit in reply means that the application stands unchallenged as per the case of ***Makerere University vs St. Mark Education Institute & Ors HCCS No. 378 of 1993.***

That the fact that the Respondent did not file a response/contest the content of the application and the supporting affidavit is an implication that she admits that whatever is contained is true and unchallenged and for that matter we refer this Court to **Section 57 of the Evidence Act Cap 6** which provides that "facts admitted need not be proved"

In the premises they prayed that this court allows this application as it is, unchallenged and grant all the orders sought by the Applicant.

Without prejudice to the above, if this Honorable court is not inclined to allow the Application as uncontested, they prayed is that the matter proceed expert on merit.

That an Application seeking stay of execution must meet the conditions set out in **Order 43 rule 4(3) of the Civil Procedure Rules SI 71-1**. The conditions were espoused in the case of ***Lawrence Musiitwa Kyazze vs Eunice Businge, Supreme Court Civil Application No. 18/1990***, but more pronounced in the Supreme Court Case of ***Hon. Theodore Ssekikubo and Ors. vs The Attorney General and Ors. Constitutional Application No. 03/2014*** and these conditions include;

1. The applicant must show that he lodge a notice of appeal.
2. That substantial loss may result to the applicant unless the stay of execution is granted.
3. That the application has been without unreasonable delay.
4. That the applicant has given security for due performance of the decree or order as may ultimately be binding upon him.

1. Whether the Applicant has lodged a Notice of Appeal?

In respect of the above, it was submitted for the Applicant that under paragraph 4 of the affidavit in support of application, the applicant states that "*being dissatisfied with the decision of court and orders in **Civil Suit No. 083/2010** I have since filed a Notice of Appeal challenging the same.*

The Applicant further attached a copy of the said Notice of Appeal and marked it 'A'.

And on face of the attached Notice of Appeal the Respondent's received stamp is reflected and it proves that the same was served unto the respondent's counsel on the 24/02/2023; and under paragraph 5 of the Applicant's affidavit he further states that his advocate has since requested for a typed record of proceeding and the same has not been availed to them.

That since the Respondent did not file affidavit in reply and has not in any way disputed the existence of the said facts, they submitted that the Applicant has in this regard proved the existence of a Notice of Appeal and that this Honorable Court should also agree with them.

In Reply, the Respondent opposed the Application and shall relied on the averments in the Affidavit in Reply sworn by Joyce Ataro.

Further, that Court should be alive to the interests of successful litigant. The Respondent has been in court for over 18 years as the Applicant has on many occasions caused the delay of justice; and that this is well evident on the court record.

In addition, that an appeal does not operate as a stay of proceedings. Execution has already been done as per the Respondent's affidavit. The Respondent is already in physical possession of the suit land and she has already been reinstated on the Certificate of title under registration instrument Number JJA-00034278. The only issue for left for execution is payment of the damages worth 200,000,000/E which includes interest and costs

That the Applicant has not met the legal requirements to justify an Order for Stay of Execution. In the applicant's affidavit, the applicant does not show any willingness to pay /finish security for costs if he so desires to Stay of Execution pending his appeal.

That the applicant is simply taking advantage of this court he first filed an application -**Misc. Application No 33 of 2023 arising out of Civil Suit No 083 of 2010** still for stay of execution and when the Application came up for hearing, he withdrew it with no reason. That this becomes an abuse of court process. The Applicant does not have clean hands before court.

They invited court to look at all Applications filed by the Applicant, they have been filed in bad faith; that is **Misc. Application No 33 of 2023, Misc. Application No 164 of 2023, Misc. Application No 162 of 203** all

on court record. That at the outset, they wished to point out that any levy of execution by the Respondent against the Applicant would relate only to the recovery of general damages and costs.

They added that the test to be applied in applications for stay or execution has been established by Judicial pronouncement on the subject: and relied on ***Kampala Bottlers vs Uganda bottlers, SC Civil Appln 25 of 1995, I Musiitwa Kyazze vs Eunice Busingye, SC Civil Application No. 18 of 1990*** the principle that is eloquently stated in the authorities is that the Applicant must satisfy the conditions stipulated in **Order 43 rule 4 CPR (supra)**.

I have carefully analyzed this Application, the supporting Affidavit, Affidavit in Reply and submissions of both sides. The principles under which an Application of stay of execution can succeed were well espoused in the case Supreme Court Case of ***Hon. Theodore Ssekikubo and Ors vs The Attorney General and Ors Constitutional Application No 03 of 2014 CITED BY LEARNED COUNSEL FOR THE Applicant (supra)***.

The purpose of the application for Stay of Execution pending appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising his/her undoubted right of appeal are safe guarded and the appeal if successful, is not rendered nugatory. See ***Lawrence Musiitwa Kyazze vs. Eunice Busingye SCCA NO. 18 of 1990 [1992] IV KALR 55***.

Further, in the case of ***Hansa Industries Ltd vs Tadjir Hussein & 2 Ors S.C.A. No. 19 of 2018***, the court of appeal stated that for an application for stay of execution to succeed there must be a pending appeal filed in court.

I have also referred to the case of ***Nalwanga vs Eden Ltd & Ors MA 7/2017*** where court noted that once an appeal is pending, court intervenes by preserving the status quo pending disposal of the appeals.

The conditions for granting Stay of Execution pending appeal are mainly;

- a) Whether there is an arguable appeal.
- b) That substantial loss may result to the applicant unless the order of stay is made.
- c) That the application has been made without unreasonable delay; (See ***Mugene v Akankwasa [2008] HCB 160***) ; and
- d) That security has been given by the applicant for due performance of the decree or orders as may ultimately be

binding upon him or her. This is available where an application for stay of execution is made before the expiry of the time allowed for appealing from the decree to be executed.

The above conditions are also reiterated in the case of **Membe v Mayoga [2009] HCB 82**.

Further, the Court of Appeal in **Kyambogo University vs Prof. Isaiah Omolo Ndiege, CA No 341 of 2013** expanded the list to include:

- a) There is serious or eminent threat of execution of the decree or order and if the application is not granted, the appeal would be rendered nugatory
- b) That the Application is not frivolous and has a likelihood of success.
- c) That refusal to grant the stay would inflict more hardship than it would avoid.

The above principles have been upheld in numerous cases.

Having elaborately stated the position of the law, I will analyze each of the conditions to be met against the evidence adduced in this application.

Regarding the first principle that there should be a pending appeal, the Applicant annexed a Notice of Appeal to this Application. The said Notice of Appeal was filed in the High Court of Jinja on the 25th day of October 2022 as per the received stamp attached thereto. The Judgment of the High Court was read on the 11th day of October 2022.

Be that as its, it is clear that the same the same Applicant had filed **MA No. 33 of 2023** on the 22nd day of February 2023 and this Application was fixed for hearing on 22/03/2023. The Applicant on his own motion through the same lawyers chose to with draw his own Application under **Order 25 rule 1 and 2 of the Civil Procedure Rules** and Court granted this order on the same day.

This means that he had indeed filed a similar Application and found it unnecessary. The current Application was then filed on 10th July 2023, four months after the Applicant withdrew his first Application.

As rightly averred by the Respondent in paragraph 7 of her Affidavit opposing this Application, **Misc. Application No 162 of 2023** is the same as **Misc. Application No 33 of 2023 arising out of Civil Suit No 083 of 2010** for Stay of Execution.

Whereas it is not denied that the Notice of Appeal was filed within the prescribed time by the law, I find the filing a similar second Application seeking the same orders an abuse of court process bearing in mind that the Applicant never gave any reasons as to why he withdrew his first Application. I have therefore not found anything that has changed to make the Applicant believe that this Court should reopen a matter that had been concluded.

Secondly, there is also proof by the Respondent that execution has partly already taken place, she is in physical possession of the suit land and the certificate of title for the suit land is already in her name(s) as per the Judgment, was registered on the title on the 6th day of June 2023 under Instrument Number JJA-0034278 (**attached hereto is a copy of the certificate of title which is in her name currently marked as "A" for the suit land as proof of execution**).

For those reason, I find valid reasons given by the Respondent; and I resolve this ground in favour of the Respondent.

2. Whether the applicant will suffer substantial loss?

In respect of this ground, learned counsel for the Applicant cited the case of ***Tropical Commodities Supplies Ltd and 2 others vs International Credit Bank Limited (in Liquidation) [2004]2 EA 331***, Ogoola J (as he then was) held that;

"The phrase substantial loss does not represent any particular amount or size; it cannot be qualified by any particular mathematical formula.

It refers to any loss great or small: of real worth or value as distinguished from a loss that is merely nominal."

That under paragraph 9 of the Applicant's affidavit he states that the Respondent has applied for execution and Notice to Show Cause that there is eminent threat that execution is in its final stages. The Applicant further attached a copy of a Notice to Show Cause why execution should not be issued which he marked **F**.

However, that under paragraph 8 the Applicant states that the property which is subject of execution is not his property and that he is no longer in possession or the registered proprietor. That the registered proprietor of the property subject to this execution was not party to the main suit **Civil Suit No. O83/2010** and nor is he party to this execution, therefore if this Application is not allowed the applicant not being in possession or ownership of the property subject to execution a great loss.

That it is the position of the law that once an appeal is pending and there is a serious threat of execution before hearing of the appeal, the court intervenes to serve the purpose of substantive justice. See ***Hwang Sung Industries Ltd vs Tadjudin Hussein & Others SCCA No.79/2008.***

That it is evident on record that the Respondent has applied for execution and that there is eminent threat for the same to pull through, however the same could cause serious loss to the Applicant because he has clearly stated that he is neither in possession nor in legal proprietorship of the subject matter; Yet the respondent seeks execution of payment of 246,000,000/= being general damages and vacant possession of suit land comprised in LRV59 FOLIO 19 also known as Plot No. 03 Circular Road Jinja.

They therefore submitted that this court finds this condition or ground proved by the applicant and accordingly grant the application.

In Reply, it was submitted for the Respondent that it is the general principle that where an unsuccessful party is exercising their unrestricted right to appeal, it is the duty of the court to make such order for staying of proceedings in the judgement appealed from to prevent the appeal from being rendered nugatory as it was discussed in the case of ***Lawrence Musiitwa Kyazze Vs. Eunice Busingye SCCA No.18 of 1990 KALR 55.***

They argued that the Applicant upon losing the civil suit fraudulently transferred the Certificate of Title to a one Kawanguze Peter which changed the status quo hence the appeal is nugatory even before the determination of the Appeal.

Furthermore, in the case of ***Tropical Commodities Supplies Limited and 2 Others V International Credit Bank Ltd In Liquidation (2004) 2 EA 331***, Ogoola J as he then held that "*the phrase substantial loss does not represent any particular amount or size: It Cannot be qualified by any mathematical formula. It refers to any loss great or small or value as distinguished from a loss that is merely nominal.*"

That the Applicant has not shown how, by payment of damages and costs at this stage, he shall suffer the alleged substantial loss. The obligation to make payment cannot on its self-constitute substantial loss. If this were so, then every Applicant would automatically obtain an Order for Stay of Execution to the obvious prejudice of a successful litigant.

That from the Applicant's affidavit, there is no material form, which this Honourable Court can infer that any substantial loss shall result at all. After

role the Applicant upon Judgment he already caused the change of the suit title to other names, so one would ask himself, what loss is he (Applicant) going to face if himself on his own evolution changed the status quo of the title after the judgment was delivered.

They borrowed from the Equity maxim that *“those that come to equity must come with clean hands”*. That the applicant does not have clean hands and he fraudulently demonstrated this when on the 11th day of October 2022, transferred the suit land to the name of May Fair Safari Hotel where he is a director / beneficial owner and then to Kawanguze Peter Frantile without obeying the Judgement of court in **Civil Suit No 083 of 2010** that was made in the favour of the Respondent.

That once someone disobeys a Court Order or its Judgment he, cannot at the same time Come before the same Court to seek a remedy as it was elaborated in the case of **Mugume Ben and Anor V Akankwasa David ULR 683**. It means he does not respect anything from court.

That the Applicant has committed so many illegalities before Court, which are;

The Applicant after the Judgment delivered by court on 11th October 2022, did not respect the outcome of court, fraudulently caused the transfer of the suit land to May Fair Safari Hotel then to Kawanguzi Peter Frantile by the 14th day of November 2022 all transactions done on the same day. This leaves so many unanswered questions.

That the Applicant is using a one Kawanguzi peter Frantile to mislead court to purport that suit property had already been sold to him irrespective of the court proceedings.

That the Applicant had already filed **Misc. application No 33 of 2022 arising out of Civil Suit No 083 of 2010** still for stay of execution, when the respondent availed evidence that he had no locus as he had transferred the property to another party wrongly, he withdrew this Application which implies that he is taking advantage of Court and abusing court process.

The Applicant has tried to file **Misc. Application No 65 of 2022 arising out of civil suit No 2010 through Kawanguzi Peter (his agent)** against the respondent to cause for the numerous delays of the remedies of the Respondent, which is unjust.

In addition, that the Applicant mislead court that he effected service of **Misc. Application No 162 of 2023** upon the Respondent which is not true once

an illegality is brought to the attention of court, court should look into these illegalities, investigate them widely and the result is to dismiss the applicant's case, as he does not have clean hands. **(See a copy of the entries on the certificate of title marked as "A", & judgment on the respondent's affidavit.**

They relied on **Scott v Brown Doering, Mc Nab and Co. (1892)2 Q.B 724** thus:

"No court ought to enforce an illegal contract or allow itself to be made instrument of enforcing obligation alleged to arise out of contract or transaction illegal if illegality is dully brought to the notice of the court and if person invoking the aid of the court is himself implicated in the illegality...."

That the subject matter of the suit from which the Applicant's intends to seek a stay pending his appeal is a land matter. Which has been before this court for over 18 years .the Respondent filed **Civil Suit No 083 of 2010** in the year 2010 while her lease was on running, by the time judgment was delivered, the lease had expired although now it is renewed, and the Respondent is now in physical possession with a certificate of title .ever since this matter was being determined, the applicant caused for the numerous delays of the Civil suit which was unjust.

They invited Court to look at the record which gives a true character of the Applicant. That the Applicant well knowing that his Appeal has no chances of success is only intending to delay justice and abuse judicial process.

In resolving this principle, I have referred to the affidavit in support of the Applicant's Application and the case of **Steel Rolling Mills Ltd & Anor vs Gestation Economique Des Mission Catholic & Anor** where Mukasa L J cited the case of **Pan African Insurance Company (U) Ltd v International Air Transport HCT MA No.86/2006** where the Applicant merely stated that if the decree is not stayed the Applicant will suffer substantial loss and stated that:-

"the deponent should have gone a step further to lay the basis upon which court can make a finding that the applicant will suffer substantial loss as alleged. The applicant should go beyond the vague and general assertion of substantial loss in the event a stay is not granted".

The learned Judge also cited the case of **Bashidar v Pribku Dyal Air 41 1954** where it was stated that:-

“It is not merely enough to repeat the words of the code and state that substantial loss will result, the kind of loss must be given and the conscience of court must be satisfied that such loss will really ensure”.

Further, it was observed in the same case that *“the words substantial’ cannot mean the ordinary loss to which every judgment debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case.... substantial loss must mean something in addition to all different from that”.*

The Applicants argued that the likelihood of the applicant suffering substantial loss if the order of stay of execution is not granted.

As stated in the decided cases, it must be substantiated by evidence and it is for that reason that before courts of law can grant an Application for Stay of Execution, there must be proved that there is a threat for execution which some decided cases refer to as eminent threat of execution.

I have carefully analyzed the submissions of both sides and case law cited. I find that the main suit out of which this Application arises has spun over 18 years and a number of Applications have been filed out of it.

In paragraph 8, the Applicant avers that the property subject of the execution doesn’t belong to him and is not registered in his names as the registered proprietor is not party to the suit nor party to the execution proceedings; and in paragraph 9, he states that execution has been issued and a notice to show cause why execution should not be issued was issued by the court and that there is eminent threat with a pending execution in its final stages.

On the other hand, in the Affidavit in Reply by the Respondent in paragraph 9, avers that execution has partly already taken place, that the Respondent is in physical possession of the suit land and the certificate of title for the suit land is already in her names as per Judgment where the Respondent was registered thereon onto the title on the 6th day of June 2023 under Instrument Number JJA-0034278 as per **Annexure A** to the Affidavit in Reply.

The Respondent has presented evidence confirming that she was reinstated on the Title, meaning that execution has already been partially completed save for damages and costs.

I have critically examined **Annexure 'A'** and found that indeed the Respondent was reinstated back as the registered owner at the **High Court of Jinja in Civil Suit No.83 of 2010** by Court Order.

Secondly, it is clear that the main suit **High Court of Jinja in Civil Suit No.83 of 2010** was between **Joyce Ataro and Richard Onen and Majid Batambuze**; the title in issue was by then in the names of **Majid Batambuze** after it was transferred to him by **Richard Onen** who had also transferred from **Joyce Ataro**.

Looking at the above *vis a vis* paragraph 8 of the Affidavit in Support of this Applicant where the Applicant avers that the property which is subject of execution is not his property and that he is no longer in possession or the registered proprietor; and that the registered proprietor of the property subject to this execution was not party to the main suit **Civil Suit No. O83/2010** and nor is he party to this execution, therefore if this Application is not allowed the Applicant not being in possession or ownership of the property subject to execution a great loss.

I have critically analyzed the above and it is my finding that this is indeed self-defeating as it clearly shows that the Applicant in this case no longer has any legal title to the suit property or any legal interest in the Certificate of Title that was changed. As such, I do not see how the Applicant, who is not that third party who is not part of this suit (and it is clear that he is not his lawful attorney) will be prejudiced if this Application is not granted.

Bearing that in mind, I agree with learned counsel for the Respondent and find that the Applicants has not proved any substantial injury that will be caused to him if the order for stay of execution is not granted.

As for the fourth Principle that there is serious or eminent threat of execution of the Decree or Order and if the Application is not granted, the appeal would be rendered nugatory, there is uncontested evidence from the Respondent that she was already registered as proprietor on the Certificate of Title in furtherance of the Decree and that she has already taken possession.

My findings therefore are that it is clear that there is no eminent danger of execution, since it is undeniable that execution has already taken place and what is left is for the Applicant to tax costs in the matter.

I therefore hold that the Applicant has also failed to fulfill these two principles; and as such, both grounds have not been satisfied.

3. Whether the Application has been brought without delay?

In respect of this ground, learned counsel for the Applicant submitted that this application has been brought without any unreasonable delays. That it is clear that the Notice to show cause was lodged in this Honorable Court on the 15th June 2023 to be heard on the 12th July 2023 and this application was brought on the 10th July 2023 within a reasonable time frame.

That the Applicant further states under paragraph 5 of his affidavit that his advocate requested for a typed record of proceeding but that the same has not yet been availed to them and this shows that any unreasonable delays in this matter be it in pursuing the appeal or the application are clearly not on his part.

In Reply, it was submitted for the Respondent that the Respondent that Respondent concedes that this Application has been made timely, however, the Applicant has not met the other two conditions.

In resolving this principle, in respect of the third principle that the application has been made without unreasonable delay, I have already indicated above that Judgment was read on the 11th of October 2022, a Notice of Appeal was lodged on the 22nd of October 2022 in the High Court of Jinja and the current Application was lodged on the 10th of July 2022.

This means that this Application was lodged nine (9) months after the Judgment was delivered. Bearing in mind my earlier findings in the first issue that the Applicant had filed and withdrawn a similar Application **Misc. Application No 33 of 2023 arising out of Civil Suit No 083 of 2010** for Stay of Execution, it is my finding and decision that this is an afterthought by the Applicant upon realizing that the Respondent had executed the court order and registered her name on the Certificate Title.

It is therefore my considered view that this Application is just an abuse of Court process as litigation must come to an end. This principle has not been satisfied by the Applicant.

4. Whether the applicant has given security for due performance of the decree or order?

It was submitted by learned counsel for the Applicant that whereas the applicant made no mention of giving security in his affidavit in support of the application **section 98 of the Civil Procedure Act Cap 71** gives the High Court inherent powers to take /make decisions which are pertinent to the ends of justice and if an order for giving security is one of those decisions

then the Applicant will unconditionally agree to the same however needless to note that this condition is

In reply, it was submitted for the Respondent that the Applicant's pleadings in this matter are silent as to the security he shall offer as a precondition for the order to stay execution against him.

They invited this Honorable Court to draw an adverse inference from the Applicant's omission to offer any undertaking to guarantee his performance of the decree against him.

In conclusion, that by this application, the Applicant seeks to avoid and delay the payment of damages and costs awarded by this Court against him in Civil Suit No 083 of 2010 together with a one Richard Onen whom he has chosen to leave behind but mislead court to act as though he was sued alone.

They prayed that this Honorable Court finds that the Applicant has not satisfied the requirements to justify an order for Stay of Execution. Consequently, dismiss the Application with costs to Respondent.

In the Alternative, if however, this Court is inclined to grant the application, we pray that the Applicant be ordered to deposit into Court the sums awarded against him worth 200,000,000/= as security for cost and a precondition for stay of execution having the execution been party been performed.

That this pre-condition will make the Applicant prosecute his appeal and avoid the court process so that litigation comes to an end.

I have carefully examined this Application and noted that the Applicants did not in any way state that they are willing to deposit security for costs. I have also read the authorities relied upon by both learned counsels.

I have relied on the case of ***Tropical Commodities Supplies Ltd & Others v International Credit Bank Ltd (in liquidation) Civil Appeal No.24 of 2004*** where Justice Ogoola held that the requirement is more of justice and insistence on policy or practice that mandates security for the entire decretal amount is likely to stifle appeals; however, I have found the decision of Justice Mukasa in ***New Vision Publishing Corporation & 2 Others v Peter Kagawa HCMA 127/2006 [KALR 391]*** while emphasizing the rationale of furnishing security for due performance of the decree in an

Application for Stay of Execution quoted with approval the Judgment of Justice Kato in the case of **Ntege Mayambala v Christopher Mwanje (1993) KALR 97** that:-

"I....there are several reasons why depositing of security by the applicant in this type of application is necessary. One of the reasons is to maintain the status quo among the parties; another reason is to ascertain that the purpose of the application is not merely intended to defeat the course of justice by delaying tactics whereby after the execution has been stayed the decree holder is made to wait indefinitely for the fruits of his success. By providing security the judgment debtor is also trying to prove how serious he is in his application for stay of execution".

Relating the above to this Application, I have found that the Applicant has neither furnished security for due satisfaction of the decree nor intimated to court by way of affidavit evidence that he even intends to do so.

I have analyzed the submissions of both sides, it is indeed true that the Applicant has not provided security for due performance of the decree/order in accordance with **Order 43 rule 4(3) (c) of the CPR**; instead he is latching onto the inherent powers of Court, which in my view, should not be invoked unless there are valid reasons to do so.

Further, the provision of this security is mandatory before any order for stay of execution can be granted. See the Court of Appeal decision of **International Credit Bank (In Liquidation) vs Tropical Commodities Ltd & 2 Others Civil Appeal No.24 of 2004**.

My interpretation of the provisions of **Order 43 rule 4 (3) CPR** and in view of the above cited case is that all the conditions stated under **sub rule 3** must be considered by court before the application is granted; and that it is only the court which can dispense with depositing of security for costs if the justice of the case warrants.

In this particular Application, having found as I have in the first three grounds, I have arrived at a finding that this Application as it is presented lacks merit and cannot succeed in its current form.

Lastly, I have considered whether the Application is not frivolous and has a likelihood of success. For this court to grant a stay of execution consideration should be made on the Judgment the Applicant intends to challenge to determine and know the reasons why he or she lost the case. This would discourage frivolous appeals only intended to delay realization of the fruits of

litigation as was stated in the case of **JWR Kazoora vs MLS Rukuba SC CA No.4/1991 (KALR 287)**.

Another factors to be considered in an Application for Stay of Execution is “*Whether the outcome of the appeal would be rendered nugatory, if execution is not stayed.*” Refer to **East African Development Bank vs Blue Nile enterprises Ltd. [2006] EA 51 (CAT)**.

As already stated earlier in this Ruling, I have examined the record and I agree with the Applicant that there is a Notice of Appeal in respect of **Civil Suit No. 083 of 2010** which he is now seeking to stay; HOWEVER, it is clear that in this case, the Respondent has already partially realized the fruits of litigation by registration on the certificate of title and taking possession of the suit land.

In the final analysis, it is my decision that the Applicant’s Application is frivolous, vexatious and has no merit as he has failed to show sufficient grounds for stay of execution of the Judgment and orders in **Civil Suit No.83 of 2023**.

The Application for setting Stay of Execution is therefore dismissed with costs to the Respondent.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
13/03/2024

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
13/03/2024