

UGANDA / JUDGMENT

Kaddu v Kaddu (Civil Application 375 of 2024) [2025] UGCA 63 (26 February 2025)

[2025] UGCA 63

COURT

Court of Appeal of Uganda

BEFORE

Kazibwe, JA

CASE / FILE NUMBER

Civil Application 375 of 2024

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. O375 OF 2024

(Arising out of Civil Appeal No.1528 of 2023)

(Arising out of High Court Divorce Cause No.02 of 2018)

i

JOHN KADDU BWABYE APPLICANT

VERSUS

TEDDY KYEYUNE KADDU RESPONDENT

Before: Hon. Justice Moses Kazibwe Kawumi

(Sitting as a single Justice)

RULING

This Ruling arises from Civil Application No.0375 of 2024 brought by Notice of Motion with a supporting affidavit under Rules 2(21), 6(2Xb), 43(1) and

20 44(LI) of the Court of Appeal Rules. The Applicant seeks a stay of execution of the Orders of the High Court in Execution Miscellaneous Application No.24 of 2023 and for Costs to be provided for.

The grounds of the Application also contained in the supporting affidavit are that:

25 L. The Applicant filed Divorce Cause No.02 of 2018 against the Respondent and the Decree Nisi was endorsed by the Court with the Consent of both parties. Determination of the ownership of property comprised in Block 246 Plot L635 at Bukasa registered in the name of Johka Print Machinery Ltd in which the Applicant owned 85% shares ³⁰ was reserved by the Court.

⁵ 2. The Court in the absence of the Applicant heard the matter relating to the property and ruled in favour of the Respondent. An Application to set aside the ex-parte proceedings was overruled prompting the Applicant to lodge Civil Appeal No.1528 pending determination in this Court.

a

- 3. The Applicant contends that he had sold the property to Johka Enterprises Ltd which in turn sold it to Eric Kigundu before Divorce Cause No.02 of 2018 was filed. The property is now subject to execution yet Kigundu who is in possession was never given a hearing since his Application for the Court to review the Ruling in Divorce Cause No.02 of 2018 was dismissed with costs.
- 4. Subsequent Applications for stay of execution and for Objector proceedings filed by Kigundu vide Misc. Application No.74 of 2024 and Misc. Application No.15L5 of 2023 were dismissed by the Court prompting him to file Civil Appeal No. 1527 pending in this Court. The Appeal will be rendered nugatory if the Application for stay of execution is not granted.
- The Respondent opposed the Application contending that Civil Appeal No.1528 is non-existent and the issues raised by the Applicant were determined in Divorce Cause No.02 of 2018, Miscellaneous Applications No.86, L43, 542, 543 and 1515 of 2023 and in Miscellaneous Applications Itlo.74 and 75 of 2024 between the parties. 25
- 30

It is contended by the Respondent that the property in contention was declared to be matrimonial property and the transactions over it with third parties were declared to be fraudulent. It is further contended that there is no Appeal to be rendered nugatory if the Application is not granted by the Court.

2 of B

⁵ Representation

Ms. Judith Tumusiime appeared for the Applicant while Mr. Blasto Byabakama appeared for the Respondent. On application by Counsel, the submissions on court record were adopted as the arguments to be considered in the determination of the Application.

Submissions by Counsel for the Applicant

Counsel argued that the Court has the mandate to entertain the Application based on Section 33 of the Judicature Act, Rules 2(.1) and 6(2Xb) of the Rules of this Court. The decision of the Supreme Court in

L5 Theodore Ssekikubo & 3 Others V AG & 4 Others [2013] UGSC 21 (10 October 2013) was referenced for the conditions to be proved before the Courts grant Orders for Stay of Execution.

It was argued that Civil Appeal No.1528 of 2023 has a likelihood of success since Divorce Cause No.02 of 2018 was heard ex-parte in relation to the ownership of the property comprised in Block 246 Plot 1635. Counsel faulted the trial Court for striking out the Petition and for denying third parties of the right to be heard. 20

- Counsel further argued that the Applicant stands to suffer irreparable damage if the property is sold since it is valued at UGX.500,000,000/- yet it is bound to be sold to recover taxed costs of UGX.40,000,000/= .It was submitted that the Applicant is willing to satisfy the decree if a decision is made by the trial court on his Application to review the Taxation Ruling. 25
- 30

It was then argued that the Application was filed without delay and the balance of convenience tilts in favour of the Applicant since the Appeal will be rendered nugatory if the property is sold.

Submissions by Counsel for the Respondent.

Preliminary Objections against the Application were raised in the submissions on three fronts. First, it was argued that the submissions related to a stay of the sale of the suit land comprised in Kyadondo Block

10 246 .)lot 1635 yet the Application was for an order to stay execution in High Court EMA No.24 of 2023 which amounted to a departure from pleadings.

15 Counsel further objected to being served with the Notice of Appeal, the Memorandum of Appeal and the Letter requesting for the record of proceedings outside the time lines set out in the Rules of this Court. It was argued that the Appeal was incompetent on account of the late service relying on David Etuke V Okonye Mustafa & Another 1z01.71 UGCA 1 (6 February 2017) for the proposition.

20 Failure by the Applicant to furnish security for costs of the Appeal was also raised as an objection pointing to the incompetence of Civil Appeal No. L57-8 of 2023 from which the Application arises.

I find it pertinent to dispose of the preliminary objections before considering the merits of the Application.

I have perused the Application and the submissions filed by Counsel for the Appiicant relating to the subject of the Application. The Application seeks to stay the Order of the Court in Execution Miscellaneous Application No.24 of 2023 pending the hearing of Civil Appeal No.1528 in this Court.

The Registrar of the High Court in EMA No.24 of 2023 issued an Order for the attachment and sale of the property comprised in Kyadondo Block246 Plot 1635 whlch is the same property in the Application from which this Ruling arises. 30

I thus fail to find merit in the preliminary objection raised by Counsel.

- 5 Counsel for the Respondent further objected to the late service of the Appeal documents on her which rendered the Appea! incompetent and finally argued that execution of the orders of the High Court hac. been partially completed since it is the Respondent's Agents in possession of the suit property.
- 10

The mandate of the court at this stage is triggered by the lodging of ^a Notice of Appeal by the Applicant for a stay of execution under Rule 6(2Xb) of the Rules of this Court. The court is only required to determine if the Appeal lodged by the Applicant is not frivolous but raises some arguable grounds as one of the considerations to grant or deny an order for ritay of execution.

The mandate of the Court in Applications for stay of execution does not extend to matters to do with the merits of the Appeal. Such matters are reserved for the full Bench which even has powers to validate any documents filed out of time once an application to the effect is lodged by the Appellant. Byamukama Fred V Kyampagi & Others. l2024l UGCA 285 (3 October 2024l.

^Ithus find no merit in the second preliminary objection.

As to the Application having been overtaken by events, the taking of possession by the Agents of the Respondents in the absence of evidence of sale of the decretal property does not amount to ful! and complete execution of the Orders of the Court. The Court ordered for the Attachment and Sale of the suit property and no evidence of sale was furnished to Court by the Respondent.

I thus find no merlt in the third objection to the Application.

- ⁵ Turning to the merits of the Application, it is evident from the court record that the Decree Nisi in Divorce Cause No.02 of 20L8 was entered by consent on 9th August 20L8 and the Court entered a Decree Absolute on 25th May 2019.

- The Registrar of the Court issued an Order for the attachment and sale of the property comprised in Kyadondo Block 246 Plot 1635 on 24th November 2023 to realize costs of UGX.46,4L5,450/= awarded to the Respondent. L0
- The Applicant filed Miscellaneous Application No.1450 of 2023 to stay execution of the Orders in EMA. No.024 of 2023 but the Judge dismissed the ,pplication on L't July 2024. The present Application was filed on 9th October 2024 after more than 3 months from the delivery of the Ruling in the dismissed Application to stay execution of the orders issued by the 15
- Registrar 20

With all due respect to Counsel for the Applicant, the present application was filed after an unduly long period and it fails on that requirement.

- The Applicant is further required to satisfy the court that the Appea! from which an application for stay of execution arises has a likelihood of success. A perusal of the Notice of Appea! filed on L3th October 2023 reveals that the Appeal is against the decision of the Trial Court in Miscellaneous Application No.0086 of 2023 delivered on 5th October 2023. 25
- 30

In Miscellaneous Application No.0086 of 2023, the Applicant sought Orders that:

- (i) The ex-parte judgment in Divorce Cause No.02 of 2018 be set aside.
- (ii) The execution of the ex parte judgment in Divorce Cause No.02 of 2018 be stayed.

- ⁵ (iii) The main suit under Divorce Cause No.02 of 2018 be reinstated and heard on its merits.
- (iv) Costs of the Application to be in the cause.
- In the Ruling delivered on 5th October 2023 the Court noted that the deponent of the supporting affidavit to the Application claimed that [,e was always in court on the dates Divorce Cause No.02 of 2018 was heard whereas not. The affidavit was found to be defective and the court further found no justifiable grounds for setting aside the Orders in Divorce Cause 10
- No.02 of 20L8. 15

A perusa! of the Application reveals that it does not furnish any grounds to fault the trial Judge on the reasons for the dismissal of Miscellaneous Application No.086 of 2023. The Application does not also fault the Registrar for ordering the attachment and sale of the property in orspute to recover litigation costs incurred by the Respondent.

The Application further introduces third party rights which were never considered by the court either in Miscellaneous Application No.086 of 2023 or in EMA No.24 for the attachment and sale of the property comprised in Kyadondo Block 246 Plot 1635. It also defeats logic for the Applicant to seek an order to stay the sale of property he alleges to have sold to a third party.

It has been long held by the Supreme Court in *Osman Kassim V Century Bottling Company Ltd*, 120201 UGSC 35 (7 October 2020) that

"in order to succeed on this ground, the Applicant must, apart from filing a Notice of Appeal, place before the court material that goes beyond mere statement that the appeal has a likelihood of success..... so as to give the court an idea about the possible grounds of his intended appeal."

I fail to find sufficient grounds for a determination that the Appeal has any likelihood of success. The Application should fail on that ground too.

a

The Applicant is further required to prove that he will suffer irreparable injury/damage if the Application for stay of execution is not granted by the Court.

The Applicant cannot suffer any injury if the Respondent proceeds to execute the Orders of Court in EMA No.24 of 2023 since he does not own the property attached. It would be the alleged third parties to raise the concerns he tries to raise through Objector proceedings or an Application arising out of an Appeal against the dismissal of such an application by the

High Court.

I further find no grounds to hold that the Appeal will be rendered nugatory since the Applicant failed to prove that the Appeal has any likelihood of success. An Applicant for an Order to stay execution of an order/decreed must first satisfy the court that the intended Appeal has a likelihood of success before the court can make a finding that such an appeal will be rendered nugatory if the Order is not granted.

In the circumstances, the Application fails. I make the following Orders:

1. The Application is dismissed.
2. The costs of the Application shall abide the outcome of the Appeal.

Dated and delivered at Kampala this 17th day of February 2025.

Moses Kazibwe Kawumi

Justice of Appeal

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/2025/63/eng@2025-02-26>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/kaddu-v-kaddu-civil-application-375-of-2024-2025-ugca-63-26-february-2025-unknown-topic-unknown-court-2025>

Prepared on 12 October 2026 · Esheria