

UGANDA / JUDGMENT

# Musaazi v Nakatoligo & Another (Miscellaneous Application 33 of 2025) [2025] UGHCLD 48 (28 March 2025) [2025] UGHCLD 48

## COURT

HC: Land Division (Uganda)

## BEFORE

Naluzze Aisha Batala, J

## CASE / FILE NUMBER

Miscellaneous Application 33 of 2025

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## THE REPUBLIC OF UGANDA

## IN THE HIGH COURT OF UGANDA

## MISCELLANEOUS APPLICATION NO. 033 OF 2025

## (ARISING FROM CIVIL APPEAL NO.103 OF 2024)

MUSAAZI SAAD ::::::::::::::::::::::::::::::

## VERSUS

## 1. NAKATOLIGO ROBINA

2. NAMEERE PROSSY ::::::::::::::::::::::::::::::

## BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA RULING

## Introduction;

- 1. Musaazi Saad hereinafter referred to as the applicant brought this application against Nakatoligo Robiina and Nameere Prossy hereinafter referred to as the respondents for orders that:
- i) The execution of decree and orders of the Magistrate Grade 1 of the Chief Magistrates Court of Nabweru at Nabweru vide Civil Suit No.3 of 2021 be stayed pending determination of HCCA No. 0103 of 2024.

ii) A temporary injunction doth issue restraining the respondents, their workers, agents and those deriving authority from them carrying out any developments on the suit land until final disposal of the suit land.

iii) Costs of this application be provided for

**\*The applicant's evidence;\***

- 2. The application is supported by the affidavit of Musaaazi Fahad which briefly states as follows:
  - i) That the applicant filed Civil Suit No. 73 Of 2021 in the Chief Magistrates Court of Nabweru and Judgment was passed against him on the 10th day of October 2024.
  - ii) That the applicant being dissatisfied with the judgment and orders of the Magistrate Grade 1 Her Worship Fiona Nakibuuka filed Civil Appeal No 0103 of 2024.
  - iii) That the respondents without awaiting the outcome of the appeal have maliciously destroyed the applicant's banana plantation and other crops, ferried materials onto the land and established foundations for construction of perimeter wall and permanent structures thereon.
- iv) That the applicant's appeal has a likely hood of success

**\*The respondents' evidence;\***

- 3. The application is respondent to by the 1st respondent by way of an affidavit in reply which briefly states as follows;
- i) That the present application is premature since the respondent has not commenced any execution proceedings and costs are yet to be taxed.
- ii) That the applicant has never been in possession of the suit land and that it is the respondent in possession and utilization of the same.
- iii) That the 1st respondent has been in possession of the suit land at all material times even before the temporary injunction was dismissed in the lower court.
- iv) That the respondent despite being the successful party in the lower court, the applicant has continued to employ goons and police to threaten the respondent.

**\*Representation;\***

4. The applicant was represented by Counsel Nansereko Shamim of M/S Nambirige & Co. Advocates whereas the 1st respondent was represented by Counsel Kabugo Sulaiman of M/S Lukwago & Co Advocates, 2nd respondent not represented despite service. Only Counsel for the applicant and the 1st respondent filed written submissions which I have considered in delivering this ruling.

**\*Issues for determination;\***

- i) Whether the execution of decree and orders of the Chief Magistrates Court of Nabweru at Nabweru should be stayed and status quo be maintained pending determination of Civil Appeal No. 0103 of 2024?

**\*Resolution and determination of the issues;\***

- 5. Order 43 rule 4 (3) of the Civil Procedure Rules provides thereof that no order for stay of execution shall be made unless the court making it is satisfied that;
  - i) That substantial loss may result to the party applying for stay of execution unless the order is made.
  - ii) That the application has been made without unreasonable delay and
  - iii) That security has been given by the applicant for the due performance of the decree or order as may be binding upon him or her.
- 6. The above requirements have been reiterated in several cases vide *\*Lawrence Musiitwa Kyazze vs Eunice Busingye SCCA No. 18 of 1990\** but can be summed up as follows;
  - i) The applicant must have lodged a notice of appeal.
  - ii) That substantial loss may result to the party applying for stay of execution unless the order is made.
  - iii) That the application has been made without unreasonable delay and
  - iv) That security has been given by the applicant for the due performance of the decree or order as may be binding upon him or her.
- 7. As such, an applicant seeking a stay of execution must meet the conditions as set out in the above provisions of the law.
- 8. From the record, there is no doubt that the applicant lodged a notice of appeal and even followed it up with a memorandum of appeal. As such the first condition is proved in favor of the applicant.
- 9. Secondly, the applicant must prove that substantial loss may result to him unless a stay of execution is granted. This requirement is equally pertinent to the grant of a temporary injunction order as well.

- 10. In the case of \*Tanzania Cotton Marketing Board vs Coget Cotton Co. SA (1995-1998) EA 312\* court observed; \*"The words substantial loss cannot mean ordinary loss to which every judgment debtor is necessarily subjected when loses his case and is deprived of his property in consequence. That is an element which must occur in every case since the code expressly prohibits stay of execution as an ordinary rule, it is clear the words substantial loss must mean something in addition to and different from"\*
- 11. In paragraph 6 of the 1st respondent's affidavit in reply, it is stated that the applicant has never been in possession of the suit land. It was the court's finding that the 1st respondent was in full utilization of the suit land and such findings were never challenged. The court reached a conclusion that the applicant

lawfully acquired the interest in the mailo title but did not affect the Kibanja interest of the respondent.

- 12. In the case of \*Muhorro Town Council vs Rutalihamu Jacob (MA No. 001 of 2022)\* while defining substantial loss; \*"The applicant should go beyond the vague and general assertions of substantial loss in the event a stay is granted. It follows from the foregoing that to amount to substantial loss, the deprivation must be over and above the ordinary loss resulting from litigation."\*
- 13. I find that the 1st respondent has been in occupation of his Kibanja while the applicant owned the mailo interest. This was the status quo up to the time of the judgment and it is still the status quo. It thus follows that there is no substantial loss on the part of the applicant and that in any case the appeal succeeds, it is in fact the respondents' loss.
- 14. I agree with the submission of Counsel for the 1st respondent that the applicant does not lose in any way and if the appeal succeeds, the applicant would instead benefit from the developments. Unlike the applicant, the respondents are bound to

lose so much if the stay is granted than when it is not and to that end the balance of convenience is in their favor.

- 15. I have also heard the benefit of reading the judgment of the lower court and these were the orders:
- i) The 1st defendant owns a Kibanja interest in the land comprised in Kyadondo Block 82 Plot 2976 land at Kungu.
- ii) The plaintiff lawfully acquired title interest in the suit land comprised in Kyadondo Block 82, Plot 2976 land at Kungu but that did not affect the Kibanja interest of the 1st defendant in any way.
- iii) The plaintiff's ownership of the mailo interest in the suit land is subject to the Kibanja interest of the 1st defendant in any way.
- iv) The 1st defendant is not a trespasser on the suit land.

- v) The plaintiff's suit is hereby dismissed with costs to the defendant.
- 16. I have noted that out of the five orders entered by court, four of them were declaratory orders. It is now a settled position of the law that declaratory orders are self-executing orders and the same cannot therefore be stayed. \*(See; Kyambogo University v\*

**\*Professor Isaiah Omolo Ndiege Court of Appeal CA No. 341 of 2013)\***

- 17. The final order is a dismissal order accompanied by an award of costs. While a dismissal order is not capable of being stayed for being a negative order, an order for award of costs can be stayed. However, in the instant application, the respondents have never extracted any decree and no step has been taken to tax the costs.
- 18. I find the instant application incompetent and prematurely filed in this court.
- 19. In the premises, the instant application is hereby dismissed with no orders as to costs

**I SO ORDER.**

**NALUZZE AISHA BATALA**

**JUDGE**

**28 th/03/2025**

**Delivered electronically via ECCMIS this 28th day of March**

**2025.**

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Prepared on 12 October 2026 · Esheria