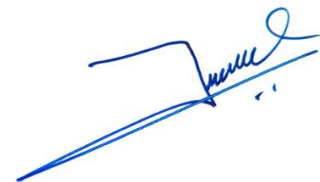


Background

The applicants are the successful decree holders against the respondents in High Court Civil Suit No. 0015 of 2019. Being dissatisfied with the decision of this Honorable court the respondents preferred an appeal to the Court of Appeal thus applied to this Honorable court vide Miscellaneous Application No.0166 of 2022 for stay of execution which application was successfully granted by this Honorable court pending determination of their appeal against the applicants.

This application is supported by an Affidavit sworn by Tekereza Hellen Baryayanga on behalf of the other applicants setting down the grounds for this application briefly as;

1. That the applicants are the successful decree holders in Civil Suit No. 0015 of 2019 against the respondents and two others from which the respondents preferred an appeal thus filing a notice of appeal in December, 2022 coupled with a request for a certified copy of proceeding.
2. That the respondents filed Miscellaneous Application No.0166 of 2022 for stay of execution on ground that the respondents had filed an appeal in this honorable court and the same was granted.
3. That since the notice of appeal was filed on 22nd November, 2022 no further step has been taken to properly ensure that the appeal is on record by filling a memorandum of appeal.
4. That the certified copies of record of proceedings and judgment were ready on the 23rd day of February, 2023 and it is now over 60 days from



the date of certification but the respondents have refused or failed to file a memorandum of appeal within the required timelines.

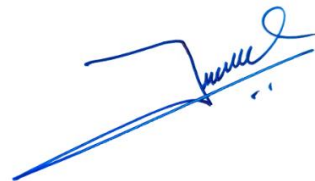
5. That in effect there is no appeal preferred against the applicants.
6. That the applicants are aggrieved and prejudiced by the ruling in Misc. Application No. 0166 of 2022 as it deprives them from enjoying the fruits of a successful litigation against the respondents.
7. That it is fair just and equitable that this application be allowed and the ruling of this court be reviewed and set aside for the ends of justice to be served.

10 In the affidavit in reply sworn by Kyaligonza Sylvia on behalf of the other administrators the respondents replied as follows;

1. That the respondents filed an application for stay of execution vide Miscellaneous Application No. 0166 of 2022 which was granted on the 14th day of March, 2023.
- 15 2. That the certificate of correctness of the record was signed on 18th May, 2023 and a memorandum of appeal was filed in the court of appeal on the 25th May, 2023.
3. That this application has no foundation as the respondents have dully filed their appeal.
- 20 4. That it is in the interest of justice that this application is dismissed with costs to the respondents.

Representation

The applicants were represented by Counsel Zemei Susan of M/S Zemei, Aber Law Chambers and the respondents were represented by Counsel Kasangaki Simon of M/s Kasangaki & Co. Advocates.



Court granted leave to parties to file written submissions, however, it was only the respondents who complied with the same.

Issue for determination

Whether the applicant has sufficient grounds for review

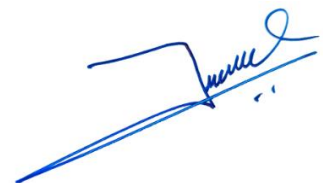
5 According to the record both parties have filed numerous applications to this court and for the sake of bringing litigation to an end and getting justice for both parties I will indulge into resolving issues as per this application. Appropriate consideration has been made as regards the submissions of the parties. My decision on the same is as below;

10 It is trite law that just like the right to appeal, an order in review is a creature of statute which must be provided for. While considering an application for review court must exercise its discretion as provided judiciously.

The powers of this honorable court to revise its decisions is provided for under Section 82 of the Civil Procedure Act and the grounds for review are well
15 outlined under **Order 46 rule (1) of the Civil Procedure Rules**. In the case of FX Mubuuke vs UEB; High Court Misc. Application No. 0098 of 2005 the grounds for review as per O.46 r (1) are;

1. That there is a mistake or manifest mistake or mistake apparent on the face of the record.

20 2. That there is a discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order was made.



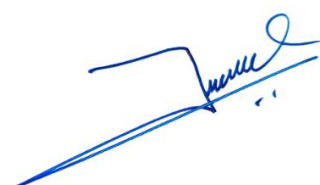
3. That any other sufficient reason exists.

According to the affidavit in support of this application the applicants premise their prayers under the third ground that is to say; any other sufficient reason that exists to warrant review of a decision.

- 5 Sufficient reason means reason sufficient on grounds analogous to those in the rule. In the instant case the applicants claim that the respondents failed to lodge an appeal by filing a memorandum of appeal in the court of appeal within the stipulated timelines as such there is no appeal and so the orders of this court to stay execution should be set aside.
- 10 In response, the respondents contend that they filed their memorandum of appeal in the court of appeal within the stipulated timelines. In their submissions the respondents contend that when they filed the letter requesting for a record of proceedings which was also served to the respondents the time limitation was halted until they received the record of proceedings from the
- 15 Registrar of this honorable court. The respondents prayed that the application be dismissed with costs as this honorable court is not the right forum to bring applications regarding propriety of instituting the appeal.

According to the Judicature (Court of Appeal Rules) an appeal in the court of appeal is lodged by way of filing a memorandum of appeal in the court of appeal.

- 20 In the circumstances the respondents filed the memorandum of appeal on the 25th day of May, 2023 which is a step taken in prosecuting the appeal. This court has the powers as per Section 98 of the CPA to grant any orders however it has no powers to decide on cases that are not before it in higher court. In the instant case an appeal is already before the court of appeal as such the high court has



no power to decide whether it was properly filed within time as per the law or not thus reviewing its decision for orders to set aside its orders for stay of execution. The right forum for such an application is the court of appeal since currently the suit is before it.

- 5 In light of the above analysis, I find no merit in this application and I therefore dismiss it with costs to the respondents.

I so Order.

Dated and delivered this 13th day of October 2023.



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**Isah Serunkuma
JUDGE**