

**Lukoba v Kigongo (Miscellaneous
Application 51 of 2024) [2025]
UGHC 215 (16 April 2025)**
[2025] UGHC 215

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- 1. This Application, brought under Order 22 Rules 23 and 26 of the Civil Procedure Rules (CPR), seeks: An order staying the execution of the orders issued in High Court Civil Appeal No. 13 of 2012 against the Applicant; and an order that the costs of this Application be in the cause.
- 2. The Application is grounded on the Applicant's affidavit, which alleges that he was the unsuccessful party in High Court Civil Appeal No. 13 of 2012. He claims a dilemma arising from two judgments: one delivered by Hon. Justice Dr. Flavian Zeija on 30th November 2017, and another allegedly delivered by Hon. Justice V. F. Musoke-Kibuuka on 7th December 2017, which he asserts is not aware of or was not given to him. The Annextures to this

Application include the proceedings of Hon. Justice Musoke-Kibuuka (marked "B") and the judgment of Hon. Justice Zeija (marked "A").

- 3. The Applicant further avers that the first Appellant in High Court Civil Appeal No. 13 of 2012, Lt. Col. Sam Nkeera, fell ill, became bedridden, and died on 2 nd July 2020 (supported by a Nakasero Hospital death notification, Annexure "C," and a *Monitor* Newspaper Article, Annexure "D"), preventing timely appeal action. The Applicant also cites his deployment outside Uganda, supported by an Internal Memo dated 2nd February 2015 and a United Nations letter dated 11th August 2015 (both marked "E"). He received a Notice to Show Cause why a warrant of execution should not

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issue, dated 25th March 2024, requiring his appearance on 19th April 2024 (Annexure "F"), prompting this Application. The Applicant further avers that he filed a Notice of Appeal and an Application for leave to appeal out of time in the Court of Appeal, arguing that a stay is necessary to prevent the appeal from being rendered nugatory, that the appeal has a high likelihood of success, and that substantial loss may ensue without a stay. He offered to furnish security for the decretal sum.

- 4. The Respondent deponed an affidavit opposing the Application, asserting non-service of the appeal or leave to appeal of time Application, lack of evidence of a pending appeal (e.g., no Court of Appeal Case number), and the Applicant's representation by Counsel who could have filed an Appeal the absence of the Applicant. The Respondent denies the appeal's likelihood of success, noting the absence of security, and argues the Application is moot, as the disputed property (Plot 50 Grant Street) has been sold twice, with the Certificate of Title now held by Nanseera Joseph (Annexure "A"). In rejoinder, the Applicant clarifies the property's transfer history but does not challenge the current ownership.

Representation

- 5. The Applicant was represented by M/s Kitende Byarugaba & Co. Advocates, and the Respondent by M/s Kawanga & Kasule Advocates. Written submissions from both parties have been considered.

Issues for Determination

- 6. The pleadings and submissions raise the following issues:
- 1. Whether an order for stay of execution should be granted?.
- 2. What remedies, if any, are available to the parties?

Decision of Court

Issue 1: Whether an order for stay of execution should be granted

7. The legal basis for a stay of execution is found in *Order 43 Rules 4(1), 4(2), and 4(3) of the Civil Procedure Rules*, read with *Order 22 Rules 23 and 26*, and is guided by judicial precedents such as *Lawrence Musiitwa Kyazze vs*

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***Eunice Busingye (Supreme Court Civil Application No. 18 of 1990)* and *Hon. Theodore Ssekikubo & Others vs Attorney General (Constitutional Application No. 03 of 2014)*. The Applicant must demonstrate:**

- A competent Notice of Appeal;
- Substantial loss or irreparable damage in absence of a stay;
- Absence of unreasonable delay;
- Security for due performance of the decree; and
- A likelihood of success or serious triable issues.
- 8. I shall evaluate each condition with reference to the evidence, statutory provisions, and case law.

1. Filing of a Competent Notice of Appeal

- 9. The Applicant filed a Notice of Appeal on 21st May 2024, alongside a request for Certified proceedings and the judgment of 30th November 2017 by Hon. Justice Flavian Zeija. No evidence supports the alleged judgment of 7th December 2017 by Hon. Justice Musoke-Kibuuka, and I proceed on the basis of the sole judgment dated 30th November 2017. The Notice, filed over six years' post-judgment, exceeds the 30-days limit under Section 79 of the Civil Procedure Act, rendering it prima facie incompetent unless extended by leave of Court.
- 10. In *Attorney General Vs the East African Law Society & Another (EACA Application No. 1 of 2013)*, the Court held that a Notice of Appeal expresses intent to appeal, potentially supporting a stay Application. However, timeliness is critical. In *Capital City Authority vs Mulangira Joseph (Miscellaneous Application No. 26 of 2016)*, the Court allowed flexibility where intent was promptly expressed post-judgment, but here, the almost seven-year delay unaccompanied by an immediate request for proceedings negates such leniency. The Applicant's failure to file an Application for leave to appeal out of time in this Court or the Court of Appeal, as required under *Section 79(2) of the Civil Procedure Act* for second appeals, further undermines competence. I find this condition unfulfilled.

2. Substantial Loss or Irreparable Damage

- 11. The Applicant's claim of substantial loss (paragraph 14 of the affidavit) lacks detail or evidence. In **Tropical Commodities Supplies Ltd vs International Credit Bank Ltd [2004] 2 EA 331**, Ogoola J defined substantial loss as a tangible, quantifiable detriment, distinguishable from nominal loss, requiring specific proof absent here. The Respondent's evidence of the property's double sale and title transfer to Nanseera Joseph (Annexure "A") suggests the Application's mootness, as execution targets a property no longer within the Applicant's control.
- 12. Under the Registration of Titles Act Cap 240, a Certificate of Title, consistent with the Registrar's records, is conclusive evidence of ownership in the absence of fraud or error, neither of which the Applicant has proved. His rejoinder, claiming tenancy on Plot 7 rather than ownership of Plot 50, weakens his case. In my view irreparable damage requires a clear risk to proprietary rights, not speculative harm. The Applicant's failure to rebut the title transfer leaves no basis for finding substantial loss, and I so hold.

3. Absence of Unreasonable Delay

- 13. The judgment was delivered on 30th November 2017, yet this Application was filed on 19th April 2024 over six years later. Section 79 of the Civil Procedure Act Cap 282 mandates prompt action, and undue delay may bar relief unless satisfactorily explained. The Applicant cites Lt. Col. Nkeera's illness and death, and his own foreign deployment, but these do not justify inaction. His Counsel, M/s Kitende Byarugaba & Co. Advocates, represented him throughout, and modern communication (e.g., email, telephone) could have facilitated timely instructions, as rightfully submitted by the Respondent.
- 14. The delay's length, absence of prior Applications for extension, and proximity to the execution notice (25th March 2024) suggest a reactive, rather than proactive, approach indicative of bad faith under **Makula International Ltd vs Cardinal Nsubuga [1982] HCB 11**, where delay prejudiced the Respondent. I find the delay unreasonable and unjustified.

4. Security for Due Performance of the Decree

- 15. **Order 43 Rule 4(3)(c) CPR** requires security to protect the judgment creditor against unsuccessful appeals. In **Shem Mpanga Mukasa & Anor vs Kizza Clessy Barya (Miscellaneous Application No. 479 of 2021*)*, Lady Justice Nkonge Rugadya emphasized security as a shield against frivolous claims, while in **Kisaalu Joseph & 10 Others vs Nakintu May & Anor (Miscellaneous Application No. 105 of 2020)**, Lady Justice Victoria Nakintu Nkwanga clarified it includes the decretal sum. **Amon Bazira vs Maurice Pater Kagimu (Land Division Miscellaneous Application No. 1138 of 2016*)* and **Lawrence Musiitwa Kyazze vs Eunice Busingye (Supreme Court Civil Application No. 18 of 1990)** affirm this as a

non-negotiable condition.

- 16. The Applicant's willingness to furnish security (paragraph 15 of his affidavit) satisfies this requirement, provided formal deposit is made. I find this condition met, subject to compliance.

5. Likelihood of Success or Triable Issues

- 17. The Applicant asserts a high chance of success under paragraph 13 of his affidavit in support of the Application but offers no grounds, such as errors in law or fact in the 2017 judgment of this Court. The Respondent highlights the Applicant's losses at both lower Courts, shifting the burden to demonstrate triable issues. In **GAPCO Uganda Ltd vs Kaweesa & Anor* (Miscellaneous Application No. 259 of 2013) [2013] UGHCLD 47*, the Court required a prima facie case, but not mere assertion. Similarly, in **Uganda Revenue Authority vs Golden Leaves Hotels & Resorts Ltd* (Miscellaneous Application No. 0783 of 2007)* and **Emaku Joseph & Anor vs Emulu Ojamuge* (Court of Appeal Civil Application No. 076 of 2024)* denied stays where no triable issues were shown.
- 18. In this Application, without a pending appeal or specific challenges to the judgment, the Applicant's claim lacks substance. I find no likelihood of success or triable issues.

6. Balance of Convenience

19. The balance of convenience, as articulated in **British American Tobacco (U) Ltd vs Nsubuga* [2006] UGCommC 32*, favours the party with a stronger legal

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position and timely action. The Respondent, having prevailed and acted on the judgment, faces prejudice from further delay, while the Applicant's delay and failure to prove harm or merit tilt the scales against him. I find the balance favours denying the stay.

7. Conclusion

20. The Applicant has satisfied only the security for due performance condition, failing on competence of appeal, substantial loss, delay, and likelihood of success. This Application, filed over six years after the 30th November 2017 judgment in Civil Appeal No. 13 of 2012, appears a dilatory tactic to frustrate the Respondent's rights from Civil Suit No. 59 of 2010 (Judgment of 10th May 2012). The Application is incompetent and dismissed with costs.

8. Orders

- 1. The Application is hereby dismissed.
- 2. Costs of the Application are awarded to the Respondent.

It is so ordered.

Ruling delivered electronically at Masaka this 16th day of April 2025.

LAWRENCE TWEYANZE JUDGE 16 th April 2025

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