

UGANDA / JUDGMENT

Nakato and Another v Busonga and Another (Civil Application 664 of 2023)

[2023] UGCA 253 (29 August 2023)

[2023] UGCA 253

COURT

Court of Appeal of Uganda

BEFORE

Kibeedi Mutangula, JA

CASE / FILE NUMBER

Civil Application 664 of 2023

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EXTEMPOR RULING IN AN APPLI FOR CERTIFICATE OF URG ENCY

^I Court Ref: CivrT Application No. 664 of 2023 of the Court of Appeal of Uganda at Kampala

Applicants' Names: Nakato Sarah and Dr. Joseph Serwadda

Respondent's Names: James Busonga, Henry Masembe and Mponye Grace

⁵ Applicants' Counsel: Mr. Samuel Sseguya

Respondents' Counsel: Mr. Francis Karooro and Mn Kaus Mukumbi

Hearing Date: Tuesday, 29h August 2023

EXTEMPORE RU LING OF MUZAMIRU MUTANG KIBEEDI. JA

Introduction

- ¹⁰ By this application, the applicants seek an order granting a certificate of urgency in the terms set out in the Notice of ft/otion as follows:
- a) ^Aceftificate of urgency dothissue to enable this Honourable Court to hear and dispose of Civil Application No. 545 of 2023.
- b) Costs of the application be provided for.
- ¹⁵ The application is brought under Rules 43(1), 48, and 50(2) (2) oI the Judicature (Court of Appeal Rules) Directions and supported by the affidavit of the applicant, Nakato Sarah

Grounds of the application

The grounds relied on by the applicants were set out in the Notice of application to be five in number. But in summary, the applicants claim that there is urgent need for this court to hear it of the threatened ²⁰ their application for stay of execution during the court vacation in lig

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execution of the decree sought to be stayed which is the subject matter of Civil Application No. 545 of 2023.

Background Facts and ascertainment of the urgency

- $\$1$ The applicants were the unsuccessful parties in Civil Suit No. 335 of 2011 of the High Court of Uganda at Kampala, Land Division in which the High Court declared the 25 respondents to be the lawful owners of land comprised in Kibuga Block 7 Plot 968 and 969 and that the 1st applicant had no lawful or bonafide interest in the suit land.
- $\$2$ In the said judgment, the court further declared the applicants to be trespassers on the land and issued an order of a permanent injunction restraining them from trespassing on the respondents' land. The court also awarded the respondents general damages of Ugx 150,000,000, interest thereon at the rate of 10% per annum, and the costs of the suit.
- $\$3$ The applicants were dissatisfied with the decision of the High Court and on 27th February 2023 they filed in the High Court a Notice of Appeal against the decision of the High Court.
- $\$4$ On 30th March 2023, the applicants filed in this court the Memorandum and Record of Appeal under reference number Civil Appeal No. 108 of 2023. The said appeal is pending disposal by this court.
- $\$5$ Before filing the instant application, the applicants applied to the trial Court for an order of stay of execution under High Court Reference number Misc. App. No. 47 of 2023. But the said application was dismissed by the trial Judge on the ground that she was **functus* officio*.
- $\$6$ On 03rd August 2023, the applicants filed Civil Application No. 303 of 2023 seeking a stay of execution of the High Court orders pending the disposal of Civil Appeal No. 108 of 2023.

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"21. Vacations.

- (1) Vacations of the court shall be determined by the Chief Justice but the arrangement of business during a vacation shall be determined by the Deputy Chief Justice; and those arrangements shall be advertised or notified in a manner directed by the Deputy Chief Justice.
- (2) No business will be conducted during a vacation, unless the Chief Justice otherwise directs, except the delivery of judgment and, when the matter is shown to be one of **urgency**, the hearing of applications and the taxation of bills." [Emphasis added]

When interpreting the above underlined words in *Patrick M. Omony, Civil Application No.* 305 of 2023 this court had this to say: 75

> "The Collins [Dictionary] English definition of "urgent" is something "requiring or compelling speedy action or attention".

> In the context of the instant application, the applicant ought to prove special features about his case in order to satisfy the court that the matter requires speedy action and preferential timetabling treatment so that it is heard before the numerous cases which were filed long before it as an exception to the FIFO policy of timetabling. (See: **Dalte** Europe Ltd (in Liquidation) Vs Makki [EWHC 1631 (Ch) at 13, and Eli Lilly and Company Vs Human Genome Sciences Inc [2012] EWHC 2857 (Pat) at 52"

The "special feature" raised by the applicants in the instant matter as necessitating the urgent consideration by this court during the court vacation is the imminent threat of execution of the 85 trial court decree which the applicants claim to be faced with, notwithstanding the fact that they filed an application for stay of the said decree before this court under reference number Civil Application No. 303 of 2023. The respondents' Counsel admitted in court that steps have indeed Jour
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Joy been commenced by the respondents to enforce the decision of the High Court. As such, any delay might render the application for stay of execution nugatory.

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I also note that the subject matter of the dispute between the parties is land and that the applicants are in its physical possession.

In the circumstances of this case, I am satisfied that this is a proper application to grant the application for the Certificate of urgency so that the substantive application for stay of execution is heard during court vacation.

Conclusion

The applicants have satisfied the preconditions of the grant, Accordingly, I hereby grant ^a certificate of urgency. The costs of this application are awarded to the applicants.

I so order

100 Signed, delivered and dated at Kampala this 29tn day of August 2023,

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Muzamiru Mutangula JUSTICE OF APPEAL

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