

UGANDA / JUDGMENT

Brian Kigozi v Kirunda Moses Menya
(Civil Application No: 136 of 2025)
[2025] UGCA 203 (23 June 2025)
[2025] UGCA 203

COURT

Court of Appeal of Uganda

BEFORE

Musa Ssekaana, JA/JCC

CASE / FILE NUMBER

Civil Application No: 136 of 2025

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO: 136 OF 2025 (ARISING FROM CIVIL APPEAL NO: 1106 OF
2024)

BRIAN KIGOZI:..... 10

VERSUS

KIRUNDA MOSES MENYA:.....

BEFORE: HON. JUSTICE MUSA SSEKAANA, JA

$\$$

(Sitting as a Single Justice)

RULING

This application was brought by way of Notice of Motion under Rules 2 (2), 6(2) (b), 42, 43, 46 and 47 of The Judicature (Court of Appeal Rules), Direction SI 13-10, O.43 CPR, S.98 CPA, Section 37 Judicature Act seeking the following orders;

1. An order for stay execution of all the orders of the High Court of Kampala (Land Division) in Civil Suit No.1535 of 2023 and all resultant orders and applications arising therefrom be stayed pending the determination of Civil Appeal 1106 of 2024.

2. That the taxation of the Respondent's Bill of costs in the High Court of Kampala (Land Division) vide Civil Suit No.1535 of 2023 and all applications and bills arising therefrom be stayed pending the

\$1\$ | Page

- s determination of the Applicant's Appeal in the Court of Appeal of Uganda holden at Kampala.
- 3. Costs of this Application be in the cause.

This application is supported by an affidavit in support deposed by BRIAN KIGOZI -the Applicant briefly stating;

- r0 1. That the applicant filed an application seeking stay of execution of the orders of the High Court Vide Misc. Application No.3305 of 2024 before the High Court and the same was dismissed.
- 2. That judgement in the High Court was entered in favor of the Respondent and the Applicant has lodged a substantive appeal in this Honorable court challenging the lower court decision vide Civil Appeal No.1106 of 2024. 15
- 20 3. That the Applicant has filed both a Notice of Appeal and ^a Memorandum of appeal against the whole judgement in this Honorable court.
- 4. That the Respondent is in the process of taxing the Bill of costs vide Taxation Application No.443 ol 2024: KIRUNDA MOSES MENYA VS BRIAN KIGOZI and Taxation Application No. 81 of 2025: KIRUNDA MOSES MENYA Vs BRIAN KIGOZI implementing the judgement and orders issued arising from both Civil suit No.1535 of 2023 and Miscellaneous Application No. 3305 of 2024 against the Applicant. 25
- ⁵ 5. That the Respondent has already commenced execution proceedings and he has in fact invited the Applicant's counsel for a pre taxation meeting.
- 6. That there is likelihood of delay before the Applicant's appeal can be disposed of and the application for stay of execution has been brought without delay.
- 7. That the Applicant's pending appeal has a high likelihood of success as the Trial Judge locked out vital evidence and further awarded special damages despite the Respondent not having reconstructed the affected perimeter wall.
- 8. That the applicant will suffer irreparable loss if this application is not granted.
- 9. That the nature of the orders issued by the High Court require the Applicant to cause construction of a retainer wall on his land for the
- benefit of the Respondent, causing great impact to his low-lying land, which loss, shall mean demolishing the retainer wall if the appeal succeeds. 20

- 10. That such demolition shall affect the terrain of his land since it's ^a valley. That enforcing the orders of the High Court will mean construction of the retainer wall and later demolishing the same if the appeal succeeds which will cause substantial loss to him. 25
- 11. That the applicant is willing to deposit his Certificate of Title for land comprised in Kibuga Block 1 Plot 856 whose value is estimated to be 3lPage ..i 0
- t0
- r5
- ⁵ U9.shs.1,000,000,000/= (One billion Uganda Shillings) as security for due performance of the decree.
- L2. That the pending appeal will be rendered nugatory if this application is not granted and that it is in the interest of justice that this application be granted. l0

The Respondent on the other hand filed an affidavit in reply to the application stating;

- 1. That he was the successful party in HCCS No.1535 of 2023. The Applicant sought to stay the orders of the court by filing MA. NO.3305 of 2024 and the same was dismissed for lack of merit.
- 2. That the present application is premature and speculative as execution of the lower court decree has commenced.
- 3. That the Applicant has not raised any compelling ground that warrant the grant of an order for stay of execution. 20
- 4. That there is no law that bars a taxing officer from taxing a bill.
- 5. That the Applicant has not provided security for due performance of the decree. 25
- 6. That the pending appeal has no chance of success and it's an abuse of court process.

l-s

- ⁵ 7. That the Trial Court issued a permanent injunction which took effect immediately and as such, there is nothing to stay.
- 8. That the property is at the verge of being washed away as the Applicant has acted in contempt of court by not erecting a retainer wall.
- 9. That the title that the Applicant wants to attach as security for due performance of the decree is encumbered with a caveat and is also registered in the names of the Applicant and a one Namuli Rose whose consent the Applicant has not attached on the court record. l0
- t5 10. That the applicant has not attached a valuation report to show the value of the land he wants to deposit as security for due performance of the decree.

- 11. That if the appeal succeeds, the Respondent has the capacity to pay for any loss that the applicant may have suffered. 20

The Applicant made an affidavit in rejoinder stating that;

- 1. The entire affidavit in reply does not oppose the application for stay of execution.
- 2. That extracting a decree and lodging a bill of costs amounts to execution.
- 3. That even without a valuation report, the Applicant has already made his intention clear to execute in fulfillment of the High Court decree.

⁵ 4. That the land is however duly valued and the applicant has also attached a consent from the co registered proprietor.

Representation

At the hearing, the Applicant was represented by Counsel Matovu Joel Charles holding brief for Counsel Kajeke.

r0 Both parties filed written submissions

Counsel for the Applicant cited the decision of Lawrence Musiitwa Kyazze vs Eunice Businge, SC Civil Application No.18 of 1990 cited with approval in DFCU BANK Vs Crane Management Services Limited Miscellaneous Application No. 0236 of 2025 arising from

- r-s Civil suit No. 0109 of 2016; for the conditions that must be satisfied before an order for stay of execution can be granted and these are;
- a. Furnishing proof of the fact that substantial loss may result to the applicant unless the stay of execution is granted.
- b. That the application has been made without unreasonable delay.
- 20 c. That the applicant has given security for due performance of the decree.

Counsel for the Applicant submitted that the Applicant first filed the application in the High Court and the same was dismissed hence this application. A copy of the said ruling was annexed to the affidavit in support as annexure "A"

That the Applicant has also filed a notice of appeal. This was on the 29th day of November 2024.

⁵ That this application has been brought without unreasonable delay. The Applicant has acted diligently in preserving his rights.

That the appeal is not frivolous and has a likelihood of success. That the High Court decision is challenged on grounds of double compensation ie pay special damages and build perimeter wall, locking out vital evidence from expert, holding the applicant for trespass in a case purely based on negligence among others. That such an appeal points to key legal errors that merit adjudication by this honorable court.

Counsel for the Applicant also submitted that the main appeal shall be rendered nugatory if this application is not granted. That the appeal before this Honorable court seeks to halt the orders of the High Court that among others compel the applicant to rebuild a perimeter wall in absence of a plan which orders cannot be reversed or compensated to by way of damages.

That executing orders of the High Court shall mean construction of ^a perimeter wall in a space meant for a drainage channel as per approved KCCA plans. That the part that collapsed is for a water channel which if defied shall not only be in breach of statutory regulation governing issuance of plans and overall city planning but also water shall continue to disturb the public, like it did to the Respondent, thus it is in public interest to grant a stay to halt constructing in a space meant for ^a drainage channel. 20 25

Counsel for the Applicant further submitted that application should be granted because there is serious imminent threat of execution of the

71Page

10

15

- ⁵ decree. That the respondent has extracted a decree and filed a bill of costs. That he has even invited the applicant for pre taxation meeting. Counsel for the applicant also submitted that substantial loss may result to the applicant unless execution is stayed,
- That the Applicant has also provided security for due performance of the decree or order. The applicant has expressed willingness to deposit his certificate of title for land valued at Uq.shs.1,000,000,000/- as security for due performance of the decree.
- On the other hand, counsel for the Respondent stated that this application should not be granted because the applicant has not come to court with clean hands. That the Applicant defied the order of the lower court requiring him to first erect a retainer wall approved by the Planning authority KCCA.

Counsel for the Respondent submitted that the application lacks merit and is meant to delay justice to the Respondent who stands to have his property washed away by the heavy rains. That the Applicant has also not paid general damages and special damages which were awarded to the Respondent in the lower court.

That the Respondent has not taken out execution proceedings and that the application is therefore premature;

That the Applicant has not satisfied court that there is imminent and or serious threat of execution. That the applicant has not also furnished security for due performance of the decree and as such this application should be dismissed. 25

81Page

10

15

Analysis.

The jurisdiction of this Court to grant a stay of execution is set out in Rule 6(2) (b) of the Rules of this Court which provides that:

"2. Subject to sub-rule (1), the institution of an appeal shall not operate to suspend any sentence or stay execution hut the Court may:

- b) in any civil proceedings, where a notice of appeal has been lodged following rule 76 of these Rules, order a stay of execution-... on such terms as the Court may think just

This rule gives this Court, the discretion, in civil proceedings, where a notice of appeal has been lodged following rule 76 of the Rules of this Court, to order a stay of execution in appropriate cases and on terms that it thinks fit.

The discretionary power must be exercised judiciously and exercised in a way that does not prevent a party from pursuing its appeal so that the same is not rendered nugatory should the appeal overturn the trial court's decision. The discretion being judicial, is exercisable on the basis of facts and sound legal principles.

In Theodore Ssekikubo & Others v The Attorney General and Others, Constitutional Application No.6 of 2013 and Lawrence Musiitwa Kyazze vs Eunice Businge, SC Civil Application No.18 of 1990 the Supreme Court laid down the principles to guide the Court in granting a stay of execution.

t0

15

5 It held that;

- a) The Applicant must establish that his appeal has a likelihood of success; or a prima facie case of his right to appeal
- b) It must also be established that he will suffer irreparable damage or that the appeal will be rendered nugatory if an order for stay is not granted.
- c) Court must consider where the balance of convenience lies.

- d) The court must establish that the application was instituted without delay.
- The major purpose of the grant of stay of execution is to help preserve the status quo and then have the merits of the case to be handled by the full bench. It is a settled practice that in an interlocutory application, the court is not hearing the appeal. So care must be exercised to avoid infringing on the jurisdiction of the bench that will eventually hear the intended appeal. t5
- This Court has the task of establishing whether the Applicant has made out the conditions for the grant of stay of execution. 20

I have considered the submissions of both counsel for the applicant and the respondent.

The applicant filed a notice of appeal in the High Court on the 20th day of November 2024 and the same is annexed on to the affidavit in support of the application as annexure "E". The applicant pleaded and proved the same in his affidavit in support.

10

10 lPage

⁵ Regarding the issue of imminent threat of execution of the decree, the evidence on the record is to the effect that the respondent has already filed bill of costs vide; Taxation Application No.443 of 2024: KIRUNDA MOSES MENYA VS BRIAN KIGOZI and Taxation Application No. 81 of 2025: KIRUNDA MOSES MENYA VS BRIAN KIGOZI And hC HAS even invited the applicant for pre taxation meeting. 10

Execution is not a one-time event but rather a process. The said process is commenced by filing a Bill of Costs. Court has noted that Execution is a process and not an event, one of the processes of execution is taxation of costs which the respondent has commenced. This is evidence that the execution process has commenced. I find that the applicant has satisfied the ground of existence of eminent threat to execution. See Osman Kassim Ramathan v Century Bottling Company Ltd SCCApp No. 035 of 2079 & Registered Trustees of the Hindu Ilion v Kagoro Epimac & 2 Others Court of Appeal Civil Application No. 304 of 2077

Furthermore, the applicant has brought this application without undue delay. The respondent-initiated execution process by filing a bill of costs on the 12th day of December 2024 and the following day, the applicant lodged an application for stay of execution in the High Court. The said application was heard and disposed off on 14th March 2025 and then applicant lodged this application in this Honorable Court on 26th March 2025.

15

I find this reasonable time and as such, the applicant has fulfilled this requirement.

This court also finds that the pending appeal vide Civil appeal No.1106 of 2024 is not frivolous and has a likelihood of success. The said appeal raises reasonable triable issues that merit consideration by this Court.

- The appeal need not be a perfect appeal but one that raises reasonable issues for this court's consideration. The applicant for instance states that the decision of the High Court is challenged on ground of double compensation. This court is mindful that in an application for stay of execution the court should not usurp the role of the bench that would hear the intended appeal if it is brought but the court may in appropriate circumstances be as emphatic as may be necessary. See Robert Kibagendi Otachi and Another Housing Finance Co. of Kenya Ltd Nairobi Civil Application No. 251 of 7996 t0 1.5
- That the trial judge awarded special and general damages to the respondent but also went ahead to order the applicant to construct ^a perimeter wall. Some of the awarded damages were in the nature of general damages, which are normally in the discretion of the trial court. Once the intended appeal is heard the court may either affirm the award, set it aside altogether or vary the sum awarded. 20
- The applicant also alleges that the suit in the trial court was based purely on negligence and yet the trial judge held the applicant for trespass. These in my opinion are genuine triable issues that merit consideration by this Honorable Court. An arguable appeal does not and 25

cannot mean an appeal which will or must succeed but simply means an appeal which can be argued.

On irreparable /substantial loss, the said term was described the in the case of: Tropical Commodities Supplies Ltd and Others Vs International Credit Bank Ltd (In liquidation) (2004)2 EA 331, as follows;

"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 ¹⁰ distinguished from a loss that is merely normal. "

Executing the orders of the High Court would require the applicant to build a perimeter wall on the land.

However, if the applicant's appeal succeeds, the applicant will have to again demolish the same perimeter wall. This would cause substantial loss \$15\$ which may not be atoned to by award of damages to the applicant.

The legal principles to be followed when considering an application for stay of execution pending appeal are to prevent substantial loss to the applicant which may be a result of not granting the order of stay of execution and if

the dictates of justice demand that the applicant should have that \$20\$ protection.

Also, the failure to grant this application shall also mean that the applicant will be held in violation of KCCA approved plans. This is so because enforcing the orders of the High Court would require the applicant to deviate from approved KCCA plans which have gazetted the said land as a

drainage channel.

S

\$13\$ | Page

In the interest of justice, it is a better option to halt enforcing the High Court Order pending the final determination of the pending appeal.

Finally, the applicant the balance of convenience also tilts in favor of the applicant because he is the one that will be held for violating KCCA orders and also impact on the terrain in the event there is a construction which cannot be reversed-they remain irreversible physical changes.

This court therefore issues an order for stay of execution pending the final determination of the main appeal.

Costs shall be in the cause.

lo ^Iso order MUSA SEKAANA

JUSTICE OF APPEAL

%)4)xt-

5

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugca/2025/203/eng@2025-06-23>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/brian-kigozi-v-kirunda-moses-menya-civil-application-no-136-of-2025-2025-ugca-203-23-june-2025-unknown-topic-unknown-court-2025>

Prepared on 14 October 2026 · Esheria