

UGANDA / JUDGMENT

John Ddamulira v Rogers Serunjogi and Fausta Serunjogi (Civil Application No. 1200 of 2023) [2025] UGCA 169 (2 May 2025)

[2025] UGCA 169

COURT

Court of Appeal of Uganda

BEFORE

Monica K. Mugenyi, JA

CASE / FILE NUMBER

Civil Application No. 1200 of 2023

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THE COURT OF APPEAL OF UGANDA AT I(AIVIPALA

(Coram: Monica K. Mugenyi, JA, sitting as a Single Judge)

CTVTL APPLTcATtoN NO. 1200 OF 2023

(Arising from Civil Application No. 1199 of 2023 & Civil Appeal No. 12 of 2019\

JOHN DDAMULIRA APPLICANT

VERSUS

1. ROGERS SERUNJOGI 2. FAUSTA SERUNJOGI RESPONDENTS

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RULING**A. Introduction**

- 1. This Application was brought under Rules 2(2), 6(2)(b), 42(2), 43(1) (2) and 44(1) of the Judicature (Court of Appeal Rules) Directions S.1 13-10 ('the Court of Appeal Rules'). The Applicant seeks an interim order restraining the Respondents and their agents, employees, assignees or persons claiming or deriving authority therefrom from executing this Court's judgment decree in Civil Appeal No. 12 of 2019 until the determination of the substantive

application of stay of execution, Civil Application No. 1199 of 2023, that is pending before the Court.

- 2. The Applicant additionally seeks an interim order restraining the Respondents, their agents, employees or anyone acting for them from effecting any sale, subdivision or construction on the suit property in issue on appeal described as approximately one acre of Kabaka's land situated in Badongo Zone LC1, Salaama parish, Makindye division in Kampala District, till the determination and disposal of the appeal now pending before the Supreme Court of Uganda.
- 3. The background to this Application is that judgment was entered against the Applicant in Civil Appeal No. 12 of 2019 whereupon he did on 22nd April 2022 file a Notice of Appeal before the Supreme Court. In the meantime, the Respondents filed a bill of costs that was taxed in the sum of Ushs. 32,069,100/=, have since applied for execution of the decree and a notice to show cause why execution should not be issued has been issued against the Applicant. The Respondents have similarly sought to execute the High Court decree for the recovery of the taxed costs, special damages in the sum of Ushs. 50 million, general damages and interest. They had sought to have the Applicant sent to civil prison but now seek attachment of the suit property. It is against this background that the Applicant seeks the stay of execution of the judgment decree emanating from this Court vide the substantive Civil Application No. 1199 of 2023, and the present interim application.
- 4. The application for interim orders is supported by an affidavit deposed by the Applicant and lodged in this Court on 9th November 2023. It is opposed by the Respondents, on whose behalf Mr. Rogers Serunjogi ('the First Respondent')

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deposed an affidavit in reply to that effect that was lodged in this Court on 12th December 2023. In turn, the Applicant filed an affidavit in rejoinder on the same date.

- 5. At the hearing of this Application, the Applicant was represented by Mr. Bruno Sserunkuma while Mr. Magellan Kazibwe represented the Respondents.

B. Parties' Legal Arguments

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- 6. It is the contention of learned Counsel for the Applicant that rule 2(2) of the Court of Appeal Rules grants the Court powers to grant interim orders of stay of execution provided that there is a competent notice of appeal, a substantive application for interlocutory orders and a serious threat of execution. Reference in that regard is made to *Zubeda Mohammed & Another v Laila Kaka Waiia & Another*. Civil Reference No. 7 of 2016 (SC)

- ⁷. Counsel argues that the Applicant has filed a notice of appeal in this matter, as well as a substantive application, Civil Application No. 1199 of 2023, that is pending determination by this Court. To preserve that application, Counsel urges the grant of the current application to so as to preserve the status quo and avert further alienations of the disputed land. It is argued that there is a serious threat of execution before disposal of Civil Application No. 1199 of 2023 as demonstrated in paragraphs 8 to 20 of the affidavit in support of this Application.
- 8. It is averred that the Respondents have since extracted a decree in respect of the lower court's decision and filed a bill of costs that was allowed without any contestation by the Applicant's former lawyers; and they had additionally scheduled the hearing of their application for execution and a notice to show cause why execution should not issue on the 30th of November 2023. It is further averred that the Respondents have commenced construction on the suit property therefore in the absence of interim orders there is a real threat of alienation of the disputed property. This would occasion irreparable damage to the Applicant and render nugatory Civil Application No. 1199 of 2023 and the appeal pending before the Supreme Court.
- 9. Conversely, learned Respondent Counsel contends that there is no valid or competent substantive application before the Court as Civil Application No. 1199 of 2023 arose out of Civil Appeal No. 12 of 2019 which was heard and decided. In Counsel's view, the concluded appeal cannot give rise to a substantive application for stay of execution. The instant application is thus opined to be incompetent. Counsel further argues that there is no pending appeal in the Supreme Court as averred in the First Respondent's affidavit.
- 10. Furthermore, the Respondents are alleged to have undertaken construction on their land, which was decreed to them and of which they are in actual possession, and cannot therefore be stopped. Counsel argues that insofar as the property reflected in the affidavit in support of the application as Annexure 'J' was not in contention in either Civil Suit No. 484 of 2014 or Civil Appeal No. 12 of 2019, the application is premised on a different property which the Applicant sold to a third party. Consequently, it is opined, there is no demonstration of real, serious or imminent threat of execution to warrant the grant of this Application, neither is there proof of a warrant of arrest against the Applicant.
- 11. Reference is made to *Faustino Ntambara v Jack Kityo Seqawole*. Civil Application No. 150 of 2021 (CoA) where an application for interim orders was dismissed with costs because the property in issue was not the subject matter of the substantive application for interlocutory orders. Reference is additionally made to *Matthew Rukikaire vs Incafex Ltd* SCCA No. 11 of 2015, where an application that did not establish imminent threat of execution was dismissed with costs. It is further argued that the Applicant has not furnished this Court with a competent notice of appeal, the memorandum of appeal on record bearing no Civil Appeal number, no Court stamp and no Court seal. In any event, there has been no service of the purported appeal on the Respondents, who are unaware of its existence.

- 12.8y way of rejoinder, it is argued that this application is premised on the concurrent jurisdiction of the Supreme Court and Court of Appeal to hear applications for interim stay of execution or interim injunction under rule 41 of the Judicature (Supreme Court rules) Directions SI 13-11; which forms the basis for the filing of the instant application. It is further argued that a notice of appeal is sufficient for

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purposes of applications of the nature before the Court presently, as provided in rule 6(2) of the Court of Appeal Rules and upheld in *Manuraquha Gashumba v Sam Nkundive*. Civil Application No. 24 of 2015 (SC) In this case, the notice of appeal was lodged on 11th April 2022. See the affidavit in support of the application.

13. In terms of the competency of the Appeal, reference is made to paragraph 6 of the affidavit in rejoinder, which clarifies that an application for the extension of time within which to file the memorandum and record of appeal is pending determination by the Supreme Court. It is further argued that the Respondents' occupation of the suit property is not a bar to the interim orders sought and preservation of the status quo. Rather, the affirmation of construction on the suit property is opined to be clear evidence of the impending alienation of the property if the Respondents are not restrained.

C. Court's determination

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14. Upon careful consideration of the parties' submissions, I am constrained to observe that I am not at liberty to interrogate the merits of either the substantive application that is pending determination by the fully constituted Court or the issues for determination on Appeal that have in some measure been alluded to by both parties. The grant of interim injunctive reliefs such as are in issue presently is governed by Rule 2(21) of the Court's Rules. That procedural rule recognizes this Court's inherent power to 'make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court ... and shall be exercised to prevent abuse of the process of any court caused by delay.' In *Theodore Ssekikubo & 2 Others v Attorney General & 4 Others*. Constitutional Application No. 4 of 2014, the preservation of parties' right of appeal was adjudged by the Supreme Court to speak to the ends of justice. In that case, the court did also allude to the role of interim orders in preserving the status quo so as to allow for the determination of the issues in contention between the parties by the full court. See also *Uqanda Revenue Authority v Nsubuqa Guster & Another*. Miscellaneous Application No. 16 of 2018 on the preservation of parties' right of appeal as an end of justice.

- 15. Additionally, it is now trite law that for an application for interim orders of stay of execution to succeed there must be substantive application for the same relief in respect of a pending Appeal, as well as imminent threat of execution of the lower court's orders before the determination of the substantive application. The existence of a Notice of Appeal is a *srne qua non*. See Patrick Kaumba Wiltshire v Ismail Dabule. Civil Application No.3 of 2018 (SC) and Theodore Ssekikubo & 2 Others v The Attorney General & 4 Others (supra).
- 16. The circumstances of the present Application are that there is a pending substantive application - Civil Application No. 1199 of 2023, as well as a notice of appeal that was lodged in this Court on 11th April 2022. That leaves two outstanding questions: first, whether this application is properly before the Court and, secondly, whether there is imminent threat of execution of the judgment decree in Civil Appeal No. 12 of 2019.
- 17. Where there is a pending appeal before the Supreme court, rule 41 of the Supreme Court Rules of Procedure requires applications for interlocutory orders to be presented to the Court of Appeal before recourse can be made to the Supreme Court. It expressly provides that 'where an application may be made either to the Court or to the Court of Appeal, it shall be made to the Court of Appeal first.' Recourse can, in any case, only be made to the Supreme Court in the exceptional circumstances delineated in rule 41(2) of the Supreme court Rules. That should settle the Respondents' disquiet on that issue.
- 18. With regard to the imminent threat of execution, paragraphs 13 and 14 of the affidavit in support of the Application demonstrate that the Respondents have commenced building on the suit property which in itself is indicative of the alienation of the suit property. Furthermore, there is indication of imminent execution of the judgment decree in the cumulative actions taken by the Respondents, to wit, the extracted decree on appeal, the taxed bill of costs, an application for execution of the decree, the notice to show cause why a warrant of arrest should not issue which was granted and a scheduled hearing to that end of Miscellaneous Application No. 11 of 2022. I am satisfied therefore that there is indeed a serious and imminent threat of execution, as well as the alienation of the suit property before the

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determination of the substantive application herein, Civil Application No. 1199 of 2023.

I am alive to the decision in Hwan Sunq Industries Ltd v Toidin Hussein & 2 Others. Civil Application No. 19 of 2008 where it was considered to be sufficient reason to grant an interim order of stay of execution where it was demonstrated that 'a substantive application is pending and that there is serious threat of execution before the hearing of the substantive application.' Similarly, in Patrick Kaumba Wiltshire v Ismail Dabule (supra), an interim order was adjudged to be necessary to 'preserve the status quo until the substantive application for a temporary injunction is heard and determined.' It thus seems to me that it would serve the interests of justice in this matter that the current status quo is preserved until the substantive application for temporary injunction has been heard and determined.

D. Conclusion

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20. In the result, an interim order is hereby issued restraining the Respondents, their agents, employees, assignees or any persons claiming or deriving authority therefrom from taking any steps, actions in execution of the judgment decree arising from Civil Appeal No. 12 of 2019 pending the determination of Civil Application No. 1199 of 2023.

It is so ordered.

Dated and delivered this 1st day of May 2024.

Arrested /

Monica K. Mugenyi Justice of Appeal

* This judgment was signed before this judge ceased to hold that office.

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