

UGANDA / JUDGMENT

# Kasenge Joseph v Jackson Kintu Kabanda (Civil Application 693 of 2024) [2025] UGCA 164 (30 May 2025)

[2025] UGCA 164

## COURT

Court of Appeal of Uganda

## BEFORE

Gashirabake, JA

## CASE / FILE NUMBER

Civil Application 693 of 2024

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 0693 OF 2024

(Arising from Civil Appeal No. 975 of 2024) (Misc. Application No. 2011 of 2021) <sup>10</sup>  
(Arising from Civil Suit No. 3121 of 2016)

KASE, NGE JOSEPH APPLICANT

VERSUS

JACKSON KINTU KABANDA RESPONDENT

RULING OF CHRISTOPHER GASHIRABAKE, JA (SINGLE JUSTICE)

## Introduction

[ ] This application was brought under Section 12 of the Judicature Act, Rules

6(2Xb) and 43 of the Judicature (Court of Appeal Rules) SI 13-10, for Orders that;

- o. The execution and implementation of the Orders of the High Court in Misc. Application No. 2014 of 2021 be stayed pending the hearing and final determination of the main appeal (Civil Appeal No. 975 of 2024)

b. The costs of this application be in the main Cause.

[2] The application is premised on the following grounds:

a. The applicant is the registered proprietor of the land comprised in Busiro Block 383 Plot 288 at Kafiansi in Wakiso district, herein the suit land to which the respondent, claiming a Kibanjo interest thereon, sued the applicant and judgment was delivered in favour of the respondent in HCCS No. 3121 of 2016.

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- <sup>5</sup> b. The said judgment issued a permanent injunction, demolition orders, special and general damages of over UGX 26,880,000/= with 8% monthly interest and costs against the applicant, who, being dissatisfied with the same, appealed against the entire Judgment vide COA-10-CY-CA. 0190/2022, which appeal is still pending before this court.
- c. The applicant then filed for a stay of execution in the High Court vide Misc. Application No. 2014 of 2024 which was partially granted by court but on unfair and strict terms requiring the applicant to first furnish UGX 48,861,682 as security for due performance payable within 2 weeks from 6<sup>th</sup> November, 2024, to deposit a title deed for Kyadondo Block 241 Plot 6013 at Kisugu in Makindye (not being the suit land) but valued at 115,000,000/= as additional security for due performance of the decree; which Orders the applicant has lodged a notice of appeal being dissatisfied with the same considering his prevailing financial status, age and the circumstances of this case.
- d. The respondent has already extracted a Notice to show cause why execution should not issue against the applicant and if this application is not granted, then the applicant is bound to suffer irreparable damage that cannot be easily atoned to by an award of damages yet the merits of his appeal shall then be rendered nugatory.
- e. The balance of convenience favours the applicant since he is already at risk of losing the suit land, being penalized to exorbitant damages and or at risk of being committed into civil prison at such frail age of over 82 years by the respondent.
- f. The applicant is ready to deposit <sup>a</sup> <sup>e</sup> deed for the suit land or the said plot 6043 in court, prays for the court to find and pronounce as sufficient and satisfactory security for due performance of the decree on the part of the applicant as to enable his appeal to be prosecuted expeditiously.

<sup>5</sup> [3] The application was opposed by an affidavit sworn by Kabagambe Geoffrey, on the grounds that the stay of execution in this court is an abuse of the Court process. He averred that the applicant was granted a conditional stay at the High Court instead of fulfilling the orders of the Court, he rushed to file <sup>a</sup> second stay in this court. He further averred that the application is misconceived since there is no valid appeal before this Court.

## Representation

- [4] The applicant and Counsel for the applicant were not in Court. The respondent was represented by Mr. Ariho Raymond. The parties filed written submissions.

## Brief facts. 15

- [5] The respondent was the successful party against the applicant in HCCS No. 3121 of 2016. The applicant then applied as the judgment debtor High Court Misc. Application No. 2014 of 2024 for stay of execution of the Decree. On the 06th November, 2024, Tadeo Asiimwe J. granted the stay of execution on condition that the applicant must deposit in court security for due performance of the decree. This was Ugx. 48, 861, 6821: (Forty-eight million, eight hundred sixty-one thousand, six hundred and eighty-two shillings. Being 50% of the outstanding decretal sum, plus a certificate of title for land in Block 244 Plot 6043 at Kisugu. The deposit was to be made within two (2) weeks of the Court's ruling.
- [6] Instead of complying with the terms of the grant, the applicant filed Misc. Application No. 3054 of 2024 seeking leave to appeal and for stay of execution of the orders of Tadeo Asiimwe, J. The application is still pending before the High Court. Without prosecuting the said appeal, the applicant decided to apply for a fresh stay.

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## Submissions for the Applicant

- [7] Counsel for the Applicant submitted that this court has the discretion under Rule 6(2)(b) of the Rules of this Court to make such orders for stay of execution of the judgment appealed against so as to prevent the appeal from being rendered nugatory.
- [8] He further submitted that the principles for the grant of stay of execution are stated in Hon Theodore Ssekikubo & 4 others vs Attorney General & 4 others, Constitutional Application No. 04 of 2014. These principles are;
    - 1. The applicant must show that he lodged a notice of appeal.
    - 2. That substantial loss may result in the applicant unless the stay of execution is granted.
    - 3. That the application has been made without unreasonable delay.
  - 1. There is a serious or imminent danger, the appeal would be rendered nugatory.
  - 5. That the appeal is not frivolous and has a likelihood of success.
  - 6. That the refusal to grant the stay would inflict more hardship than it would avoid.
  - [9] On ground one, counsel submitted that the applicant has lodged a notice of appeal and letters requesting for certified record of proceedings and judgment against both the main suit judgment and the resultant application for stay of execution.

- [10] On the second ground of substantial loss, counsel submitted that the applicant is the registered owner of the suit land with permanent buildings thereon on which he is using for residential purposes and yet the court has

ordered their demolition and this would cause substantial loss. Counsel cited *Tropical Commodities Suppliers Ltd & Others vs International Credit Bank Ltd. (in Liquidation)* (200a) 2 EA 331, where it was held that;

"Substantial loss does not represent any particular amount or size of loss /or it cannot be quantified by any particular mathematical formula but refers to any loss, great or small, that is of real worth or value as distinguished from the loss without a value or that which is merely nominal. "

- [1] Counsel also argued that the application has been made without delay since the ruling was made on 6th November, 2024 and this application was filed on the 29th November, 2024.
- [2] Considering whether there is an imminent threat, counsel argued that there is a serious threat of execution if the application is not granted. It was argued that the orders of the High Court involve a lot of money and also eviction and demolition if the applicant is not granted the application.
- [13] It was argued that the application and the appeal are not frivolous and have a likelihood of success. Counsel argued that the appeal raises serious issues to be determined by this Court.
- [14] It was contended by counsel that the applicant has demonstrated the willingness to provide security for due performance in case it is ordered. The applicant was willing to deposit the title deed for the suit land or another land of the same monetary value. Counsel also argued that the requirement for security for costs is not mandatory; it is optional depending on the circumstances of each case. Counsel, prayed that the status of the applicant should be put into consideration in order to decide whether security should be ordered or not.

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[15] Counsel submitted that the applicant had satisfied all the grounds required for the grant of this application.

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## Submissions for the Respondent

- [6] Counsel for the respondent raised a preliminary objection stating that the application offends rule 42 of the Judicature (Court of Appeal Rules) Directions S.I 13-10 which is to the effect that whenever an application may be made either in the court or in the High Court it shall be made first in the High Court. Counsel argued that the applicant was aware of this requirement and he filed Misc. Application No. 3054 of 3034 seeking leave to appeal and for

a stay of execution. While the same was still pending, he filed this application. Counsel argued that the applicant has not filed any special circumstances to justify the current application for a stay of execution before this court.

- [11] On ground one, counsel argued that the applicant does not have an automatic right of appeal so as to enable him to file a Notice of appeal and raise such an application. Counsel submitted that without obtaining leave to appeal, the applicant cannot claim that there is a pending Civil Appeal No. 975 of 2024. He prayed that this court finds that there is no pending appeal.
- [18] On whether the appeal has a likelihood of success, counsel argued that there must be a pending appeal with chances of success, which is not the case in this matter. It was contended that the applicant has not set out any serious matter of law or fact that merited judicial consideration on appeal. Counsel cited *Mbogo & Anor vs Shah* 119681 EA 93, to the effect that a court of appeal should not interfere with the exercise of the discretion of a Judge unless it is satisfied that the Judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision or unless it is manifest from the case as a whole that the Judge has been clearly wrong in the exercise of his discretion and that as a result has suffered

injustice. Counsel argued that there is no likelihood that the appeal would succeed.

- [9] Counsel contended that the applicant presented security of land in Block 244 Plot 6043 at Kisugu. It was argued that the applicant never brought a valuation report. Counsel argued that for the applicant to desire to file only land as security is being done in bad faith. It was contended that the said land is heavily encumbered with third-party developments. Counsel still stuck to the argument that the applicant ought to furnish security for due performance as ordered by the High Court. Counsel submitted that the other land suggested by the applicant has no valuation report and its ownership status and possible encumbrances are unknown.
- [20] On the other hand, counsel submitted that if the court is to grant the application. The applicant should be ordered to deposit monetary security for the due performance of the undisputed decretal sum as at 6th November, 2024, which was UGX 97,723,364/- (Ninety-seven million, seven hundred twenty-three thousand, three hundred sixty-four shillings only). Counsel prayed that the applicant deposit into court 70% thereof in the sum of UGX 68,406,354/- (Sixty-eight million, four hundred six thousand three hundred fifty-four shillings only). It was argued that this would be reasonable assurance to the respondent that he may untimely recover his monetary awards that keep rising every day due to interest.

121) Counsel submitted that the application should be dismissed.

## Consideration of Court.

I have read the pleadings and the submissions of both counsel. Rule 6(2) (b) and 2(2) of the Rules of this Court provide this court with the power

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to grant a stay of execution where a notice of appeal has been lodged in accordance with Rule 76, on such terms as it thinks fit.

123) The respondent raised a preliminary objection on the ground that the application offends Rule 42 of the Rules of this court, which requires that an application for a stay of execution is first filed in the High Court and only in exceptional circumstances can it be filed in this court at first instance. This rule states thus:

## 42. Order of hearing applications

- (1) Whenever an application may be made either in the court or in the High Court, it shall be made first in the High Court.
- (2) Notwithstanding sub rule (1) of this rule, in any civil or criminal matter, the court may, on application or of its own motion, give leave to appeal and grant a consequential extension of time for doing any act as the justice of the case requires, or entertain an application under rule 6(2)(b) of these Rules. in order to safeguard the right of appeal, notwithstanding the fact that no application for that purpose has first been made to the High Court.

The applicant sought a stay of execution from the High Court vide Miscellaneous Application No. 2014 of 2021, which was heard by Tadeo Asiimwe, J. He delivered his ruling on the 06th November 2024. The Judge granted a conditional stay, stating;

"Ideally, vacant possession cannot be monetarized. Secondly, ordering the applicant to furnish the entire sum (damages) would, in my opinion, amount to a disguised full execution. In the circumstances, I shall therefore allow the application conditionally with the following orders:

- 1. An order that the applicant shall furnish 50% of general damages, interest and costs to the court equivalent to 48 861,682/= (Forty-eight million eighty hundred sixty-one thousand six hundred and eighty-two shillings) as security for due performance.
- 2. The said amount in I above shall be deposited in court within 2 weeks from this ruling.
- 3. In addition, the land title comprised in Kyadondo Block 244 Plot 6043 shall be deposited in Court as additional security for due performance. "
- 15 125) In the affidavit in support of the Motion by the applicant, in paragraph four, he contended that the above conditions were "unfair and strict"; he averred that,

"That subsequently, I filed for a stay of execution of the said judgment in the High Court at Kampala vide Misc. Application No. 2011 of 2024 which was partially granted by court but on unfair and strict terms requiring me to first furnish Ugx 48,861,682 cash deposit in court as security for due performance within 2 weeks from 6<sup>th</sup> November, 2024 also to deposit a title deed for Kyadondo Block 244 Plot 604j at Kisugu in Makindye (not being the suit land) but which land is valued more than the suit land at a sum of Ugx 115,000,000/= as per the copy of the valuation report hereto marked 'D' as additional security for due performance of the decree; see the court Decree hereto marked 'E'."

30 126 I it is my considered opinion that this application is an abuse of the court process because it raises questions for this court to determine, well aware that such issues have previously been directly or substantially determined. The applicant filed their application for a stay of execution in the High Court as

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- <sup>5</sup> they ought to have done under rule 42(1). The Application was conditionally granted. The Applicant was aggrieved by the conditions, stating that the terms were unfair and strict. I do not find the conditions attached to the stay unfair. He needs to comply with them. It has to be appreciated that a grant of an application for stay of execution is an exercise of the discretionary power of the Judge on such terms as he deems fit. It is my view that this present application was brought as a disguised appeal against the conditions set by the High Court while granting the stay of execution. This is intended to deny the respondent from enjoying the fruits of his victory in the trial Court. 10
- 127 I, therefore, allow the preliminary objection by counsel for the respondent and hereby dismiss Civil Application No. 693 of 2024.
- [28] I find that this application has no merit. It is hereby dismissed.

## Decision

- (a) The application is dismissed.
- (b) Each party shall bear their own costs for the application.

**I so order.**

Dated, signed and delivered at Kampala this 2025. {r^ 5 of Day

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C. GASHIRABAKE

JUSTICE OF APPEAL

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