

Attorney General & Another v Kiggala & 4 Others (Miscellaneous Application 121 of 2024) [2025] UGHCCD 40 (26 February 2025)
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BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application by Notice of Motion under section 98 of CPA, CAP 71, section 33 Judicature Act Cap 13, O.43 rule 4(3) and 4(3) and O. 52 of the CPR SI 71-1 seeking for the following orders that;

1. Execution of the orders against the Applicants/respondents in Miscellaneous Cause 132 of 2021 be stayed pending the Appeal.
2. The costs of the application abide the outcome of the Appeal.

This application is supported by the affidavit of Isaac Ogwang-Senior Management Litigation and Enforcement Officer at the National Social Security Fund and the grounds briefly are;

1. That the applicants intend to appeal against the ruling and orders in Miscellaneous cause No. 132 of 2021 to the Court of Appeal in Kiggala Joseph & 4 ors in which court inter alia declared that land comprised in Mailo Register Volume 273 Folio was eligible for issue of a certificate of title and that their interest cannot be extinguished without payment of adequate compensation.
2. That the applicants being dissatisfied with the decision of His Lordship Hon. Mr. Justice Ssekaana Musa lodge an appeal against the whole judgment.
3. That on 23rd January 2024, the Ag Commissioner Land Registration has issued a Notice to Effect changes on the register under section 91 of the Land Act and the Notice was sent to NSSF and other third parties for a hearing on 19th February 2024
4. The order issued affects third parties who will be disposed without a right to fair hearing if it is implemented. NSSF was not a party to the suit but is aggrieved by the decision as the order affects the ownership of National Social Security Fund land comprised in Kyadondo Block 269 Plot 1322
5. That the applicant will suffer irreparable loss in the event that this order of stay of execution of the judgment is not granted.
6. That if this Honourable Court does not grant a stay of execution of the Orders in Misc. Cause No. 132 of 2021, it will render the pending appeal nugatory.

The respondents filed an affidavit in reply through Fredrick Jjunju-3rd respondent and stated as follows;

1. The declarations having been made cannot be stayed and that the court did not make any orders against National Social Security Fund.
2. The court did not assess or order payment of compensation.
3. The court advised the 2nd applicant to harmonise the ownership of the suit land within a reasonable time.

4. That at the time the court delivered its ruling, the 2nd applicant was already undertaking a verification of ownership of the suit land and conducting a hearing on the same.
5. That allowing the application for stay will be tantamount to stopping the 2nd applicant from carrying out his statutory functions.
6. That investigating the ownership of this land cannot cause any injustice.

The applicants were represented by *Johnson Natuhwera (SSA)* and *Charity Nabasa (SSA)* and *Ssemaganda Simon* of NSSF on watching brief while the respondents were represented by *Counsel Nelson Nerima*.

The parties filed written submissions which I have considered in this ruling.

DETERMINATION

The applicants submitted that the purpose of an application for stay of execution is to preserve the subject matter in dispute so that the applicants who are exercising their undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory.

The applicant submitted that application sets out the grounds upon which an application can be granted citing several cases which laid down the principles upon which a stay of execution will be granted as follows:

1. Applicant must establish that his appeal has likelihood of success; or a prima facie case of his right of appeal.
2. That the applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.
3. If 1-2 above have not been established, court must consider where the balance of convenience lies.

The supreme court further added thus; another principle is that the applicant must also establish that the application was instituted without delay. ***Lawrence Musitwa Kyazze v Eunice Busingye SCCA No. 18 of 1990***

The courts have further expanded the conditions for the grant of an order of stay to include; a serious and eminent threat of execution of the decree or order and if the application is not granted the appeal would be rendered nugatory.

The respondents' counsel submitted that declarations made by court are binding immediately and cannot be 'stayed'. They can only be set aside if the appeal succeeds. The court did not assess or order payment of compensation. There is no pending execution.

It was further contended that the applicants do not own or reside on the disputed land and that the applicants seem to be aggrieved on behalf of National Social Security Fund whose interests are alleged to be affected by the decision of court. The present applicants cannot litigate on behalf of National Social Security Fund.

The 2nd applicant was already undertaking a verification of ownership of the suit land and was conducting a hearing on the same. That National Social Security Fund is a party to the hearing before the 2nd applicant and will be accorded a hearing.

That if this application is allowed it will be tantamount to stopping the 2nd applicant from carrying out their statutory functions and investigating ownership of land cannot cause any injustice.

Analysis

Sections 33 of the Judicature Act, 98 of the Civil Procedure Act, and Order 43 rule 4(2), provides for stay of execution by high court in case sufficient cause is shown.

Order 43 rules 4(3) provides for grounds of an application for stay of execution. That the court must be satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

The most often cited authority in application of this type is ***Lawrence Musiitwa Kyazze - vs - Eunice Busingye, Civil Application No. 18 of 1990***, in which the Supreme Court held that “Parties asking for a stay” should meet conditions like:

1. That substantial loss may result to the applicant unless the order is made.
2. That the application has been made without unreasonable delay.
3. That the applicant has given security for due performance of the decree or order as may ultimately be binding upon him.

In the present case, the applicants intend to appeal or that they have appealed to court of appeal. The 2nd applicant had set to implement the decision of court by inviting parties for a hearing including the third parties allegedly affected the decision of court. The court directed the 2nd applicant to investigate the ownership of the land under their statutory mandate under the Land Act.

This court does not understand why the applicants do not want to have the ownership wrangles investigated and sorted out within the Land registry. The order for stay seems to prefer the continued disputes over the same land without any clear final solution to the disputes. The law provides a right of appeal against the decision of the 2nd applicant in case any party is dissatisfied and it is inconceivable that the applicants mandated to keep a clean land register would prefer to keep a dirty register with different titles created over the old titles.

The solution lies in cleaning the register through a proper investigation of ownership of the said land which the applicants are now trying to stop pending the appeal. This may create more problems and other third party rights and more confusion on this land. The appellate court could take proper benefit from the proper investigation to be carried out by the 2nd applicant in order to determine the rights of the different stakeholders.

The purpose of the stay is to preserve the status quo and avoid any possible irreparable loss or injury to either of the parties. This court does not envisage any loss or injury which would be occasioned to the applicants apart from perpetuating illegalities on the same land without a permanent solution.

The policy of the court is that in exceptional circumstances it should exercise judicial discretion such that a pending matter or suit is not rendered nugatory, a stay of execution should be granted irrespective of whether or not it is a monetary claim or decree. It is the discretion of the court to grant or refuse a stay of execution but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. ***Cotecna Inspection SA v Hems Group Trading Limited Court of Appeal Civil Application No. 303 of 2000 (CAK)***

This court will not engage into determining the propriety of the intended appeal since this is the preserve of the appellate court's jurisdiction and not the trial court. The nature of the declarations given are intended to find a final solution to the problems on Lubowa land by the office of the 2nd applicant. Irrespective of the decision on appeal, the fact remains on the ground that there is competing interests of different persons including National Social Security Fund which must be addressed to steer development on the land without staying in court for ever.

The appeal which is the subject of this application is against the decision (ruling) of High Court. The peculiarity of this application is that, it is an appeal arising out of a judicial review matter where the court must exercise extreme circumspection in staying orders against abuse of power or actions found to be illegal, irrational or procedurally improper since the stay would mean a continued illegality or perpetuating wrongful exercise of power or legitimizing abuse of authority until the appeal is determined after about 4 or 5 years at the bare minimum and thus technically defeating the orders of court.

The court which has found an illegality or abuse of power may be constrained to allow the party (public body or officer) any further delay in continuing to act illegally or contrary to the law for which they have been found to be in breach unless there are 'special circumstances' which would justify suspending the successful litigants rights or allowing the continued breach of the law.

There must be a balancing act in ensuring that the orders of court in judicial review are not rendered nugatory, the same way the applicants (appellants) have argued that the appeal should not be rendered nugatory. Whereas the prospects of any success at appeal are speculative, the ruling made by the court has already found some wrongdoing on the part of the applicants and has vested some rights to the respondent. This must be preserved in order to ensure the rule of law flourishes and is not strangled through endless appeal litigation. The court must assess the relative risks of injustice in not staying execution of the orders granted by court as against putting right what was done wrongly or maintain status quo which is premised on abuse of authority or misinterpretation or misapplication of the law.

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. So long as the 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, an order passed by a competent court should be allowed to be executed unless a strong case is made out on cogent grounds no stay should be granted. Where the stay is to be granted, the court must be mindful of the time frame within which the final orders shall be made so as not to defeat judicial review orders or render them ineffective or become overtaken by events due to lapse of time.

In summary and for the reasons herein above, this court hesitantly stays execution of the orders for a period of 12 months only. I make no order as to costs

I so order.

SSEKAANA MUSA

JUDGE

This ruling has been delivered by the Registrar.....day of February 2025

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