

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(FAMILY DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 1180 OF 2023**  
**(Arising out of Miscellaneous Application No. 250 of 2023)**  
**(Arising from Civil Suit No. 058 of 2015).**

**1. SAM KASULE**  
**2. EDWARD SEKITTO:..... APPLICANTS**

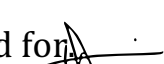
**VERSUS**

**1. JULIET MBOOWA**  
**2. NAMBI EVA**  
**3. NAKAKANDE NORAH**  
**4. KASULE ROBERT**  
**5. KABUYE RICHARD:..... RESPONDENT**

**Before: Lady Justice Ketrah Kitariisibwa Katunguka.**

**Ruling.**

**Introduction:**

1. This application is brought by way of Notice of Motion for the grant of orders that; An Interim Order of stay of execution of the Judgment and Decree of Civil Suit No. 58 of 2015 be issued pending the hearing and final disposal of Misc. Application No. 250 of 2023 for stay of execution of the said Judgment and decree; The costs of and incidental to this application be provided for 

2. The grounds of the application are set out in the Notice of Motion and Affidavit in support deposed by Sam Kasule (the 1<sup>st</sup> Applicant) and briefly that; On the 14<sup>th</sup> day of October, 2022, this Honourable Court gave Judgment in favour of the respondents in Civil Suit No. 58 of 2015; the applicants herein being dissatisfied with the said Judgment, lodged an appeal to the Court of Appeal against part of the said Judgment and Decree arising therefrom raising several legal issues that warrant serious judicial consideration with a high chance of success;
3. The applicants filed Misc. Application No. 250 of 2023 for stay of execution of the decree in Civil Suit No. 58 of 2015 pending the hearing and determination of the said appeal; there is a serious threat of executing the decree arising out of the High Court judgment before the determination of Misc. Application No. 250 of 2023 as well as the appeal; several potential buyers have been taken by the respondents to inspect land at Makindye which this honourable court declared to be that of Janet Naluyima Mbowe and the family banana plantation has all been cut to have the property disposed of; the applicants will suffer irreparable loss and Misc. Application No. 250 of 2023 and the appeal will be rendered nugatory if this application is not granted; it is in the interest of justice that this court grants this application for the ends of justice to be met.
4. The application is opposed by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents through the affidavit deposed on their behalf by Juliet Mbowe (the 1<sup>st</sup> Respondent) that; the respondents have not in any way tried to execute the orders granted by this court in Civil Suit No.58 of 2015; the respondents have not filed any application to execute the orders of this court; the only step that was taken after the decision of this court was made, was have a bill of costs filed and to date the

same has not yet been taxed or fixed for taxation by this court; no appeal against the decision of the High Court has been filed; the court among other things in the Judgment declared that property comprised in Luwafu- Makindye, as not being part of the estate of the deceased but that of Janet Naluyima Mbowa, which she has been using at her will without any concern from the applicants; after harvesting and her plantation being attacked by a banana disease she was advised to have the same cut down to re-plant later;

5. The said plantation is the property of Janet Naluyima Mbowa and has never been family property as alleged; how she uses it was not the applicants' business since the court had declared the land as hers; as again they cannot engage in the sale of property that court declared to belong to Janet Naluyima Mbowa; the applicants will not suffer any irreparable loss as they are the ones using the estate properties; if anything it is the applicants delaying the execution of the judgement with their purported appeal with the intention of disposing off that estate property comprised in Kyadondo Block 5 Plot 13, land at Kiwereza, Wakiso district, or commencing the business of mining sand from the same to their benefit and the detriment of the respondents who are the children of the late Enosi Mbowa; they pray that the court halts any transaction on the property of the estate of the late Enosi Mbowa, and more so property comprised in Kyadondo Block 5 Plot 13, land at Kiwereza, Wakiso district.
6. The Applicant filed an affidavit in rejoinder to the effect that; the application has merit as they have lodged a competent Notice of Appeal in this court and also an Application for stay of execution as the respondents have already extracted the decree of the said judgment; there is a serious threat to execute the decree of Civil Suit No. 58 of 2015; the Applicants filed a Memorandum of

Appeal in the Court of Appeal; the bill of costs was fixed for taxation on the 24<sup>th</sup> day of February, 2023 and later to the 3<sup>rd</sup> day of March, 2023 but the applicants requested to have the taxation stayed until after the determination of the application for stay, and the registrar stayed those proceedings; the appeal raises several legal issues that warrant serious judicial consideration with a high chance of success and the same was served onto the respondents.

The applicants filed an affidavit in rejoinder reiterating the earlier position in the affidavit in reply.

**Representation:**

7. When the matter came up on 2<sup>nd</sup> October 2023, counsel Bbale Sadat represented the applicants while counsel Yovino Okwir represented the respondents; both counsel have filed written submissions which I have considered.

**Determination:**

The issue for determination is : **Whether the application satisfies the grounds for the grant of an interim order for stay of execution of decree in Civil Suit No.58 of 2015 pending the determination of Misc. Application No.250 of 2023?**

8. It is trite law that a successful litigant should not be deprived of the fruits of a judgment obtained in his favour, unless there are special circumstances (or special grounds) that justify a stay of execution to be granted (see Membe Vs. Mayoga [2009] 1 HCB). The Supreme Court in **Yakobo Senkungu and others vs Cerencio Mukasa, SC Civil Application No. 5 of 2013** stated that; the granting of interim orders is meant to help parties to preserve the status quo


and then have the main issues between the parties determined by the full court as per the Rules.

The principles followed by courts for the grant of interim orders are set out in ***Hwang Sung Industries Limited v Tajdin Hussein & Others, SC Civil 10 Application No.19 of 2008***, cited by learned counsel for the applicants and respondents; where Okello JSC, as he then was, said: *"For an application for an interim stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before hearing the substantive application. It is not necessary to pre-empt the consideration of matters necessary in deciding whether or not to grant the substantive application for stay."*

9. In ***Patrick Kaumba Wiltshire Vs. Ismail Dabule, Supreme Court Civil Application No. 03 of 2018***; Supreme Court referred to its earlier decision in *Zubeda Mohamed & Anor v. Laila Walia & Anor, Civil Reference No. 07 of 2016* where it laid down the conditions to be satisfied by an Applicant to justify the grant of an interim order as : i) A competent Notice of Appeal; ii) A substantive application; and iii) A serious threat of execution. "

I shall analyse if each of the above three conditions have been satisfied by the applicants.

***a) A competent Notice of Appeal.***

10. The record shows a notice of appeal in respect of Civil Suit No.058 of 2015 marked as 'R' lodged in this court on 18/10/2022. Counsel for the respondents in the written submissions concedes to this; but argues that the appeal lacks merit. Whether the appeal has merit or not, is a decision to be made by the appellant court; the existence of the notice of appeal has been proved 

***b) Whether there exists a substantive application.***

11. It is uncontested by the respondents that the applicants have filed Miscellaneous Application No.250 of 2023 for stay of execution of the decree in Civil Suit No.58 of 2015 pending hearing and determination before this court; which fact counsel for the respondents admits in the submissions; this condition has also been proved.

***c) Whether there is a serious threat of execution.***

12. Counsel for the applicants submitted there is an eminent threat of executing the decree in the civil suit before the determination of Misc. Application No.250 of 2023 since the respondents have brought several buyers to inspect the suit land at Makindye and the family banana plantation has all been cut down with the intention of disposing off the property; in support of his submissions counsel cites the case of Gashumba Maniraguha Vs. Sam Nkundiye, SC Civil Application No.24 of 2015 where court held that there was imminent threat of execution where it is discovered that there was a permanent house on the suit land which was yet to be demolished.
13. For the respondents, counsel submitted that the respondents have demonstrated that they have not instituted any execution proceedings; they have only filed for taxation of their bill of costs; the applicants have not been served with execution proceedings, a notice to show cause or whatsoever to prove the claims of an ongoing execution.

14. At Paragraph 9 of the affidavit in support of the application it is stated that there is a serious threat of executing the decree arising out of the High Court judgment as the respondents have brought several potential buyers to inspect the suit land which was declared not to form part of the estate of the late Enosi Mbowe and all family banana plantations on the land have been cut to pave way for the intended sale before the determination of Misc. Application No.250 of 2023 as well as the said appeal; attached thereto is a photograph of the cut down banana plantations.

15. The 1<sup>st</sup> respondent in the affidavit in reply contends that court declared the property at Makindye not part of the estate of the deceased, but the property of Jane Naluyima Mbowe; the respondents do not deny cutting the banana plantation but claim that they not only have a right to cut it but it was infected;

16. The respondents have not adduced evidence of the alleged banana disease which led to the cutting down of the plantation on the suit land at Luwafu Makindye; I find the claim hearsay.

At paragraph 7 of the affidavit in reply, the respondents admit having filed the bill of costs for taxation but that the same has not been fixed for hearing.

17. The filing of a bill of costs amounts to a start of execution, for a bill of costs is part and parcel of the execution process. The fact that the respondents extracted a decree shows imminent execution. The applicants claim in their memorandum of appeal to the Court of Appeal that it was an error for this court to hold that the residential holding situate at Makindye Luwafu is not part of

the estate of the late Enos Mbowa. The respondents are alleged to have tampered with the suit land which, according to the applicants, and they are beginning the execution process; I find that it would not be in the interest of justice if anything is allowed to be done concerning the suit land before the main application is disposed of as it would render it nugatory; issue 3 is answered in the affirmative.

18. In the circumstances it is in the interest of justice to grant an interim order of stay of execution of the decree issued in HCCS No. 58 of 2015 pending the hearing and final disposal of Misc. Application No.250 of 2023.

The application succeeds with no order as to costs.



Ketrah Kitariisibwa Katunguka

Judge

17/10/2023

Delivered by email to:  
[balesada2@gmail.com](mailto:balesada2@gmail.com), [balesad@yahoo.com](mailto:balesad@yahoo.com), [yovino.okwir@gmail.com](mailto:yovino.okwir@gmail.com)