

UGANDA / JUDGMENT

Centenary Rural Development Bank v
Dorcas Nanjero (Civil Application No: 585
of 2024) [2025] UGCA 205 (17 June 2025)
[2025] UGCA 205

COURT

Court of Appeal of Uganda

BEFORE

Musa Ssekaana, JA/JCC

CASE / FILE NUMBER

Civil Application No: 585 of 2024

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| 5 | THE REPUBLIC OF UGANDA |

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| | IN THE COURT OF APPEAL OF UGANDA AT KAMPALA |

| | CIVIL APPLICATION NO: 585 OF 2024 |

| | (CIVIL APPLICATION NO: 259 OF 2023) |

| | (ARISING FROM MTSC. APPLICATION NO: 285 OF 2021) |

| 10 | (ARISING FROM COMMERCIAL COURT MISC. CAUSE NO.44 OF 2020) |

| | CENT BANK: :: :: :: APPLICANT CENTENARY RURAL DEVELOP |

| | VERSUS |

| | DORCAS NAN, ERO (Executrix of Odongpiou |

| | Is Stanislaw Emmanuel) : : : : : RESPONDENT |

BEFORE: HON. JUSTICE MUS SSEKAANA A (Sitting as a Single justice)

RULING

- ²⁰ This application was brought by way of Notice of Motion under Rules 2 (2), 6(2) (b) of the Court of Appeal Rules, Section 12 of the Judicature Act, cap 16 and Section 98 of the CPA Cap 282 seeking the following orders;

- 1. An order doth issue to sta execution in Misc. Cause No.44 of 2020 and Misc. Application No. 85 of 2021 pending the determination of ²⁵ the substantive Civil Applica ion No: 259 of 2024.
- 2. That the costs of this application abide the result of the appeal.

This application is supportecl by pn affidavit in support deposed by RUTH BIRUNGI -Senior legal officer-litlgation of the respondent, stating;

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- ⁵ 1. That Misc. Cause No.44 of sought consequential orders t which was erroneously registe 2020 Odongpiou Stanislaus Emmanuel c cancel the Bank's (Appellant) mortgage red on Kyadondo Block 184 Plot 43.
- 10 2. That the Bank opposed the application on grounds inter alia that there had been no suit for recovery and that the matter required an ordinary suit.
- 3. That in a ruling dated 26th Fcbruary 2021, the court allowed Misc. cause No.44 of 2020 and awarded Odongpiou general damages of U9.shs.140,00,000/..
- 4. That the bank filed Misc. Application No.285 of 202L seeking review and setting aside of the findings and orders that the bank lodged ^a mortgage on Kyadondo Block 184 plot 43, and review and setting aside l0 of the award of general dama es and costs
- 5. That the bank produced nc evidence that its mortgage deed was actually lodged on Busiro Block 184 plot 43 but the Land Office erroneously registered it on yadondo Block 184 plot 43 belonging to ²⁵ Odongpiou Stansislau Emman el.
- 6. That in a ruling dated 26tr' Al)rt 2022, the court held that the bank did not take the necessary steps to obtain the mortgage deed and also failed to exercise due dilige ce when new matter or evidence was lo discovered. <^

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- 7. That the trial court awarded ^a excessive sum of U9.shs.140,000,000/= for a mistake by the Land making. Office and which was not of the bank's
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- 8. That the grievances raise serious questions of law and fact which merit adjudication by this Honorabl court.
- l-s 9. That the dismissal 2022. bank filed a notice of its application f r of appeal and appealed against the review under Civil Appeal No.357 of

- 10 10. The bank applied for stay Commercial Court and both Court. of execution and leave to appeal in the applications were dismissed by the High
- 11. The bank has applied to Application No.259 of 2023 in this court for leave to appeal vide Civil order to validate the appeal.
- 25 12. The Respondent's bill of U9.shs.18,220,000/= and a v issued for the bank's two vehir costs has been taxed and allowed at [arrant of attachment and sale has been cles and one vehicle has been attached.

30 13. That the decretal sum is Ug likely to distribute it to the impossible to recover if the a(.shs.158,220,000/= and the respondent is beneficiaries of the estate and it will be peal succeeds 9."

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- ¹ 14. The respondent has no means to refund the damages the event the appeal succeeds and the attachment of vehicles has caused substantidl inconvenience to the bank. and costs in the bank's
- 15. That the applicant has file a substantive application for leave to t0 appeal and stay of execution which is yet to be fixed and heard by this court. d

The respondent on the other application stating; and filed an affidavit in reply to the

- ruling in the said matter w Application No.285 of 2021 Cause No.44 of 2020 and with costs for want of merit 1. That Misc. Cause No.44 of 2020 was heard and determined on its merits and the applicant participated in the proceedings. That the ps delivered and the applicant filed Misc. for review of the decision of court in Misc. he application was heard and dismissed l5
- 10
- 2. That the appellant filed a notice of appeal on 27th 10/2022, at High Court Commercial Division without first obtaining leave to appeal from either High Court or Court of appeal.
- 25 3. That the applicant also f ilcd a Memorandum of appeal in the court of appeal vide Civil Appeal No.357 of 2022 without first seeking leave to appeal and the applicant h{s erroneously filed Application No.259 of 2023 to validate the app{al and this was done without justified reason or suff icient catrsc 9.4n

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- ⁱ 4. That the land compriscrl in Kyadondo Block 184 Plot 43 at Nsasa Wakiso district has always been registered in the names of the late Odongpio Stanislaus Emma uel and the deceased at the time of his death had possession of e said title as well as custody of the Certificate of title for the sai land.
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5. That the deceased during his life time never applied and or obtained a loan from the Respondent of U9.shs.10,000,000/= from the applicant and nor was he ever its customer, borrower or surety and yet the applicant erroneously registered a mortgage on the said certificate of title without any justifiable reasons. That the applicant has not adduced any evidence to prove that the said registration was done by the land office erroneously.
- 6. That the said mortgage has frustrated the respondent's effort as executrix to distribute the estate property in order to complete the subdivisions that had been commenced by the late Odongipou Stanislaus Emmanuel; and there are no new facts that were produced by the applicant to warrant an application for review and application for leave to appeal.
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- 7. That the applicant's appeal and Misc. application 1371 of 2022, were all frivolous, and an abuse of court process because the appellant lodged the said mortgage in 2007 and has up to date refused to vacate the same despite formal complaints to do so. {a

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- 8. That there is no evidence that the same mortgage was ever registered on land comprised in Busiro Block 184 Plot 43 at Kaba bi as the applicant wants to make this court believe.
- 9. That the applicant has not showed that the respondent will not be able to pay back the money awarded in general damages and costs if the appeal succeeds, the applicant's submissions are simply speculative.
- 10. That the application has been overtaken by events because one of the motor vehicles has already been impounded and advertised for sale

Representation

At the hearing, the applicant was represented by Counsel Nelson Nerima and Counsel Ronald Mugisa represented the respondent

Both parties filed written submissions

Counsel for the applicant submitted that the application should be granted because the applicant has met all the requirements necessary for the grant of the said application.

25 That the applicant filed her application of appeal on 27th April 2022 and the same is on court record and the applicant's appeal vide civil application no:2 of 2022 has applied to this court for leave to appeal of 2023. Submitted

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s That the decretal sum is 158,220,000/= and a warrant of attachment has been issued for the bank's velricles and one vehicle has been seized.

The original judgement crclitor rlied and the executor will distribute the decretal money arnong the bc cficiaries of the estate and it will be impossible to get b.tck iI the app I succccds.

10 Counsel for the applicant subm tted that the application was instituted without delay.

The High court was rlclivcred application for leave to appeal 16th June 2023. its ruling on 26th April 2022 and the an d stay was dismissed by High Court on

15 The applicant promptly ;tpplied for leave to appeal and stay of execution on the 3'd of)uly 2023 vicle Civil App lication No.259 of 2023.

The appeal has a high likelihood necessary steps anrl ;trlrIttr rtci nor, the applicant applietl for lt:itvc to 20 2023 vide Civil Applrcation No.259 of succcss because the applicant took the v evidcncc which was unchallenged. That appeal and stay of execution on 3'd.,;uly I of 2023.

That the trial court ;tv;,rttriecl an exccssive sum of 140,000,000/= for ^a mistake by the larrel otrfcc whfch was excessive. That the trial court wrongly applied a hirlh standard fLr review.

The said grievancos rlrr,t'scrior-r! qucstions of law and fact which merit 2s adjudication on appr',r1.

)ccaucs there is no competent notice of Counsel for the respondent application should lrc tiisnrisscl n the other hand submitted that this

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appeal and as such, this applicati n cannot be sustained and as such, there is no need to delve into tht: rest of the grounds. ^t t

That the applicant in this application filecl a notice of appeal on 2710412022 way before he was rlr;rntcrl lcavc to appeal. The application for leave to appeal in the High Corrrt was rlifmised. That even the Memorandum of 10 appeal was filed bcforc seeking ldave to appeal.

Counsel for the rcsportrrlcnt frr lrcr strbmited that the appeal has no serious grounds of ;rp1tc;rl and as sur.h, this application should not be granted. That the applicatiLrn do not clisclose a prima facie case because of the following reason\;

- 1. The land comprised in Kyadondo Block 184 Plot 43 at Nsasa has at all material times been in the names of the late ODONGIPOU Stanislaus Emriri. He had physical possession of the said land and custody of the Certificate of Title. That he had even commenced subdivision process until he was sabotaged by the applicant's action.
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- 2. That the deceased never borrowed any money from the applicant bank and was neither their customer nor surety and yet the applicant registered a mortgage on the land.
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- 3. That the applicant has not adduced any evidence to prove that the mortgage was correctly registered on the land by the lands office.

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- In re-consideration, counsel for the applicant submitted that under Rule 76(4) of the Court of Appeal Rules, when an appeal lies only with leave or on a certificate of law of general public importance is involved, it shall not be necessary to obtain leave or a certificate before lodging the notice of appeal.
- 10 That it was therefore, necessary for the applicant to file a notice of appeal before obtaining leave.

That regarding leave, in fact, success, counsel for the appellant submitted that there is no merit in the grounds of the appeal. It suffices to show that the appeal is not of law and fact. It is obvious and it raises arguable questions of

That security for costs is not a mandatory requirement in the Court of Appeal. {rtrt, i l l rule 4(3) of the Civil Procedure rules cited by the respondent of '1, 'pr ls to; 11) deals to the High Court. rlrcc

Consideration, an y's.

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

"2. Subject to such order to suspend any stay of execution (1), the institution of an appeal shall not operate to stay execution but the Court may:

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

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this rule gives the court, in its discretion, in civil proceedings, where ^a notice of appeal is, or is not, following rule 76 of the Rules of this Court, to order a stay of execution that it thinks fit. It is in appropriate cases and on terms

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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 ineffectual by the court's decision. It is not the appeal overturn the trial

In *Theodore S. L. & Others v The Attorney General and Others*, Constitutional Application No. 6 of 2013, the Supreme Court laid down the principle, that the Court in granting a stay of execution.

It held that;

- a) The applicant must establish that his appeal has a likelihood of success; or, that it is in the public interest that he should be allowed to appeal
- b) It must also be shown that he will suffer irreparable damage or that the public interest will be served by the grant of a stay of execution if an order for stay is not granted
- c) Court must consider the balance of convenience lies.
- d) The court is satisfied that the application was instituted without delay.
- 2-5 The major purpose of the status quo is the full bench. It is the duty of the court, of execution is to help preserve merits of the case to be handled by the court

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This Court has the task of establishing whether the Applicant has made **out the conditions for the grant of stay of execution.**

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 27th day of April 2022 and has applied to this Honorable court for leave to appeal vide Civil Application No. 259 of 2023. The submission from counsel for the respondent that it was illegal for the applicant to file a notice of appeal before obtaining leave to appeal cannot stand because, under **Rule 76 (4)** of the Court of Appeal Rules, when an appeal lies only with leave or on a certificate that a point of law of general public importance is involved, it shall not be necessary to obtain leave or certificate before **lodging the notice of appeal.**

It was therefore proper for the applicant to file a notice of appeal before obtaining leave to appeal. The filing of a notice of appeal is a prerequisite in an application for stay of execution in the court of appeal. See *Vishram Ravji Halai v Thornton & Turpin Nairobi Civil Application No. 15 of 1990* [1990] KLR 365

The applicant is also required to prove that the pending appeal has a high likelihood of success. For this ground to succeed, the applicant **must show** that the appeal is not frivolous and that it raises arguable questions of law. It is not necessary to delve into the merits of the appeal as counsel for the respondent has exhaustively done. It suffices

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to show simply that the appeal raises genuine triable issues that merit **\$\mathsf{S}\$ adjudication** by the court.

The applicant has demonstrated that it took all the necessary steps and exercised due diligence and adduced new evidence which was **unchallenged**. The applicant further alleges that the trial court awarded an excessive sum of Uq.shs. \$140,000,000/\$ to the respondent for a mistake that was solely made by the Lands Office. These are indeed arguable questions fact and the applicant succeeds on this ground.

Regarding the issue of irreparable damage, the respondent has already **commenced** the execution process and indeed one of the applicant's operational vehicles has already been impounded and advertised for sale. The purpose of the application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal are **safeguarded** and the appeal if successful, is not rendered nugatory. **See**

Consolidated *Marine v Nampijja and Another Nairobi Civil 20 Application No. 93 of 1989(COA); Nsabimana v Jokana and Another CA Civil Application No. 222 of 2023*

The respondent has not rebutted the applicant's averments on **irreparable** loss if execution proceeds. In fact, it is not in dispute that the original respondent is deceased and the current one is simply an administrator of his estate whose sole duty is to distribute the estate to the named beneficiaries. If that is done, recovering the monies already

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distributed to different beneficiaries will be hard in case the appeal $\mathbf{S}$ **succeeds** and the beneficiaries may not be able to refund.

The balance of convenience also lies in favor of the applicant because if the appeal succeeds, the applicant may not be able to recover the **decretal** sum and yet if the appeal fails, the respondent can easily recover the amount. It should be noted that one of the applicant's **vehicles** has already been impounded and advertised for sale and this **greatly inconveniences** the applicant's operation.

The respondent further argued that the applicant be ordered to deposit **security** for costs of the substantial amounts synonymous to the subject matter in dispute to safeguard the respondent's right to recover the \$15\$ **general** damages and costs. The practice of **imposing** security for due performance of the decree in some cases is only a rule of practice based on case law. See Joel Kato and Margaret Kato v Nuulu Nalwoga SC Civil Application No. 04 of 2012 UGSC 15 [2013]

There is no requirement for furnishing security in the court of appeal. \$20\$ The court can order for a stay of execution even without an order for the applicant to pay security for due performance of the decree and a stay of execution involves an exercise of judicial discretion which is unfettered. Each case should be decided on its facts depending on what is just in the particular circumstances. The applicant is a financial \$25\$ institution which has not had any issues of liquidity in its operations and it is not likely to fail to pay the decretal sum and taxed costs in case the **respondent** succeeds. $\leq m$

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The court finds that the applicant has proved all the grounds needed for $\mathbf{S}$ **the grant of the current application.**

This court therefore issues an order for stay of execution in Miscellaneous Cause No.44 of 2020 and Miscellaneous Application No.285 of 2021 pending the final determination of Civil Application No:259 of 2024. The applicant's motor vehicle which has been attached and advertised for sale is also hereby released.

Costs shall be in the cause.

I so order \$aaug-m\$ \$\ldots\$ MUSA SSEKAANA JUSTICE OF APPEAL

Delivered in 12th June 2025

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