

UGANDA / JUDGMENT

Murad v Bwogi & Another

(Miscellaneous Application 799 of 2024)

[2024] UGHCFD 76 (1 November 2024)

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COURT

HC: Family Division (Uganda)

BEFORE

Komuhangi, J

CASE / FILE NUMBER

Miscellaneous Application 799 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA (FAMILY DIVISION)
MISCELLANEOUS APPLICATION 0799 OF 2024 5 (ARISING OUT OF
MISCELLANEOUS APPLICATION NO. 0797 OF 224) (ARISING FROM
MISCELLANEOUS APPLICATION NO. 0229 OF 2023) (ARISING FROM CIVIL SUIT NO.
0040 OF 2010)

MURAD SAMNANI =====APPLICANT

10 VERSUS

1. WASSWA AMONI BWOGI=====RESPONDENTS

2. KATO WILLIAM KAJUBI

BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA 15 RULING

Introduction

This is a Ruling in respect of an Application by Notice of Motion for Orders that:

- (a) A stay of execution Order be granted against the Respondents pending the determination of Miscellaneous Application No. 0797 of 2024 for review and
- 20 setting aside of Judgment and Orders in Civil Suit No. 0040 of 2010 and consequently Miscellaneous Application No. 0229 of 2023;

(b) Costs of this Application provided for.

Representation

25 The Application was filed by Kamulegeya & Co. Advocates, but when the matter came up for hearing, the Applicant was represented by Mr. Buyoni Joseck of Sanywa, Wabwire & Co. Advocates who had filed a Notice of joint instructions that very morning. Both Counsel made oral submissions and the same have been considered in this Ruling.

5 The Application

The Application is supported by the Affidavit of the Applicant and may be summarised as follows:

That the Applicant has an interest on the suit land because he bought it jointly with his business partner one Mohammad Thobani from one Joshua Kajubi Mayanja.

10 That he took possession of the suit property and from nowhere, the Respondents appeared and threatened to evict him and also filed Civil Suit No. 0040 of 2010 which was judged in their favour and the Court ordered him to vacate the premises.

The Applicant further avers that Joshua Mayanja, who has since died, filed a Notice

- 15 of Appeal but fell sick and was not able to pursue it. The Respondents then filed Miscellaneous Application No. 0229 of 2023 against the Applicant for contempt of Court and the same was granted and he was ordered to vacate the premises, pay damages and costs and there is a Warrant of Arrest against him.
- 20 The Applicant also averred that Miscellaneous Application No. 0797 of 2024 for Review of Judgment in Civil Suit No. 0040 of 2010 has been brought without delay and it has a high likelihood of success. It is further his averment that if this Application is not granted, Miscellaneous Application No. 0797 of 2024 will be rendered nugatory and he will suffer substantial loss as he is aggrieved and 25 dissatisfied with the Judgment in Civil Suit No. 0040 of 2010 because he has an interest in the suit property.

On the other hand, the Respondents opposed the Application in their Affidavits in Reply and averred that the Applicant has no interest in the suit land and Mohamood Thobani on whose behalf he was acting already complied with the Orders of the Court in Civil Suit No. 0040 of 2010 and has since disassociated himself from the

5 Applicant . They further averred that the continuous refusal of the Applicant to vacate the suit land despite the numerous Court Orders is intended to deny them and other beneficiaries the benefits and fruits of the Judgment that was given in their favour.

Background of the Application

10 I have deemed it necessary to give a detailed background to this Application because of the peculiar nature of the Application and the Applicant.

The Respondents filed Civil Suit No. 0040 of 2010 against their brother Mayanja Joshua Kajubi seeking for: revocation of the Letters of Administration for the estate

- 15 of the late Salongo Sepuya Kajubi Mulondozi Merekizadeki (deceased) granted to the Defendant (Mayanja Joshua Kajubi); cancellation of the Defendant's name from the land comprised in Kibuga Block 10 Plots 581 and 582 at Bukesa; an Order that the Defendant accounts for the suit estate; an Order nullifying the sale of the suit estate comprised in Kibuga Block 10 Plots 581 and 582; General damages; interests
- 20 and costs of the suit.

Judgment in Civil Suit No. 0040 of 2010 was passed by this Honourable Court on 23rd February 2023 in favour of the Respondents and therein it was ordered **inter alia** that: Mohamood Noordin Thobani and/or his agents remove their property kept in 25 the suit property with immediate effect so that the Respondents and the other beneficiaries occupy the premises in accordance with the wishes of the Deceased in

the Will pending the appointment of another Administrator.

Mohamood Noordin Thobani and his agent (the Applicant) failed to comply with the Court Order and the 1st Respondent filed Miscellaneous Application No. 0229 of 2023 for Contempt of Court Orders against them. The Ruling in the said Application was delivered on 4th October 2023. The Applicant was found to be in Contempt of 5 the Court Orders because he had refused to remove his property from the suit land yet the Respondents had asked him to do so on several occasions. It was also

discovered by the Court that Mohamood Noordin Thobani had even written a letter to the Applicant and copied in this Court instructing him to remove his property from the suit land as per the Judgment since he was the one in its possession.

Upon being found in Contempt of Court Orders, this Court ordered the Applicant to: comply with the Orders given in Civil Suit No. 0040 of 2010 within three (3) days, in any case not later than 9th October 2023 failure of which he was to be arrested and committed to Civil Prison for six (6) months. The Applicant was also ordered to pay 15 the Respondent a sum of UGX 10,000,000 (Uganda Shillings Ten Million) with interest of 10% from the date of the said Ruling as exemplary damages which shall be for the benefit of all the beneficiaries of the suit property; pay a sum of UGX 10,000,000 (Uganda Shillings Ten Million) as a fine; and Costs for that Application.

20 The Applicant still defied the Orders of the Court but instead filed **Miscellaneous Application No. 1257 Of 2023: Murad Samnani versus Wasswa Amon Bwogi** for a Stay of Execution of Orders in Miscellaneous Application No. 0229 of 2023. The Application was dismissed with costs.

25 The Applicant still refused to comply with the Orders of the Court and the Deputy Registrar of the Court issued a Warrant of Arrest in Exeucution on 15th May 2024 ordering the arrest of the Applicant unless he paid a sum of UGX 21,588,333

(Uganda Shillings Twenty One Million Five Hundred Eighty Eight Thousand Three Hundred Thirty Three).

Instead of complying with the Order of the Court, the Applicant filed Miscellaneous

Application No. 0797 of 2024 on 24 5 th May 2024 for Review of Judgment in Civil Suit No. 0040 of 2010. On the same day, the Applicant filed this Application for a Stay of Execution of Orders in Civil Suit No. 0040 of 2010 and Miscellaneous Application No. 0229 of 2022 pending the determination of the Application for Review, hence this Ruling.

Issue

Whether there exists sufficient cause for a stay of execution pending the determination of Miscellaneous Application No. 0797 of 2010 for review and setting aside of Judgment and Orders in Civil Suit No. 0040 of 2010 and consequently

15 Miscellaneous Application No. 0229 of 2023.

Resolution of Issue

Whether there exists sufficient cause for a stay of execution pending the determination of Miscellaneous Application No. 0797 of 2010 for review and 20 *setting aside of Judgment and Orders in Civil Suit No. 0040 of 2010 and consequently Miscellaneous Application No. 0229 of 2023*.

I need to observe from the onset that it is unclear from the reliefs sought which Orders the Application intends to have stayed. As has already been noted, this Court

25 dismissed an Application for a stay of execution of Orders in Miscellaneous Application No. 0229 of 2023 vide Miscellaneous Application No. 1257 of 2023. This, therefore, means that the Orders in Miscellaneous Application No. 0229 still stand and the Applicant **MUST** comply with them.

This takes me to the next possible Orders that the Applicant may have intended to 5 be stayed vide this Application being the Decree and Orders in Civil Suit No. 040 of 2010.

Counsel for the Applicant submitted that if this Application is not granted, Miscellaneous Application No. 0797 of 2024 will be rendered nugatory and the Applicant will suffer loss. Counsel did not address the Court on the likelihood of success of the Application for review.

On the other hand, Counsel for the Respondents contended that this Application and the others that the Applicant has filed lack merit but an abuse of the Court process.

- 15 He insisted that the Applicant has continued to blatantly disregard the Court Orders without any repercussions. He submitted that this Application should not be granted. He prayed that if this Court is inclined to allow this Application, then the Applicant should be ordered to pay UGX 21,588,333 (Uganda Shillings Twenty-One Million Five Hundred Eighty-Eight Thousand Three Hundred Thirty-Three) as indicated on
- 20 the Warrant of Arrest.

Court's Consideration

The Applicant did not adduce any evidence to prove that he will suffer substantial loss if this Application is not granted. It is important to note that during the hearing

25 of Civil Suit No. 0040 of 2010, no evidence was adduced to the effect that the Applicant jointly acquired the suit property with Muhamood Thobani. That claim has just come up in this Application. This Court treats this claim as an afterthought

and a falsehood intended to mislead the Court. This Court already ruled that there is no loss that the Applicant will suffer if the execution is not stayed in *Miscellaneous Application No. 1257 Of 2023: Murad Samnani versus Wasswa Amon Bwogi* (Supra).

I will reproduce the Ruling of this Court for purposes of emphasis:

"*Regarding the first ground that substantial loss may result to the party applying for stay of execution unless the Order is made, I find no evidence to the fact that the Applicant is going to incur any substantial loss if the Application for stay is not granted. As already stated, no*

10 *execution proceedings have been commenced in regard to the Orders made in Miscellaneous Application No. 0229 of 2023.*

Also, the Applicant has not produced any evidence to the satisfaction of the Court that he is going to incur substantial loss as a result of the Orders made in Miscellaneous Application No.

- 15 *0229 of 2023 apart from simply stating in his paragraph 7 of the Affidavit in support of the Chamber Summons that if the impugned Order is executed, it will substantially affect the operations of his business, reputation and quality of life since he has been condemned to pay colossal sums of money or risk imprisonment in civil prison. I do not find this explanation satisfying enough to warrant the Applicant a stay of execution. The Applicant does not operate*
- 20 *his business from the suit premises and neither does he stay in the same. Had the Applicant complied with the Orders given by this Court in Civil Suit No. 0040 of 2010, then he would not be at risk of paying a colossal sum of money or risk imprisonment as he states.*
- *It should be noted that seven (7) months had elapsed from the time the Applicant was ordered* 25 *to remove his property from the suit premises to the time Miscellaneous Application No. 0229 of 2023 was filed in which he was found in contempt of the Court Orders in Civil Suit No. 040 of 2010.*

It should further be noted that the Applicant was at all times present when the proceedings in 30 *Civil Suit No. 0040 of 2010 were ongoing; Judgment was delivered in his presence; a copy of*

the said Judgment was availed to him, a typed and certified copy of the Record of Proceedings was availed to him but he never lodged a Notice of Appeal from 23rd February 2023 when Judgment was delivered in Civil Suit No. 0040 of 2010. He only lodged a Notice of Appeal on the 10th day of October 2023 after he had been found in contempt of Court Orders, which date

was also past the deadline of 9 5 *th October 2023 when he was supposed to remove his items from the suit premises as per the Orders made in Miscellaneous Application No. 0229 of 2023. The Applicant's allegation in paragraph 7 of his Affidavit in support of the Chamber Summons that he was not fully served with any legal proceedings by the Respondent in the Miscellaneous Application is not true.*

In the premises, I find that the Applicant is just complicating this matter and has been adamant in complying with the Court Orders. I find that the purported substantial loss the Applicant states in his Affidavit is rather self-imposed because of his continued disregard for Court Orders. I am rather disturbed as to why the Applicant would refuse to remove his items from the suit

15 *property even after his Principal (Mohamood Nordin Thobani) asked him by a letter which was copied to this Court to do so. The claim by the Applicant that it is Mayanja Joshua to remove the properties from the suit property lacks any iota of logic because during trial, the Applicant confirmed that he is the one who kept his properties in the house and the order to remove the property was made to him and not to Joshua Mayanja.*

More so, I find that the Appeal shall not be rendered a nugatory if this Application for stay of execution is not granted because there is no imminent threat of execution by the Respondent; apart from simply alleging it in his paragraph 6 of his Affidavit in Support of the Chamber Summons, the Applicant has not presented the any argument or evidence that shows that his

25 *alleged Appeal is likely to succeed.*

I am therefore, inclined to again agree with Counsel for the Respondent that this Application is frivolous and vexatious, a perfect abuse of Court process, an attempt to validate by a Court Process, the relentless contempt of Court by the Applicant and a further attempt to create a 30 *situation of endless litigation by the Applicant so as to render the Orders of this Court meaningless.*

For the reasons stated above, I find that no substantial loss may result to the Applicant if execution is not stayed. The first ground is hereby resolved in the negative.

Having found the first ground in the negative, I also find that resolving the other grounds which 5 *are: whether the Application has been made without any reasonable delay; and whether security has been given by the Applicant for due performance of the Decree or Order as may ultimately be binding upon him/her, inconsequential. This is because they are hinged on the first ground of whether substantial loss shall occur to the Applicant if an Order for stay of execution is not granted. As such, I shall not resolve them herein as they have been submerged in the first* 10 *ground.*

In light of the above, I find that the execution of the Decree or Orders against the Applicant in Miscellaneous Application No. 0229 of 2023 CANNOT be stayed by this Honourable Court pending the alleged Appeal."

I still hold the same view that the Applicant has not adduced any evidence to prove that he will suffer loss. He has therefore, not satisfied the first ground as claimed by him in his Affidavit in Support of the Application and as submitted by his Counsel.

- 20 I will proceed to address whether this Application has been filed without unreasonable delay and the likelihood of its success. The Applicant in his Affidavit claims that this Application has been filed without undue delay and has a likelihood of success. However, the Judgment in Civil Suit No. 0040 of 2010 was delivered on 23rd February 2023. As already observed, the
- 25 Applicant, though not a party to the Suit was present in the Court at all material times including the date of delivering the Judgment. He was given a signed copy of the Judgment. If the Applicant indeed considered himself an aggrieved party by the Judgment, he would have sought to have it reviewed immediately. However, he did not do anything to express his grievance and dissatisfaction until 24th May 2024 after

a Warrant of Arrest was issued against him. This indeed is very absurd and evidence of utter abuse of the Court process. The reason for this delay has not been explained and the only inference this Court will make is that the Applicant is looking for all ways possible to disregard the Orders of the Court using the same Court, which is

5 extremely unfortunate and this Court heavily condemns that conduct.

Consequently, therefore, this Application lacks merit; it is an utter abuse of the Court process; and is accordingly dismissed with costs.

- 10 The Applicant shall comply with the Orders of the Court in Miscellaneous Application No. 0229 of 2023, failure of which this Court shall not entertain Miscellaneous Application No. 0797 of 2024.
- **Dated at Kampala this 1st 15 day of November 2024.**

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Alice Komuhangi Khaukha

20 JUDGE

01/11/2024

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