

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**EXECUTION AND BAILIFFS DIVISION**  
**MISCELLENOUS APPLICATION 761 OF 2016**  
**(ARISING FROM EMA 3276 OF 2014)**  
**(ARISING FRM CIVIL SUIT 56 OF 20111)**

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**1. KATO LUTAAYA JOSEPH**  
**2. BABIRYE ALLEN ..... APPLICANTS**

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**VERSUS**

**LAWRENCE SEMWANGA AND 6 OTHERS .....RESPONDNETS**

**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

**RULING**

By this application made under S.98 C.P.A and 0.52 rr 1 (1), 2 and 3 C.P.R, the Applicants  
15 sought demolition of any structures on the land / Kibanja on land at Mutundwe, Kigaga Zone, by  
way of consequential orders against the Respondents, their agents, servants or any other person  
or entity deriving authority from them.

Costs of the application were also applied for.

The application was supported by the affidavit of the First Applicant which was relied upon at  
20 the hearing.

Briefly, the grounds are that:-

- The Applicants filed civil suit 56/2011 against the Respondents for recovery of the suit land.

- Judgment was delivered in favor of the Applicants.
- The Applicants applied to this court for execution of the judgment and decree, which was done.
- It is in the interests of justice that orders for demolition issue against the Respondents by way of consequential orders.

The application was first called for hearing on 04.06.16 but on that date, there was no affidavit in reply on the record. Matter was adjourned to 21.06.16 to allow Counsel for the Respondents time to reply to the application.

On 21.06.16, again the Respondents and their Counsel were absent. Counsel for the Applicants submitted that hearing notices had been extracted and served upon the Counsel for the Respondents, but that as before, Counsel for the Respondents refused to acknowledge service.

Since M/S Mugenyi and Co. Advocates were the last known address of service of the respondents, who had received documents but had refused to acknowledge service, without giving any reasons; court found that the Respondents were properly served and application was allowed to proceed exparte. There are affidavits of service on record.

Counsel for the Applicants went through the motion and the reasons thereof. It was emphasized that the Applicants had been declared the owners of the suit land in civil suit 56/11.

Execution of the decree and warrant to give vacant possession of the suit property were granted and the same was executed on 07.04.15. – A copy of the warrant was attached to the applicant as Annexure C.

Further that the Applicants took possession of the suit land and the return of warrant was made as indicated by Annexure D.

However, that some of the Respondents had re-entered the land and reoccupied some of the structures on the land, yet the Applicants are desirous of utilizing the land.

Counsel then prayed for the order of demolition to be issued as a consequential order against the Respondents, their agents, servants, or any other person deriving authority from them.

The issue is **whether this is a proper case for issuance of consequential orders.**

S.98 of the C.P.A saves the inherent powers of court ***“to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.”***

It is the uncontested assertion of the Applicants that they were the successful party in civil suit  
5 56/2011, which was a suit for recovery of the suit land, that they filed against the Respondents.  
That judgment was given in favor of the Applicants as evidenced by the decree of court dated  
25.02.13, whereby the Respondents were declared trespassers on the suit land.

It was also decreed that the Respondents either vacate the suit land or be evicted from the land.

It is apparent from the record that an application for execution was made by the Applicants. The  
10 Respondents applied for stay of execution vide Miscellaneous Application 397/2015.

The application for stay of execution was called for hearing on 20.05.15, where upon Counsel for  
the Applicants withdrew the application. The withdrawal was allowed and each party required to  
bear its own costs.

The warrant to give vacant possession had been issued earlier and had been executed on the  
15 07.04.15, and the Applicants put in possession of the disputed land.

The Bailiff returned the warrant on 07.04.2015 duly executed.

Since it is the unchallenged evidence of the Applicants that some of the Respondents have since  
re-occupied the buildings on the land in total disregard of the orders of court, and the fact that the  
Applicants are desirous of using the land, it is only just and proper that the consequential orders  
20 applied for by the Applicants issue.

The application is accordingly allowed. The consequential orders applied for by the Applicants  
to issue.

Costs of the application are also granted to the Applicants.

**Flavia Senoga Anglin**

**JUDGE**

**28.06.16**