

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
MISCELLANEOUS APPLICATION NO. 179/2020  
(Arising out of Miscellaneous Application No. 619 of 2019)  
(Arising out of Civil Suit No. 422 of 2018)

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KIWANUKA ANTHONY.....APPLICANT

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VERSUS

1. ASUMAN SEMAKADDE  
2. ISA WAMALA  
3. JAFFALI SEKYANDA  
4. MADINA NANTEZA.....RESPONDENTS

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Before: Lady Justice Alexandra Nkonge Rugadya

RULING:

Introduction:

20 This application seeks orders under **Orders 9 rr 12 and 23 and 52 rr 1 and 3 of the Civil Procedure Rules S.I 71-1; section 98 of the Civil Procedure Act, Cap 71; and article 28 of the Constitution of Uganda; and the Judicature.**

The orders are that the execution of the judgment in **HCCS No. 422 of 2018** be stayed pending appeal; and that this court grants the respondents leave to appeal against **HCMA No. 619 of 2019.**

25 The application is supported by the affidavit of Mr. Kiwanuka Anthony who is represented through the firm of **M/S Katende, Ssempebwa & Co. Advocates, Solicitors and Legal Consultants**, while the affidavit in reply in objection to the application was filed by Mr. Issa Wamala, represented through the firm of **M/S Arthur-Arutha & Co. Advocates.**

**Back ground to application.**

The respondents instituted **HCCS No. 422 of 2018** against the applicant for trespass on the land comprised in **Kyadondo Block 79 Plot 29, land at Lugo**; and among others, sought orders for vacant possession and general damages.

- 5 Upon the applicant's failure to enter appearance, an *ex parte* judgment was passed against him. He filed an application vide: **HCMA 619 of 2019** under which he sought to set aside the *ex parte* judgment; and prayed for reinstatement of the main suit, which prayers court declined to grant in its ruling made on 23<sup>rd</sup> January, 2020.

- 10 In this application therefore, he seeks two orders: that execution of judgment in **HCCS No. 422 of 2018** be stayed pending appeal; and for this court to grant leave to appeal against **HCMA No. 619 of 2019**.

In the affidavit in reply the respondents however raised some points of law that since there was no application for execution of the judgment secured in the main suit the application was prematurely before this court.

- 15 Furthermore, that there was no irreparable damage/loss would be occasioned to the applicant by any execution and that the application was full of falsehoods, is misconceived and misguided, the effect of which was to render the application incurably defective.

The applicant did not file any rejoinder.

**Consideration of the issues:**

- 20 Details of the pleadings and submissions filed by each side in relation to this application are on record and I need not reproduce them here. The objection against the application is based two main grounds:

- 25 That in the first place there is no evidence that an appeal was filed against the judgment in **HCCS No. 422 of 2018**, in respect of which the order of stay is sought, and that the application therefore discloses no grounds so as to merit such orders sought.

Secondly, the supporting affidavit offends the requirements of **section 3 of Illiterate Protection Act, Cap. 78** which made the application incurably defective and therefore inadmissible.

**Section 3 of the Illiterates Protection Act:**

- 30 Any person who shall write any document for or at the request of or on behalf or in the name of any illiterate shall also write on the document is or her own true and full name as



*the writer of the document and his or her true full address, and his or so doing shall imply a statement that he or she was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read over and explained to him or her.*

- 5 The import of that section is to ensure that documents which are purportedly written for and on instructions of illiterate persons are understood by such persons if they are to be bound by their content.

10 These are stringent measures which were intended to protect illiterate persons from manipulations or any oppressive acts of those who are literate. The requirements are legal not merely procedural.

The omission or failure to comply with those requirements cannot therefore be redeemed by **article 126 (2)(e) of the Constitution**. (See also: ***Tikens Francis and Anor vs the Electoral Commission and 2 others; Kasaala Growers Cooperative Society versus Kakooza and another.***)

- 15 A careful look at the affidavit in support by the applicant filed 24<sup>th</sup> February 2019 in support of **MA No. 619/ 2019** and another filed on 7<sup>th</sup> October, 2019 vide **MA No. 1540 of 2019** both by the applicant, prove the assertion made by counsel for the respondents.

20 In each of those cases one Hasfa Namulindwa had duly complied with the requirements of the said Act by attaching the certificate of translation below the applicant's signature. This meant that it was an acknowledged fact that the applicant was illiterate and therefore **section 3 of the Illiterates Protection Act** duly applied to him. When it however came to the present application, the pleadings did not bear the certificate of translation.

The possibility that the applicant became literate between 7<sup>th</sup> October, 2019 when **MA No. 1540 of 2019** was filed and 11<sup>th</sup> February, 2020 when the instant application was filed, is so remote.

- 25 It is not made any easier when court also noted that the signatures of the applicant appearing in each of the affidavits in the separate applications were glaringly different; one did not have to be a handwriting expert to notice that anomaly.

30 It is also clear that no memorandum of appeal or at least a notice of appeal was ever filed by the applicant against the decision of this court in **HCCS No.422 of 2018**, to justify a stay of execution that a court may grant under **order 43 of the Civil Procedure Rules**.

Against that backdrop, the conclusion is inevitable that there was non-compliance with the above requirements of the law; there was no valid expression of interest by the applicant to challenge

the orders of court and that the firm representing the applicant therefore had no prior valid instructions to file the pleadings on behalf of the applicant,

Since therefore no rejoinder was filed by the applicant in reply or by the counsel by way of submissions to challenge that position, this becomes a foregone conclusion.

- 5 I must therefore reject this application as fatally defective and therefore incompetently before this court, and strike it out with costs against counsel in personal conduct of this application.

  
**Alexandra Nkonge Rugadya**

**Judge**

10 **6<sup>th</sup> May, 2021**

*Delivered via e-mail 10/5/2021*