

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA**  
**AT KAMPALA**

**MISC. APPLICATION NO. 005 OF 2023**

**(Arising from Civil Application No. 05 of 2023)**

**(Arising from C.A.C.A No. 250 of 2016)**

**(Arising from Masindi High Court Civil Appeal No. 05 of 2014)**

**(Arising from Masindi Chief Magistrates Court Civil Suit No. 9  
of 2006)**

**KISEMBO EMMANUEL & ORS ===== APPLICANTS**

**VS**

**TIBEZINDA MOSES & ORS ===== RESPONDENTS**

**RULING OF MIKE J. CHIBITA, JSC**

This is an application, brought under Rules 2(2), 42 (1), 43, 50 and 51 of the Judicature (Supreme Court Rules) Directions, seeking the following orders:

1. An Interim Order of Stay of Execution and Judgment and/or the Decree of the Court of Appeal in Civil Appeal No. 005 of 2014 until the main application No. 05 of 2023 is fully disposed of;
2. Costs of the Application be provided for.

The Notice of Motion is supported by the affidavit of Kisembo Emmanuel, the 1<sup>st</sup> Applicant, sworn on the 20<sup>th</sup> day of February, 2023

The application was opposed by the Respondents who filed an affidavit by Tibezenia Moses, the 1<sup>st</sup> Respondent, undated.

The brief facts of the case are as follows: -

This is a third appeal. The original suit was filed in the Chief Magistrates Court of Masindi. The suit concerned a dispute over a piece of land situated in Kitamanya village, Kikwanana Parish, Nyagahya sub County, Masindi District in 2006.

In 2014 the Applicants were declared the rightful owners of most of the land, except pieces occupied by the Respondents, by the Chief Magistrate, Masindi.

On appeal, the High Court reversed the decision of the Chief Magistrate and allowed the appeal.

On further appeal, the Court of Appeal affirmed the decision of the High Court and dismissed the Applicants' appeal.

Being dissatisfied with the decision of the Court of Appeal, the Applicants are desirous of filing a Third appeal to the Supreme Court. They informed Court that they consequently filed Miscellaneous Application No. 05 of 2023, applying for a Certificate of Importance.

In the meantime, the Applicants filed the instant application for an Interim Order to stay execution of the Orders of the Court of Appeal.

## **REPRESENTATION**

At the hearing of the instant application on 16<sup>th</sup> March, 2023, the Applicants were represented by learned Counsel Alfred Okello Oryem while the Respondents were represented by learned Counsel Innocent Okongo. All the Respondents, as well as the first and third Applicants were in court.

The lawyers were asked to file written submissions following a schedule issued by court.

## **APPLICANTS' CASE**

Learned Counsel for the Applicants contended that there is a serious threat of execution as evidenced by letters written to the Applicants by the Respondents. He further stated that there is a substantive application pending, as well as a Notice of Appeal, on record, as required by law.

Learned Counsel cited **Hwan Sung Industries Ltd vs Tajdin Hussein and 2 others SCCA No. 19 of 2008**, **Gashumba Maniraguha vs Sam Nkundiye SCCA No. 25 of 2014** and **Osman Kassim Ramathan vs Century Bottling Co. Ltd SCCA No. 35 of 2019**.

Learned Counsel also sought to distinguish the cases cited by the learned Counsel for the Respondents in opposition to the application. These cases include, **Remigio Obwana vs The Registered Trustees of Tororo Diocese SCCA No. 14 of 2021**, **Paddy Musoke vs John Agard & 2 others SCCA No. 37 of 2021**.

## **RESPONDENTS' CASE**

The Respondents opposed the application in an affidavit sworn by the 1<sup>st</sup> Respondent, Tibeziinda Moses. He averred that there has not been an application for an order to execute the Orders of the Court of Appeal but had only instructed his lawyers to give notice to the Applicants to leave the land in dispute.

The deponent further denied dividing and selling the suit land.

He further averred that the Applicants have not filed any application for stay in the Court of Appeal as required by law before filing the instant application. He therefore prayed that the instant application be dismissed for being incompetent.

In his written submissions, learned Counsel for the Respondents raised a preliminary point of law to the effect that the 4<sup>th</sup> applicant was dead and therefore rule 49(2) of the Judicature (Supreme Court Rules) Directions should come into play.

He further argued that the instant application did not meet the conditions for grant of an Interim Order set out in **Remegio Obwana vs Registered Trustees of Tororo Diocese (supra)**.

He cited the cases of **Paddy Musoke vs John Agard and 2 others SCCA No. 37 of 2021** and **Lawrence Musiitwa Kyazze vs Eunice Busingye SCCA No. 18 of 1990** to further support his opposition to the grant of an Interim Order

### **CONSIDERATION**

I have keenly and analytically considered the affidavits and other pleadings on record and evaluated all the available evidence.

The law applicable is section 6(2) of the Judicature Act, which provides as follows:

**“Where an appeal emanates from a judgment or order of a Chief Magistrate or a Magistrate Grade 1 in the exercise of his or her original jurisdiction, but not including an interlocutory matter, a party aggrieved may lodge a third appeal to the Supreme Court on the Certificate of the Court of Appeal that the appeal concerns a matter of law of great public or general importance, if the Supreme Court considers, in its overall duty to see that justice is done, that the appeal should be heard.”**

Rule 2(2) of the Rules of this court provide as follows:

**“Nothing in these rules shall be taken to limit or otherwise affect the inherent powers of the Court, and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such Court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay”**

Rule 3(b) of the rules this Court provides as follows:

**“appeal in relation to appeals to the court, includes an intended appeal.”**

Rule 39(1)(b) of the rules of this court provides as follows:

**“if the Court of Appeal refuses to grant a certificate as referred to in paragraph (a) of this sub rule, an application may be lodged by notice of motion in the court within fourteen days after the refusal to grant the certificate by the Court of Appeal for leave to appeal to the court on the ground that the intended appeal raises one or more matters of great public or general importance which would be proper for the court to review in order to see that justice is done.”**

The Jurisdiction of this Court to grant a stay of execution or any other injunctive order is set out in **Rule 6(2) (b)** of the Rules of this Court. The rule provides as follows:

**“(2) Subject to sub rule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may-**

**(b) In any civil proceedings, where a notice of appeal has been lodged in accordance with rule 72 of these rules, order a stay of execution, an injunction of proceedings as the Court may consider just.”** (Emphasis mine)

The basic requirements that ought to be satisfied by an applicant for the grant of an interim order for stay of execution are the following:

1. The applicant should have filed a notice of appeal and requested for a certified copy of the judgment and proceedings to enable him or her file a memorandum of appeal.

2. The applicant should have lodged a substantive application for stay of execution.
3. The applicant must show that there is a serious threat of execution of the judgment and orders being appealed against.
4. It must be shown that the substantive application and the appeal will be rendered nugatory if court does not grant the interim order of stay.
5. It should be shown that the appeal stands a reasonable likelihood of success.
6. It must be shown that the applicant will suffer irreparable loss if the court does not grant the interim order of stay of execution.  
(See **Francis Drake Lubega vs. A.G & Anor, SC Misc. Appl. No. 13 of 2015, Theodore Sekikubo & Others vs. A.G, SCCA No. 4 of 2014, Hwang Sung Industries vs. Tajdin, SCC Appl. No. 19 of 2008, Belex Tours & Travel Ltd vs. Crane Bank Ltd, Misc. Appl. 21 of 2015.**)

The aforementioned Rule 72(1) provides as follows:

***“Any person who desires to appeal to the court shall give notice in writing, which shall be lodged in duplicate with the registrar of the Court of Appeal.”***  
(Emphasis mine).

“The term “appeal” is defined by **Black’s Law Dictionary @ 96, (supra) to mean:**

***“a complaint to a higher tribunal of an error or injustice committed by a lower tribunal, in which the***

***error or injustice is sought to be corrected or reversed.***

Indeed, the memorandum of Appeal filed by the 1<sup>st</sup> Respondent shows the dissatisfaction with the Court of Appeal's decision. The 1<sup>st</sup> Respondent seeks to overturn the decisions of the Court of Appeal which confirmed the decisions of the High Court. The law permits such an appellant who is desirous of having this Court as the last appellate court to consider the complaints raised in the grounds of appeal, and faced with the threat of execution of the lower court's decision and orders before the determination of the appeal, to apply for the invocation of court's discretion to grant an injunctive order against the successful party pending the disposal of the appeal.

The grant of an order of stay or injunction is meant to protect the appellant's/applicant's right of appeal. This position was illustrated in the case of **Kiganda John & Anor vs. Yakobo M.N Senkungu, SCCA No. 16 of 2017**, Tumwesigye, JSC explained thus:

***“The essence of an order for interim stay of execution is that when a party pursues his/her right of appeal, the appeal should not be rendered nugatory should it be successful; the stay will preserve the status quo pending the disposal of the appeal.***

(See also **Hon. Theodore Ssekikubo & Others vs. A.G, SCCA No. 4 of 2014**.)

It was argued for the Applicant that this Court is empowered with wide discretion under rule 2(2) to entertain such applications and to



make such orders as may be necessary to achieve the ends of justice or to prevent the abuse of its process.

Counsel for the Respondents denied ever intending to execute the Orders of court to evict the Applicants. He only admitted to writing letters to the Applicants.

Indeed, in his affidavit in reply, Moses Tibeziinda, avers, in paragraph 12 as follows:

*“...there is no imminent threat to execute the decree and the applicants have not shown any such threat.”*

In paragraph 13 of the affidavit, he continues:

*“... I and the other Respondents wrote letters to inform the occupants on the land about the decision of the Court of Appeal and to request them to leave peacefully without incurring costs of a bailiff...”*

On the one hand, the Respondents contend that there is no imminent threat of eviction, while on the other hand they concede that they wrote letters to the Applicants asking them to leave.

The Applicants have interpreted the aforementioned letters as a threat of eviction. Regardless of the intentions of the Respondents, if the Applicants feel threatened by the letters written to them, I would resolve any interpretation of the letters in favour of the Applicants.

The Applicants are on the receiving end of the communication. It is their interpretation of the communication, in absence of further



explanation by the author of the communication, that matters in this particular case.

Either way, the Respondents are not, in principle, opposed to the continued stay of the Applicants on the suit land until resolution of the matters pending in court.

The preliminary point of law regarding death of one of the applicants was not supported by evidence and cannot therefore be taken seriously enough to be discussed. It is therefore disregarded.

In the result, I find that the applicants have satisfied the conditions necessary for grant of an Interim Order for stay of Execution.

The Interim Order is therefore, hereby, granted restraining the Respondents and their agents from evicting or threatening to evict the Applicants until the final disposal of the main application No. 05 of 2023.

Or, until further Orders by this Court.

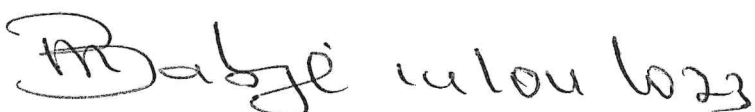
Costs will abide the outcome of the substantive application.

Dated at Kampala, this 14<sup>th</sup> day of April 2023

  
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**Mike J. Chibita**

**Justice of the Supreme Court**

Delivered as directed by the  
Hon. Justice 



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The Interim Order is therefore, hereby, granted restraining the Respondents and their agents from evicting or threatening to evict the Applicants until the final disposal of the main application No. 05 of 2023.

Or, until further Orders by this Court.

Costs will abide the outcome of the substantive application.

Dated at Kampala, this 14<sup>th</sup> day of April 2023

  
.....

**Mike J. Chibita**

**Justice of the Supreme Court**

Delivered as directed by the  
Hon-Justice Abaje 14/04/2023

