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- Acam Florence, with the consent of the other applicants, deposed an affidavit $\$ \mathsf{S} \$$ supporting the application containing the grounds upon which the application is anchored. She stated that:
 - a) The applicants were sued by the respondents in the main suit.
 - b) The applicants were never served with the summons to file a defence.
 - c) Without directly consulting them, a written statement of defence was filed on the applicants' behalf through M/s Isodo and Company Advocates.
 - d) When the applicants' inquired how the defence was filed on their behalf, they realised that three politicians, the 1st, 2nd and 3rd defendants in the main suit, approached M/s Isodo & Company Advocates and instructed them to file a defence on their behalf.
 - e) After giving M/s Isodo & Company Advocates instructions, the first, second, and third defendants in the main suit abandoned the lawyer, who lost interest in the case. Since the lawyer did not know the other applicants, he could not contact them.
 - f) The impasse caused the respondent to proceed **ex parte** to the applicants' detriment.
 - g) The applicants did not know any of the proceedings in court and were only shocked when the respondents' bailiffs began arresting and threatening some of the applicants with arrest in the execution of a court order.
 - h) The respondents are currently executing the court orders where the 1st applicant has since been arrested and has paid UGX 3 million in costs over a matter she did not participate in nor know about. Annexure B
 - i) The 1st applicant is currently pensive about another arrest as the respondents still demand more from her, while the other applicants are in panic mode as they expect to be arrested anytime.
 - j) The applicants have filed to set aside the **ex parte** judgment, which is yet to be determined by this honorable court.
 - k) It is in the interest of justice that this application be allowed to permit them to exercise their constitutional right to be heard such that any execution shall be based on final court orders obtained inter-party.
- 3. Grounds in opposition to the application:
 - Agama Richard, with the consent of the 2nd respondent, deposed an affidavit in reply in opposition to the application. He stated that;

- a) The present application is an afterthought to frustrate the execution, even after the execution process has already commenced. (See a copy of receipts marked B and C, respectively, on the applicants' affidavit in support and are attached hereto as "A1 and A2")
- b) The 1st applicant cannot bring this application after consenting to a payment schedule. The Respondents shall raise a point of law on the same.
- c) The applicants were properly served with summons to file a defence, and through their lawyers, M/s Isodo and Co. Advocates, they filed a Joint Written Statement of Defence. (See a copy of the Affidavit of Service and Joint Written of Defence marked as "B1 and B2".)
- d) A Joint Written Statement of Defence was filed by the applicants in 2017, and the issue of non-service on the applicants has never come up in court as they claim, and Counsel Isodo Samuel has always appeared for all the applicants.
- e) The applicants' counsel always attended Court, and he never denied having been given instructions to defend the applicants/defendants.

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- f) The applicants through their counsel were served but opted not to attend court and the court directed that the matter proceed *ex parte* on 9th March 2022. (A copy of the affidavit of service and order of the court marked as C1 and C2 respectively.)
- $\$S$
- g) The orders of the court resulted into issuance of a warrant of arrest in execution and the said execution is being implemented. (A copy of the warrant of execution marked as "D")
- h) The applicants have always been aware of the court proceeding and their counsel has always been attending court and filing pleadings on their behalf even after court directed the matter to proceed *ex parte*. (A copy of the application, affidavit in reply and letter dated 25th August 2022 from the applicants' lawyers requesting for withdrawal are attached as E1, E2 and E3, respectively.)
- i) The respondents' lawyers have advised that the applicants and others filed Misc. Application No. 103 of 2022 on 21st July 2022 to set aside the *ex parte* order and/or proceedings and later opted to withdraw the same, which the Registrar withdrew on 12th September 2022. (A copy of the Application, Affidavit in Reply and letter dated 25th August 2022 from the Applicants' lawyers requesting for withdrawal are already attached as "E1, E2, E3".)
- j) There was an inordinate delay in filing this application since the judgment in Civil Suit No. 15 of 2017 was delivered in 2022, and the Applicants filed Misc. Application No. 103 of 2022 to set aside the *ex parte* order and proceedings, which they abandoned and withdrew.

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- k) The applicants are using this application to evade the execution process, which is already ongoing, which is an abuse of the court process.
- l) The application to set aside has no likelihood of success.

- m) The respondents' lawyers advised that the present application is an afterthought which only came up to avoid further execution processes which have been ongoing.
- n) This application has no merit and should be dismissed with costs.
- 4. Representation: \$5\$

Counsel Opolot Simon represented the applicants, while Counsel Omurangi Lillian and Counsel Natukunda represented the respondents. The parties filed written submissions, which have been considered accordingly. I am thankful for the submissions and will refer to them as and when necessary.

5. Issues: 10

Two issues suffice to resolve the instant application and these are;

- a) Whether there is a proper case for grant of an order for a stay of execution?
- b) What are the remedies to the applicants in the circumstances?

6. Resolution: 15

This application was brought under Section 98 of the Civil Procedure Act, Cap 282 (CPA) which inherently empowers this court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Likewise, the application was brought under Section 33 of the Judicature Act, Cap

- 16, which empowers this court to grant absolutely or on such terms and 20 conditions as it thinks just all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided. 25
- As this is an application arising from a civil matter, it is trite law that the duty and burden of proof lies on the applicants because they are the ones who seek to get

a decision of this court in their favour. (See: Sections 101 and 102 of the Evidence Act, Cap 6).

- a) Whether there is a proper case for grant of an order for a stay of execution?

- It is a settled position of the law that the court has inherent discretionary power $\$ \backslash \mathrm{mathsf{S}} \$$ to stay execution of its orders and while doing so, the court weighs the circumstances of each particular case and exercises discretion on whether to stay execution or grant the order sought. (see: Umeme Limited v Nankabirwa (Miscellaneous Cause No 154 of 2021) 2022 UGHCCD 56).

The case of Lawrence Musiitwa Kyazze Vs. Eunice Busingye Supreme Court Civil 10 Application No. 18 of 1990 enlists the grounds to be considered for applications of this nature and these are:

- a. That substantial loss may result to the applicant unless the order is made.
- b. That the application has been made without unreasonable delay.
- c. That security has been given by the applicant for due performance of the decree.

The said grounds were increased on by the Court of Appeal of Uganda in the case of Kyambogo University vs Prof Isaiah Omolo Ndiege CACA No. 341 of 2013, where the grounds were further enhanced to include;

- a) There is a serious or imminent threat of execution of the decree or order, and if the application is not granted, the appeal would be rendered nugatory.
- b) That the application is not frivolous and is likely to succeed.
- c) That the refusal to grant the stay would inflict more hardship than it would avoid
- d) The Applicant must show that he lodged a notice of appeal.

I will follow the grounds as represented above to establish whether or not a stay of execution can be preferred in favour of the applicant.

- a) The applicants have filed an application to set aside the *ex parte* judgement The applicants aver that they have filed to set aside the *ex parte* judgement which

is yet to be determined by this court in form of Miscellaneous Application No. 30 $\$ \backslash \mathrm{mathsf{S}} \$$ of 2024. The respondent accedes to this fact.

I have perused Miscellaneous Application No. 30 of 2024. It is seeking orders to set aside the *ex parte* decree/judgement issued in Civil Suit No. 15 of 2017. Since this fact is confirmed and none of the parties denies the existence of the said application then I am satisfied that that substantive application exists. Consequently, the applicants have proved this ground.

b) There is a serious or imminent threat of execution of the Decree or order, and if the application is not granted, the Appeal would be rendered nugatory.

- The applicants averred that they were shocked when the respondents' bailiffs 15 began arresting and threatening some of the applicants with arrest in executing a court order by which the 1st applicant was arrested, and he paid UGX 3,000,000 in costs over a matter he did not participate in. The applicants' counsel submitted that the other applicants are all under threat and live in fear of being picked up
- at any time, including the first applicant, a civil servant who has since failed to 20 cope with the demands to pay the balance.

On the other hand, the respondents contended that the present application was an afterthought to frustrate the execution, even after the execution process had already commenced and that the 1st applicant cannot bring this application after consenting to a payment schedule.

The respondents' lawyers submitted that there is no pending threat of arrest because the parties entered a consent, which is on the court record, that the

defendants/applicants would pay the decretal sum together with costs, whereupon the 1st applicant paid the first instalment of 3 million and the respondent

has since detested from executing the said decree.

In the case of **Uganda Revenue Authority versus East African Holding Limited Court* \$ \overline{5}\$ of Appeal Civil Appeal No. 144 of 2014, while dismissing an application such as the instant one, Richard Buteera, JA held that;*

"There must be established by evidence a serious and imminent threat of execution of the decree or order, and the evidence should be adduced that if the application is not granted, the main application and the appeal shall be rendered nugatory."

I have examined the applicants' annexures B and C, marked A1 and A2 by the respondents. They relate to the 1st applicant's part payment of the decretal 15 amount, and I have also perused the execution file vide Miscellaneous Application No. 17 of 2023; I have not seen the consent agreement of the parties, which the respondent's counsel submitted on.

I am satisfied that execution has already commenced with a warrant of arrest in execution dated 13th May 2024, which was issued against all the applicants. 20 Therefore, the applicants' contention that the imminent threat is against the rest because Acam Florence was arrested is flawed because the warrant of arrest issued on 13th May 2024 was against ALL the applicants.

This means that execution is already in motion, and the object of this application cannot be fulfilled. The applicants have not proved this condition.

c) There is no inordinate delay in bringing the application:

The respondents averred that there was an inordinate delay in filing this application since the judgment in Civil Suit No. 15 of 2017 was delivered in 2022. This instant application was filed on 01 March 2024, and the application to set

- aside the exported judgment was also filed this year. $\$ \backslash \mathrm{mathsf{S}} \$$ There is clearly no inordinate delay in filing this application since it springs out of Civil Suit No. 15 of 2017 whose decision was delivered on 17th August 2022 and even for Miscellaneous Application No. 30 of 2024, which seeks to set it aside, it was filed shortly before the instant application but this year of 2024.
- This instant case presents special circumstances because before the instant 10 application and the application from which it springs, after the **ex parte** order in Civil Suit No. 15 of 2017, the applicants filed Miscellaneous Application No. 103 of 2022 but later withdrew it citing the reason that it had been overtaken by events since the judgement in Civil Suit No. 15 of 2017 had been delivered on 17th August 2022. 15

From that time till 20th April 2023 when execution vide Execution Application No. 17 of 2023 was filed and up until 27th November 2023 when a warrant of arrest in execution was issued, there was no imminent threat.

I am convinced that since imminent threat started on 27th November 2023, this instant application being filed on 22nd February 2024 does not indicate inordinate delay as it sought to stay the warrant of arrest which unfortunately the application has not.

Be that as it may, the application was not filed with inordinate delay. The applicants have proved that there is no inordinate delay in bringing this present

application. 25

d) That substantial loss may result to the applicants unless the stay of execution is granted:

The applicants averred that they did not know any of the proceedings in court and were only shocked when the respondents' bailiffs began arresting and threatening some of the applicants with arrest in the execution of a court order $\$ \backslash \mathrm{mathsf{S}} \$$ and that the respondents are currently executing the court orders where the $\$ 1^{\wedge} \backslash \mathrm{rm} \mathrm{st} \$$ applicant has since been arrested and has paid UGX 3 million in costs over a matter she did not participate in nor know about.

The applicants' counsel submitted that the applicants are faced with a colossal bill where each of them is expected to pay approximately UGX 7,000,000/= for a 10 matter that they never participated in and that, in the current times, it is close to impossible for peasant farmers like the applicants to raise UGX 7 million shillings, and to watch them succumb to arrest will be unjust in the face of this application in which counsel for the applicants contended will result in substantial loss. On

the other hand, the respondents contended that the present application is an 15 afterthought to frustrate the execution, even after the execution process has already commenced and is ongoing, but that there was consent entered, and the respondent is waiting for the applicants to pay up as to the terms of the consent. In the case of *Eriab Kabigiza vs. Lawrence Sserwanja (1975) HCB 199*, it was held that: 20

"The main criterion for staying execution should be whether the judgment debtor would suffer substantial loss if the decree was executed, notwithstanding that the decree might subsequently be set aside."

Also, in the case of *Tropical Commodities Supplies Ltd and Others vs. International* Credit Bank Ltd (in liquidation) [2004] 2 EA 331, substantial loss was described thus;

"Substantial loss does not represent any particular size or amount but refers to any loss, great or small, that is of real worth or value as distinguished from a loss that is merely normal."

Further, in the case of *Mabu Commodities Limited versus Sophie Nakitende HCMA* No. 530 of 2020, it was observed that;

In this case, the Applicant has not demonstrated that the loss (if any) will not 10 be capable of monetary atonement by the Respondent, who is a businesswoman or that it will affect the operations of the company. There seems to be a common thinking among litigants that the court can grant a stay of every decree as an automatic right by alleging substantial loss, which is wrong. While exercising the discretion conferred under the law of stay of execution, the court should duly consider that a party who has obtained a lawful decree/order is not deprived of the fruits of that decree except for good and cogent reasons."

It was further observed in the case of Mabu Commodities Limited versus Sophie Nakitende (supra) that;

"The substantial loss must be proved with cogent evidence in order for the court to be able to assess the impact and potential loss or handicap the company will suffer. In the absence of any books of accounts of the applicant, this court is not persuaded by mere statements that the company will suffer any substantial loss. The applicant failed to show that they will not be able to recover the said monies if they succeeded in the appeal. So long as the

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decree/order is not set aside by a competent court, it stands good and effective and should not be lightly dealt with so as to deprive the holder of the lawful decree/order of its fruits. Therefore, a decree/order passed by a competent court should be allowed to be executed unless a strong case is made out on cogent grounds that no stay should be granted. Otherwise, every judgment debtor would file an appeal as a way of stopping the successful parties from enjoying the fruits of litigation."

In this case, the applicants have not provided evidence that substantial loss would be occasioned to them, which cannot be atoned monetarily. Therefore, I find that 10 the applicants have not proved this ground.

It is trite that the purpose of a stay of execution is to preserve the subject matter in dispute.

I, therefore, find it wise not to continue in determining whether the applicants have met or not met the other grounds of a stay of execution because the 15 grounds which would have put into effect the purpose of this instant application, that is, that imminent threat of execution, substantial loss resulting have not been met by the applicants.

The applicant has, therefore, not adduced cogent evidence to the required standard. I find this instant application as an afterthought and accordingly it is 20 having no merit and would fail.

What are the remedies to the applicant in the circumstances?

From my assessments and conclusions above I have found that this application is without any merit and thus is disallowed as it was an afterthought and since it is disallowed, then there are no remedies available to the applicants in the circumstances.

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7. Conclusion:

I accordingly decline to grant this application which is hereby dismissed with orders that the costs of this application be met by the applicants and to be paid to the respondents.

The application is dismissed with costs to the respondents.

I so order $\$ \mathsf{S}$

Hon. Justice Dr Henry Peter Adonyo

Judge

12th July 2024

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