

UGANDA / JUDGMENT

Mukiibi & Another v The Commissioner Land Registration & Another (Miscellaneous Application 39 of 2023) [2024] UGSC 30 (22 August 2024)

[2024] UGSC 30

COURT

Supreme Court of Uganda

BEFORE

Mike Chibita, JSC

CASE / FILE NUMBER

Miscellaneous Application 39 of 2023

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THE REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA AT KAMPALA
[CORAM: CHIBITA, JSC] MISC. CIVIL APPLICATION NO. 039 OF 2023 [ARISING OUT
OF CIVIL APPLICATION NO. 043 OF 2023] BETWEEN

1. HEZEKIAH MUKIIBI 2. JONATHAN MAGALA

AND

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1. THE COMMISSIONER LAND REGISTRATION 2. EDWARD WASSWA
DRAKE ::::RESPONDENTS

(An application for an interim order of stay of execution.)

$\$20$

RULING.

The applicants filed this application under the provisions of Article 132(1-2) of the Constitution, Section 4, 6, 7 and 8 of the Judicature Act and Rules 2(2), 6(2)(b), 41(2), 42(1) & 2) , 43 of the Judicature (Supreme Court Rules) Directions S. I 13-11, seeking for:

- a. An interim order of injunction and / or stay of execution of the judgment and orders of the Court of Appeal in Civil Appeal No. 113 of 2020 pending the determination of the main application in Civil Application No. 43 of 2023 for a stay of execution, pending determination of the appeal.

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- b. An interim injunction against the respondents, their agents, servants or persons claiming interest from them from changing the status quo in respect of the property comprised in Kyadondo Block 185 Plot 385 land at Namugongo until final determination of the applicants' appeal.
- c. Costs of the application abide the outcome of the appeal. 10

Grounds:

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\$20\$

The grounds of the application are that:

1. The applicants filed a notice of appeal on the 19th Day of October 2023 against the decision in Court of Appeal Civil Appeal No.113 Of 2020 and a copy was filed in the registry of this honourable court.
2. The Respondents have been served with the Notice of Appeal and letter requesting for proceedings.
3. The Appeal raises serious matters relating to powers of the 1st Respondent to cancel a certificate of title on grounds of fraud and the right to a fair hearing before cancellation of a land title.

an imminent threat that the Respondents will \$4.\$ There is execute/implement the orders issued by the trial judge and tamper/alter the status quo of the suit land before determination of the Appeal.

5. The Applicants shall suffer a substantial loss if this application is \$25\$ not granted.

6. The Applicants' right to be heard on appeal shall be curtailed if this application is not granted.
7. The applicants' Appeal will be rendered nugatory if this application is not granted.
8. The balance of convenience is in favour of granting the application.
9. The Registrar Court of Appeal has advised the Applicants to lodge 10 the instant application in this Court.

The application is supported by the affidavits of Mr. Hezekiah Mukiibi and Jonathan Magala, dated 10th November, 2023 together with a supplementary affidavit deposed by the 1st applicant which expound the grounds.

Background;

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altered the register through a complaint by a one Winnie Tugume, that she purchased the said land in 1998 from Tefiro Doffe Bisase Kisosonkole and that the 1st applicant was a witness to the same. The 1st respondent hence cancelled the applicants as proprietors of the said land. The applicants however, maintained that they were the lawful owners of the land. The 1st applicant claimed that the said land \$10\$ was transferred to him in 1981 from a one Jeremiah Munyigwa. He then subdivided the land into plots 8151, 8152, 8153 and 8154. He transferred plot 8152 to the 2nd applicant. Dissatisfied with the decision of the 1st respondent, the applicants subsequently, lodged an application for Judicial Review in the High Court. The trial Judge 15 dismissed the application. The applicants appealed to the Court of Appeal but were unsuccessful. They have now appealed to this Court hence this application for interim stay pending determination of the substantive application.

Representation \$20\$

CONSIDERATION OF COURT

determined by the full court. See: Yakobo Senkungu and others vs Cerencio Mukasa, No. 5 of 2013(SC) and Guliano Gargio vs Calaudio Casadio. No.3 of 2013.

Rule 2(2) empowers this Court to issue interim orders in order to achieve the ends of justice. One of the ends of justice is to preserve the right of appeal. See: Hon. Theodore Ssekikuubo and others v 10 The Attorney General and others, SC Constitutional Application No. 04 of 2014 and Zubeda Mohamed & Anor vs. Laila Wallia & Anor, No.07 of 2016(SC)

The established criteria for granting interim stay is settled in a plethora of cases. These encompass the requirement of a valid notice of appeal, a substantive application, and an imminent threat of execution. See: **Hwang Sung Industries Limited vs. Tajdin Hussein & Others**, No. 19 of 2008(SC) followed in **Zubeda Mohamed & Anor vs. Laila Wallia & Anor**, (Supra).

It is not in dispute that there is a notice of appeal lodged in this Court on 18th October 2023 marked as annexure B1 and B2. There is also a pending substantive application, vide Civil Application No. 43 of 2023 filed on 13th November 2023 from which this application arises.

However, I note that the respondent strongly averred that he is not a party to the case and the applicants state that he was added to the proceedings having been registered as proprietor.

As stated earlier, interim orders are to maintain the status quo and have the main issues in controversy determined by the full Court. The

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Court at this stage does not delve into the merits of the case. Therefore, regarding the issue of the respondent not being a party by virtue of not having been party at the High Court and Court of Appeal, will be better determined in the substantive application and in the appeal itself since it has a bearing on the likelihood of success of the appeal.

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The issue therefore is whether there is serious threat of execution before granting the interim order, bearing in mind that it is meant only to preserve the *status quo* until the main application is heard and determined.

- The applicants state that there is an imminent threat that the 15 respondents will execute the orders of the lower court and alter the status quo of the suit property before the determination of the appeal and that the respondents have requested for approval of the draft decree which shall then be endorsed by court.

- The 1^{st} respondent stated that there was no threat of execution as 20 they have not taken any step to execute the orders of the Court of Appeal, and furthermore, that they had not received any application seeking the change of the register and there were beneficiary caveats that could only be lapsed by a court order, therefore no transfer could be effected until then. The allegations of the applicants were 25 speculative and no threat of execution was proved by the applicants.

The applicants rejoined that the 2^{nd} respondent had taken steps to alter the *status quo* by building a boundary wall and had caused an illegal police post to be placed on the land as a way of evicting the

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applicants on the land. The applicants adduced pictures to that effect $\sqrt{5}$ as evidence. Furthermore, they stated that there was a threat to alter the *status quo* as the 1^{st} respondent had previously done so when the matter was at trial at the High Court and caused the land to be transferred to a 3^{rd} party. That if the order is not granted the status quo will change and thus will render the main application and the intended appeal nugatory. The applicants also averred that they had no control over the beneficiary caveats which could be removed without their consent and alterations could be made. Therefore, the only remedy for the applicants is the grant of an interim stay of execution to maintain the status quo.

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Given the peculiar circumstances of the case, it is in the interest of justice that the *status quo* is maintained not to render the substantive application nugatory. A review of the evidence shows that the previous conduct of the 1^{st} respondent flouted a court order. Since the respondents did not respect the court order during the High Court 20 proceeding, and effected transfer of the land to a third party and the certificate of title is in the name of the 2^{nd} respondent, the status quo can easily and hastily be changed. Moreover, the 1^{st} respondent is currently engaged in the process of extracting the decree and could proceed with execution at its discretion hence rendering the main application nugatory.

2^{nd} Furthermore, the applicants have demonstrated that the respondent is putting up a wall fence and has deployed police on the property which is likely to seal out the applicants from the land. The

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\$2nd\$ respondent argued that he was not party to the proceedings in the trial court and on appeal, therefore he cannot be subjected to this appeal and applications since that curtails his right to a fair hearing. I am of the view that this is actually a threat to the parties' interests since he can easily transfer the property to third parties if he wished which has the effect of rendering the main application nugatory.

I am therefore of the firm view that the ends of justice require that the status quo be preserved as is, pending determination of the substantive application. In the result, I accordingly allow this application. The costs shall abide the outcome of the main application.

Dated at Kampala this

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MIKE J. CHIBITA JUSTICE OF THE SUPREME COURT

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Prepared on 13 October 2026 · Esheria