

UGANDA / JUDGMENT

Okumu and 9 Others v Obina and 5 Others (Civil Application 59 of 2022) [2022] UGCA 325 (4 March 2022)

[2022] UGCA 325

COURT

Court of Appeal of Uganda

BEFORE

Gashirabake, JA

CASE / FILE NUMBER

Civil Application 59 of 2022

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA

CIVIL APPLICATION NO. 59 OF 2022

(ARTSTNG OUT OF CrVrL AppEAL NO. 58 OF 2019 AND CrVrL APPLTCATION 180 oF'2021)

BETWEEN

| OKUMU VINCENT
1. | |-----| | AJOK EDISA
2. | | 3.
COSMAS
ADYEBO | | 4.
ONYACH JAMES | | 5.
OBONYO VINANSIO | | 6.
LAGORO | |
7.
MUZEE KOMAKECH | | a.
OKELLO TITUS | | 9.
ANGELLA APACO | |
OJULI.
10
. APPLICANTS | | AND |

RESPONDENTS 1. NEKOMIA oBINA 2. ONEXA JoHN 3. OKULLU CHARLES 4. oNYANGo AMoS 5.
OTIM sAM 6. BwoNGAMoI GEoRGE KoMAKECH

RULING BY CHRISTOPHER GASHIRABAKE, JA

This is an application by Notice of Motion under Rules 2(2) and 6(2) of the Judicature (Court of Appeal Rules) Directions S. I 13-10 and S.33 Judicature Act and a-ll enabling laws for orders that:-

- a. An interim injunction do issue restraining the respondents or alry one of them or their agents , servants , workmen or those claim under them or on their behalf from;

- i. Evicting the applicants from the suit land.
- ii. Trespassing on the suit land
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- iii. Demolishing or otherwise damaging the applicant's buildings, crops and other developments on the suit land
- iv. Selling, mortgaging, leasing or otherwise alienating the suit land.
- v. Causing the arrest and imprisonment of the applicants in execution of judgment and orders in Civil Appeal No. 42 of 2018

Till the disposal of the Civil Application No. 180 of 2027.

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- b. The costs of the Application abide the results of the Appeal.

The grounds of this application are set out in the affidavit of Mr. Okumu Vincent, the 1st Applicant herein but briefly are that:

- a. The applicants are aggrieved by the decision in the High Court in Civil Appeal No. 42 of 2018 and have filed a prima facie appeal in the court of appeal against the decision and have also filed a prima facie application for a temporary injunction.
- b. Irreparable loss shall accrue to the Applicants if this application is not granted and the Appeal and main Application shall be rendered nugatory.
- c. The balance of convenience is in favor of the applicants who are in possession of the suit land.
- d. It is in interests of justice that this application be granted.

When the application came up for hearing today, the respondent had not appeared in court. The court process server Atuhaire Immaculate filed an affidavit of service which is evidence that the respondents were sufficiently served. I believe that the respondents were served but they decided not to appear. The applicant then moved court to proceed under Rule 56 (2) of the Judicature court of appeal rules S. 13-10 which provides that,

> 'If the applicant appears and the respondent fails to appear, the application shall proceed in the absence of the

respondent, unless the court sees fit to adjourn the hearing'

Considering the facts of the case and interests of justice this court decided to proceed *ex parte*.

Consideration for the application

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This court has inherent power to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of Court under Rule 2(2) of the Judicature Court of appeal, Rules which provide that;

> 'Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, or the High Court, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent abuse of the process of any court caused by delay.'

It was held in Ssekikubo & Ors vs. AG & Ors, SC Constitutional Application no. ()4 of 2014 that,

'Rule 2(2) of the judicature court rules gives this court very wide discretion to make such orders as may be necessary to achieve the ends of justice, one of the ends of justice is to preserve the right of appeal'

Under Rules 6(2) (b) of the Judicature (Court of Appeal Rules) Directions

> In any civil proceedings, where a notice of appeal has been lodged in accordance with rule 76 of these Rules, order a stay of execution, an injunction, or a stay of proceedings on such terms as the court may think just.

In Hwan Sung Industries Ltd vs Tajdin Hussein a.rad, 2 others Civil Application No. 19 of 2008, Okello JSC, laid down the guiding principles in granting interim injunctions, that;

> "For an application for an interim order of stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before the hearing of the pending substantive application.

> It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.'

The grant of an interim injunction is an exercise of judicial discretion. However for court to exercise its discretion in granting an interim injunction the applicant must prove to the satisfaction of court that there's;

1. A Competent Notice of Appeal;

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- 2. A substantive application; and
- 3. A serious threat of execution.

Considering the first requirement of the Supreme Court in the case of Dr. Ahmed Muhammed Kisuule vs. Greenland Bank (In liquidation) Miscellaneous Application no. 7 of 2010 stated that;

"For an application in this Court for a stay of execution to succeed the applicant must first show subject to other facts in a given case, that he/she has lodged a notice of appeal in accordance with Rule 72 of Rules of this Court..."

In this instant case, it is established that there's an appeal civil appeal no. 58 of 2019, filed with this court. According to the record there's a substantive application Civil Application No 180 of 2021, pending before this court as required by court in Huan Sung Industries Ltd above. Additionally the applicant must prove that there is a serious threat of execution which will occasion irreparable loss if the order is not granted. The applicant must demonstrate compelling circumstances for grant of an order of interim injunction. In National Enterprise Corporation Vs Mukisa Foods Miscellaneous Application No. 7 of 1998, court held that;

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"As a general rule, the only ground for stay of execution is for the applicant to show that once the decretal property is disposed of there is no likelihood of getting it back should the appeal succeed."

According to the applicant in paragraph 16 of the affidavit in support of the Notice of Motion avers that the respondents have pushed for execution. The High court in Gulu has renewed the warrant to give vacant possession to the respondents and the

warrant is due for execution on or before 2nd March, 2022. Upon perusal of the warrant, it is by notice that the warrant would expire on the 2nd of March 2022. Since there's no evidence that execution issued, it is in the interest of justice that this application is granted to preserve the status quo since the applicants are in possession of the suit land.

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I therefore grant this application and no execution should issue until after the determination of the substantive application in Civil Application 180 of 2021.

Dated at Kampala this 10 day of 2022 +*.

C. GASHIRABAKE JUSTICE OF APPEAL

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