

UGANDA / JUDGMENT

Anslem Semakula v Anna Nabatanzi and Others (Miscellaneous Application No. 9 of 2025) [2025] UGHC 450 (24 June 2025)

[2025] UGHC 450

COURT

High Court of Uganda

BEFORE

Nassuna Matovu, J

CASE / FILE NUMBER

Miscellaneous Application No. 9 of 2025

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISCELLANEOUS APPLICATION NO. 0009 OF 2025

(ARISING OUT OF CIVIL SUIT NO. 94 OF 2010)

ANSLEM SEMAKULAAPPLICANT

Versus

1. ANNA NABATANZI 2. KASULE MIKE 3. KIRINYA GERALD (Administrators of the estate of the late Anslem Semakula Musoke RESPONDENTS

BEFORE HON. LADY JUSTICE FLAVIA NASSUNA MATOVU RULING.

1. This application was brought under the provisions of S.33 of the Judicature Act, S. 98 of the Civil Procedure Act, O.22 r 26, O.43 rr.1,2,3, &5 and O.52 rr. 1,2, and 3 of the Civil Procedure Rules. It was seeking orders that execution of judgment and orders issued by court in HCCS. No. 94 of 2010 be stayed pending appeal and costs of the application be provided for. It was brought by notice of motion which was supported by an affidavit that was sworn by the applicant. The grounds of the application

were laid in the notice of motion and affidavit in support. Briefly the grounds were that;

- a. The applicant filed Civil Appeal No. 553 of 2023 which is pending determination at the Court of appeal.
- b. There is a serious threat of execution of the judgment and decree in HCCS. No. 94 of 2010, as the respondents are in the process of cancelling Certificates of title in the names of the applicant.
- c. Execution before the determination of appeal will render the appeal nugatory.
- d. The applicant will suffer substantial loss of the appeal is not granted.
- 2. The respondents filed an affidavit in reply which was sworn by the 2nd respondent by which they called upon court to dismiss the application with costs. Briefly it was stated that;
 - a) There is no valid appeal against the judgment of court in HCCS. No. 94 of 2010.
 - b) The respondents were merely executing their duties as administrators to the estate of late Anslem Semakula Musoke and there is nothing to prevent them from doing so.
 - c) The respondents have have already distributed the estate to rightful beneficiaries and are in the process of filing their inventory.
 - d) The application is an abuse of court process as the applicants have already filed HCCS. No. 483 of 2024 at the Family Division challenging the actions of the respondent.
- 3. The applicant filed an affidavit in rejoinder by which he reiterated his earlier averments.

4. LEGAL REPRESENTATION:

The applicant was represented by M/s DAB Advocates while the Respondents were represented by M/s Mukiibi & Kyeyune Advocates & Solicitors.

5. ISSUE:

Whether execution of judgment and decree issued in HCCS. No. 94 of 2010 should be stayed.

6. LAW APPLICABLE

- The constitution of the Republic of Uganda 1995.
- The Judicature Act Cap 16
- The Civil Procedure Act Cap 282
- The Civil Procedure Rules
- Common law and Case law.

7. SUBMISSION OF COUNSEL FOR THE APPLICANT.

Briefly counsel for the applicant submitted that the applicant had appealed against the decision of court in HCCS. No. 94 of 2010 vide Civil Appeal No.553 of 2023, the said appeal has not yet been disposed of and it has a likelihood of success. Further that the respondents were in the process of implementing the orders of court in HCCS. No. 94 of 2010 by subdividing the land, distributing it and cancelling the certificates of title. That if the application is not granted the applicant will suffer substantial loss and the appeal will be rendered nugatory. That the circumstances of the case do not require security for costs since the costs have not been taxed. He cited several authorities in support of his submission which I carefully studied.

8. SUBMISSION OF COUNSEL FOR THE RESPONDENTS.

Briefly counsel for the respondents submitted that the applicant had not demonstrated that there are sufficient grounds for stay of execution of the decree in HCCS. No. 94 of 2010. That there is no valid appeal at the court of appeal, the respondents had already implemented the decree and there is therefore nothing to stay. The application is therefore not only moot but an abuse of court process. Counsel also cited several authorities in support of his submissions which I carefully studied.

9. DECISION OF COURT

- a) I note that the laws cited by the applicant in the instant application allow this court to entertain applications of this nature. Courts have overtime come up with considerations to guide them in applications of this nature. In the case of

Lawrence Musiitwa Kyazze vs Eunice Busingye¹ the Supreme court guided that before granting an application for stay of execution the applicant must show that; there is a pending appeal; substantial loss may result to the party applying for stay of execution unless the order is made; the application has been made without unreasonable delay and that security has been given by the applicant for due performance of the decree or order as may be ultimately binding upon him or her. In **Kyambogo University vs. Prof. Isaiah Omolo Ndiege**², the court added that the applicant must also show that there is a serious threat of execution of the decree and that if the application is not granted the appeal would be rendered nugatory.

- b) After carefully studying the pleadings, record of proceedings and submission of both counsel I have noted as follows: Judgement in HCCS No.94 of 2010 was delivered on 15/7/2022, and the court made several orders which included inter alia; cancellation of all entries and actions affecting the estate of the late Anslem Semakula Musoke comprised in Busiro Block 298 , plots 22 and 58 now comprised in plots 110, 111, 112, and 114 (plot 113 is excluded); Restoration of the name of the deceased, Anslem Semakula Musoke on the Register Book in the office of the Registrar of Titles and subsequently register administrators of the estate of the said deceased; An eviction

¹SCCA No.18 of 1990

² Civil Appeal No. 341 of 2013.

against the 2nd defendant from plots 110 and 112; Permanent injunction to issue against the 1st and 2nd defendants restraining them from further trespass on the suit land; The defendants to pay general damages of 100 million, interest of 10% per annum on the general damages and costs of the case.

- c) The applicant being dissatisfied with the said judgment lodged an appeal vide Civil Appeal No 553 of 2023. Whereas counsel for the respondents submitted that the said appeal is not valid, it is not for this court to determine whether or not the appeal at the Court of appeal is valid. That is an issue that will be determined at the court of appeal. The said appeal is still pending at the court of appeal. It is therefore clear that the applicant has filed an appeal which is yet to be disposed of.
- d) However, it is not automatic that when a party appeals against a decision of court, execution must be stayed. As rightly indicated in the authorities cited above, the applicant must also show that substantial loss may result to her unless the order is made; the application has been made without unreasonable delay; and that security has been given by the her for due performance of the decree or order as may be ultimately binding upon him or her; and above all she must also show that there is a serious threat of execution of the decree (emphasis mine),and that if the application is not granted the appeal would be rendered nugatory.
- e) In the instant case counsel for the applicant submitted that there are threats to execute as the respondents were in the process of cancelling certificates of title in the names of the applicant in addition to distributing the applicant's suit land to other people. However, the applicant did not avail to court copy of application by the respondents to the Registrar of titles in support of the said allegation. Suffice to note that the procedure for execution of court decrees is clearly set out under O. 22 of the Civil Procedure Rules. O. 22 rr 7 and 8 provide that whoever desires to execute a decree has to apply to court to execute the same. There is nothing to show that the respondents have made any application to execute the decree in the suit. The applicant has not shown the steps taken by the respondents to execute the decree in accordance with the rules. Apparently the respondents have not even filed bill of costs for taxation. There is also no evidence to show that the respondents have threatened to evict the applicant from the suit land as ordered by court. The court has not also seen any application to the registrar of titles to effect changes in the register as ordered by court. There is nothing on record to show that the respondent has taken steps to execute the orders issued by court and there is therefore no evidence to show that there is an impending or imminent threat of execution.
- f) I do agree with counsel for the respondents that the respondents seem to be merely executing their duties as

administrators to estate of late Anslem Musoke but not executing any orders of court. I must also note that matters concerning administration of the said estate are subject of dispute in HCCS. No. 483 of 2024 at the Family Division and it would not be prudent for this court to issue other orders concerning the said estate. This application is therefore merely speculative, there are no threats to execute, there is no pending application for execution, no steps have been taken by the respondent to implement the court decision and therefore there is nothing for this court to stay.

- g) I therefore find that this application does not meet the requirements for grant of stay of execution and it is accordingly dismissed with costs to the respondents.

Dated at Kampala this 24th day of June 2025.

JUDGE

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Prepared on 14 October 2026 · Esheria