

UGANDA / JUDGMENT

Okune & 5 Others v Obia & Another (Civil Application 717 of 2024) [2025] UGCA 23 (29 January 2025) [2025] UGCA 23

COURT

Court of Appeal of Uganda

BEFORE

Cheborion-Barishaki, JA

CASE / FILE NUMBER

Civil Application 717 of 2024

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THE REPUBLIC OF UGANDA IN THE COURT OF APPEAL OF UGANDA HOLDEN AT KAMPALA
CIVIL APPLICATION NO.717 OF 2024 (ARTSTNG FROM CML APPEAL NO.922 OF 2o24l (ARTSTNG
FROM CrVrL SUIT NO.10 OF 2o24l.

1. ENG. ODONGOOKUNE 2. MR. OJWANG OPOTA 3. WILLIE OMODO OMODO 4. OTIM TOM 5.
OKELLOIJA]/IZA 6. VINCENT I OLING..... APPLICANTS \IERSUS 1. OBIA DENIS
ACILA 2. BENJAMIN OKII..... RESPONDENTS

> MR. JUSTICE CHtrBORION BARISHAKI, JA (SINGLE JUDGE)

RULING

Introduction

- [1] This Application is for an order of stay of execution of the judgment and orders issued by the High Court of Lira in Civil Suit No. 10 of 2024.
- [2] The background to the Application is that the Respondents instituted High Court Civil Suit No. 10 of 2024 challenging the election of the 1st Applicant as the traditional or cultural leader/ Paramount Chief of Lango on the ground that his election was illegal, null and void. In their defence, the Applicants pleaded that the election of the 1st Applicant followed the act of abdication from the office of Paramount Chief by His Highness Yosum Odur Ebii. That it was after this abdication that the 1st Applicant was elected by majority of the council of clan heads as the new Paramount Chief of Lango, and they contended at trial that the election and the result of the said election were valid.

- [3] The 1st, 2nd and 3rd Applicants also lodged a counterclaim against the Respondents together with other 5 individuals who are not party to this Application that is, Dickson Ogwang Okul, Dr. Dan Okello, Prof. Richard Nam, Dan Opito Odwee and Okwir Jaramogi Dennis. In their counterclaim, the said Applicants majorly challenged the parallel election organized by the Respondents together with the rest of the counter-defendants, on the ground that the 1st Applicant had already been elected by the majority of the clan leaders of Lango, and subsequently his election published in the Official Uganda Gazette as such.
- [4] On 31st October 2024 the High Court delivered judgment in favor of the Respondents declaring the 1st Applicant to have been illegally elected as the Paramount Chief of Lango. The 1st Applicant's installation as the duly elected Paramount Chief was permanently enjoined. The Court also made a declaration that His Highness Yosum Odur Ebii was still the Paramount Chief of Lango and the Minister of Gender, Labour and Social Development was directed to re-gazette him in the Official Gazette as such. The Court also declared the election of Dickson Ogwal Okul (the 3rd Counter Defendant) as Paramount Chief of Lango illegal and forbade him from performing the functions of Paramount Chief.
- [5] The Applicants being dissatisfied with the judgment of the High Court lodged their notice of appeal and wrote a letter requesting for typed copy of proceedings. The Applicants filed an application for stay of execution in the High Court which was dismissed on 29th November 2024, hence their filing this application in the Court of Appeal.
- [6] The Notice of Motion is supported by an affidavit in support and ^a supplementary affidavit both deposed by Engineer Dr. Michael I Moses Odongo Okune on his own behalf as the 1st Applicant and on behalf of the rest of the Applicants who issued him with a letter of authority. The two

affidavits set forth the following grounds upon which the Application is premised;-

- 1. The Applicants are dissatisfied with the judgment and orders of the Hon. Phillip Odoki in Liro HCCS 10 of 2024 delivered via email on 31st October, 2024.
- 2. The Applicants have lodged a notice of appeal together with ^a letter requesting for typed and certified copy of record of proceedings on the 1st of November 2024.
- 3. The Applicants have further lodged a memorandum of appeal as guided at this Court's registry, on ECCMIS and was generated Civil Appeal No. 922 of 2024 which appeal has a strong likelihood of success.
- 4. There is a serious threat of execution before the hearing of the pending substantive application.

- 5. That on 41h Nouember 2024, third parties wrote to the Minister of Gender, Labour & Social Deuelopment fonaarding the orders of the Coutt and demanding that the Minister complies uith the orders for de-gozettement of the l't Applicant and re-go.z,ettement of Yosum Odur Ebii. Their letter uas responded to by the Minister requesting cerToin further information lo assisl the Ministry to comply ruith the orders of Court.
- 6. In an attempt to exealte the orders of the High Cou/i, the Respondents and other people including Dickson Ogwang Okul, who tuas the 3d Counter Defendant in the High Court case, are persistentlA attacking the offices of the cultural institution wauing the copA of the judgment of the High Court. As a result crtiminal complaints haue been filed such as SD/ 37/ 18/ 2024.
- 7. That the Respondents are prouocotieue and making a number of ciminal complaints to police when accosted bg the clan heads aligned to the Applicants - trho are the majoitA - all in the

names of execTtting these court orders uich ule are now seeking to staA. TheA ore nou) using the orders to frustrate actiuiities of the Applicants generally as qtlhtral leaders.

- 8. That the Applicants applied for stay of execution in the High Court which is the tial court a.nd on 29h Nouember 2024, the High Court dismissed the Applicants' application for stog of exeantion hence this application.
- 9. That if this application is not granted, the Applicants' intended appeal shall be rendered nugatory.
- TO. That the Appliconts stand to suffer irreparable loss once this application is not granted.
- 1"l. That upon the election of the l.t Applicont as Paromount Chief elect, he resigned his cttltruol position of Au-titong (clan chiefl uthich u.tas immediatelg, through a itual he conducted, filled by another clan member. The 1d Applicant also reduced his posf retirement contract peiod tuith Ministry of Works and Transport from 3 Aears to 4 months ending 31d October 2024 in anticipation of carrying out his duties os Paramount Chief of Lango.
- 12. That there is no other ga-zetted Paramount Chief since the one replaced bg the Applicant abdicated and u.tos de-gozetted.
- L3. That the judgment has also affected access lo public funds necessary for the institution's operations, causing financial constraints that further undermine its functionalitg. That this is so because the Respondents are actiuey using the judgment to demand for public funds ond other facilities due to the ld Apptticant ond his administration uithout recourse and get once these sums are spent without accountabilitg then it's impossible to recouer them.

- 14. That the Respondents have been purportedly appointed as cabinet ministers by Yosum Odur in a list of released cabinet appointments in an attempt to give effect to the judgment. That this demonstrates a relationship between the Respondents and the possible attempt to de-gazette the current cultural leadership, further undermining the institution's stability and causing irreparable damage.
- ¹⁵. That the balance of convenience lies in favor of the Applicants .
- 16. That this application has been instituted without delay.
- 17. That the Applicants have deposited security for costs and are willing and ready to provide security for due performance if need be except that the judgment appealed from is none monetary.
- 18. That it is in the interest of justice and/ or in the fair administration of substantive justice that this honorable court grants this application.
- ¹⁹. That the judgment has curtailed the roles of the 3d Applicant, the Speaker of the council, who is unable to convene council meetings, leaving the council paralyzed. and all cultural programs in limbo. That if the judgment is not stayed, irreparable harm will be caused to the Lango Cultural Institution as rituals and practices to be conducted by the Applicants by virtue of their offices and bound by time cannot be recovered or compensated for pecuniarily.
- 20. That the judgment failed to provide guidance on how the speaker's position could be managed, leaving the cultural institution in an awkward and uncertain position.
- 21. That the members of the Electoral Commission (4th, 3rd and 6th Applicants) now face the risk of being removed from office under the new legal framework created by the judgment, despite being spared by the trial court. A stay would preserve their

appointments and allow them to conduct essential elections for clan chiefs, council committee members, and other key roles necessary for the smooth running of the institution pending appeal.

- 22. That the judgment has also affected access to public funds necessary for the institution's operations, causing financial constraints that further undermine its functionality. This is so because the Respondents are actually using the judgment to demand for public funds and other facilities due to the 1st Applicant and his administration without recourse to procedures and get once these sums are spent without accountability then it's impossible to recover them.

- 23. That the Respondents have been purportedly appointed as cabinet ministers by Mr. Yosum Odur in a list of released cabinet appointments in an attempt to give effect to the judgment/ orders/ decree. This demonstrates a relationship between the Respondents and the possible attempt to de-govern, the current cultural leadership, further undermining the institution's stability and causing irreparable damage.
 - 24. That the cabinet/ leadership which is sprung up as a result of the High Court judgment has recently issued a request to Mr. Tonng Otoa for him to vacate the official residence of the Inngo Prime Minister.
 - [7] The Respondents opposed the application and filed three affidavits deposed by Obia Denis Aci1a, Benjamin Okii being the 1st and 2nd Respondents, and Mr Dickson Ogwang who is not a party to this Application. The grounds in opposition as contained in the 1st and 2nd Respondents' two affidavits are as follows:-
1. That the orders issued by the High Court in Civil Suit No. 10 of 2024 are self-executing in nature and thus cannot be stayed.

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- 2. That the deposit of security is irrelevant since the Applicants have not satisfied the other grounds for stay of execution.
- 3. That a serious threat of execution is not a $\frac{1}{2}$ ground to be considered when determining an application for stay of execution.*
- *4. That they have never written to the Minister* of Gender, Labour and Social Development or even attached the offices of the cultural union.
- 5. That the Applicants have not demonstrated how their appeal to the Court of Appeal will be rendered nugatory if this Application is disallowed.
- 6. That the Applicants have not demonstrated how they will suffer irreparable damage as individuals in respect of the cultural institution.*
- 7. That the 1st Applicant's purported election was annulled by the High Court of Uganda* holden at Lira.
- 8. That at the time the Court nullified the election of the 1st Applicant, he had not yet assumed office as the *Won Nyaci* (Paramount Chief) of Lango as there was still a reigning Won Nyaci, Yosum Odur Ebii who had been and is still actively and

legally performing all the functions of the office of the Paramount Chief of Lango.

- 9. That this Application is highly misleading since the 1st Applicant has never been a legally recognized Paramount Chief and as such it's false for him to claim that his activities and or cultural institution activities are being curtailed and in any case as already noted his election was nullified before ascending to the throne of Paramount Chief of Lango.
- 10. That this Application is filed by the Applicants in their individual capacities for their own personal benefit and not for the interest of the people of Lango and there are no activities that have been curtailed by the High Court nullifying the election of the 1st Applicant.
- 11. That the 1st Applicant's election was annulled after court found that his said election was illegally conducted and his subsequent gazettement was illegal and as such court accordingly ordered for degazettement and in any case that gazettement does not make one ^a Paramount Chief.
- 12. That the Applicants have not been in any way in charge of the cultural institution and the High Court judgment only concretized the position of the Paramount Chief whom the Applicants had tried to illegally remove from his position.
- 13. That the Respondents' appointment as cabinet minister is within the mandate of the Paramount Chief and it's not necessary to give effect to the judgment.
- ¹⁴ . That the balance of convenience does not lie in favour of the 1st Applicant who has never been or performed and/or assumed the functions of the office of won-nyaci of Lango since there exists the reigning Won Ngaci of Lango His Highness Yosum Odur Dbii tuho is still on his throne and is performing all the functions of the office.
- 11. That granting this application will alter the status quo.

[8]. The third affidavit in reply which was deposed by a one Dickson Ogwang contained the following grounds of opposition:-

- 76. That the 1st Applicant's coronation which was scheduled for 2nd November 2024 did not take place because court nullified the 7th Applicant's and his election on 31st October 2024.
- ¹⁷ . That the status quo is that the 1st Applicant is not the Paramount Chief of Lango and that his claim to the throne of Paramount Chief of Lango was also nullified by the court and the seat of Won Nyaci reverted back to Mzee Yosum

Odur, the Paramount Chief whose abdication that was meant to take effect on 1st November 2024 was nullified by the Court on 31st October 2024.

- 18. That an stay of execution granted to the Applicants must equally apply to him.
- 19. That a stay of execution of orders of the High Court in Civil Suit No. 10 of 2024 means that he can also go ahead with his claim to the throne as Paramount Chief of Lango in pursuit of his cultural rights as duly elected Paramount Chief of Lango through adult suffrage of over 75,000 people of Lango chiefdom.

- 20. That Yosum Odur is still Paramount Chief and thus granting a stay of execution would lead to and create more confusion as there would be three Paramount Chiefs to the throne which would create more hardship and confusion in Lango.
- 21. That the 1st Applicant will not suffer any substantial loss or damage in the event that the application for stay is not granted because he has never been coronated as Paramount Chief of Lango as the event did not take place, and he

is not enjoying any benefits as one, both before and after the judgment.

- 22. That the failure to grant the orders sought in this application cannot render the appeal nugatory as the people of Lango chieftdom are currently paying allegiance to and being served by His Highness Yosum Odur Ebii the Paramount Chief and as and when the Court of Appeal determines the appeal pending, he would be supposed to be the Paramount Chief and will take over office.
- 23. That the granting of the orders sought will create a vacuum in the leadership of Lango as it will mean that there is no cultural leader for Lango which would create more absurdity and not in the best interest of justice.
- [8] At the hearing of the application, Mr. Joseph Matsiko and Mr. Adam Makmot Kibwanga appeared jointly for the Applicants while the Respondents were represented by Mr. Luganda .

Both counsel filed written submissions in accordance with the Court's directions.

Applicants Submissions

- [9] Counsel for the Applicants submitted that where an unsuccessful party is exercising their unrestricted right of appeal, it is the duty of court to make such orders for staying execution of the judgment appealed from as this will prevent the appeal from being rendered nugatory as was stated in *Ilson* vs. *Church* (1979) volume 72 Chd 454 followed in *Global Capital Sae 2004 Ltd & Anor* vs. *Altce Oklor & Anor* HChIA No. 485/2072. They added that the rationale for these conditions is to maintain the status quo of the property or subject matter that is at stake if the stay of execution is not granted, and to preserve the intended appeal and not to render it nugatory.

Church (1979) volume 72 Chd 454 followed in *Global Capital Sae 2004 Ltd & Anor* vs. *Altce Oklor & Anor* HChIA No. 485/2072. They added that the rationale for these conditions is to maintain the status quo of the property or subject matter that is at stake if the stay of execution is not granted, and to preserve the intended appeal and not to render it nugatory.

- [10] On whether the appeal has a likelihood of success, counsel submitted that it is a matter of grave error to hold a person who was overwhelmingly elected as Paramount Chief as not having been validly elected when even electoral law and principles ignore any non-compliance (if any) that does not affect the expressed will of the people. That it would indeed be grave if the status quo is not maintained and an abdicated former leader is imposed on the people against their will, and against his wish, and that would greatly contravene the constitutional right of the people of Lango to their cultural rights, and undermine the right of the 1st Applicant to lead the people who chose him.

- [11] On whether the application will suffer irreparable damage or that the appeal will be rendered nugatory if the stay is not granted, counsel submitted that the 1st Applicant will suffer substantial loss if this injunction is not granted because he was an Awitong (Clan Chief) of his clan before being elected as Won Nyaci. That he vacated the office of the clan chief to concentrate on being the Won Nyaci and culturally he cannot go back to the same position. That when he was elected and gazetted his status traditionally and socially changed to Won Nyaci and he had to forego his post-employment contract with Ministry of Works as commissioner which he had been engaged in ever since he got early retirement from public service in 2014. Further, the 1st Applicant has started carrying out his roles as the Won Nyaci of which are ritual and spiritual and losing time on them is irrecoverable and stopping him is an assault on his socio-cultural rights as enshrined in Uganda's constitution. That cultural entitlements are immeasurable and losing them cannot be atoned by compensation and yet if the 1st Applicant is de-gazetted and the rest of the Applicants are denied the opportunity to be what they were before the judgment appealed against was delivered, say the speaker or

members of the electoral commission, then all their cultural rights would be taken away for a period of time which can never be recovered and yet granting the stay of execution will not take away the Respondents' rights as none of them is on record of being elected Won Nyaci, speaker or members of the Electoral Commission or wanting to become one.

- [12] Counsel further submitted that if the Applicants are successful in their Appeal, they will not be able to recover from Yosum Odur because he is not a party to the appeal and thus occasion an irreparable loss. That since the 1st Applicant is an established engineer who ran major national and international projects, and was a former chairperson of the engineers' registration board, his de-gazettement which would be a public notice would greatly injure his position and standing and inconvenience him as this will damage his reputation, no amount of compensation can atone for that.
- [13] They further submitted that the process of executing the Court orders has commenced and which has greatly interrupted with the functioning of the chiefdom. That this took the form of a letter dated 4th November 2024 written to the Minister of Gender, Labour and Social Development forwarding the orders of the Court for the minister's execution by de-gazetting the 1st Applicant and re-gazetting Yosum Odur as the Paramount Chief. That the 1st Respondent posing as prime minister had written a letter to the Minister of Gender, Labour and Social Development demanding the release of 200 million shillings to be used for activities of the Lango Cultural Foundation. That another letter dated 9th December 2024 was written by a one Fredrick Ogwal Oyee posing as the Prime Minister of Lango Cultural Foundation demanding for the handover of a house at Ireda Estate.

- [14] Counsel submitted further that the 1st Applicant's loss is irreparable and cannot be atoned for in damages because he was enthroned as Paramount Chief following the abdication by Yosum Odur. That the judgment introduced third parties to the main suit whom the 1st Applicant, if no stay of execution is issued stopping such third parties from enforcing the said orders, cannot have recourse against those third parties should they act in ways that introduce further parties who like them are not party to the

appeal and the concluded main suit. That the Applicants will have no recourse on appeal against such parties.

- [15] They submitted further that the provision for security for due performance of the decree is not a condition precedent for grant of stay of execution as portrayed in the decided case of Imperial Royal Hotel Ltd & 2 Ors os. Ochan Daniel, Mlsc. Application IVo. 777 of 2072. That additionally the Court did not issue any monetary awards or property related awards that would warrant the Applicants to provide security for due performance of the decree. That the orders in this case by their nature do not attract any security for due performance of the decree and even so the judgment appealed against did not award costs to any party as each party was ordered to bear its costs.

Respondents Submissions

1161 Counsel for the Respondents opposed the Application and submitted that it was imperative to point out to Court that this Application suffers from legal mootness since the orders issued by the High Court in Civil Suit 10 of 2024 are declaratory orders which are self-executing in nature and thus cannot be stayed. That the abdication of Yosum Odur was to take effect on 1st November 2024 which did not happen while the 1st Applicant had organized his coronation to take place on 2nd November 2024 a day after the abdication which never happened. That there is therefore no present live controversy in respect of this Application which affects the rights of the parties. That the High Court judgment which annulled the intended abdication was delivered on 31st October 2024 a day before the abdication took effect on 1st November 2024. In essence, Counsel argues, a stay of execution of this particular order could only be possible if it was obtained before 1st November 2024 which would have the effect of making the abdication have effect. That the abdication having never taken effect as a result of the court order, the natural consequence was that Yosum Odur remained the reigning Paramount Chief of Lango as correctly ordered by the High Court. That even the 1st Applicant's coronation slated for 2nd November 2024 did, not take place.

- 1171 He submitted that the nature of the orders granted by the High Court were declaratory in nature, self-executing and cannot be stayed, and the grant of a stay would instead alter the status quo. That the 1st Applicant wishes to carry out activities of becoming the Paramount Chief including coronation and running a parallel government besides the one of the reigning Paramount Chief Yosum Odur whom the 1st Applicant intended to replace. That this Application if allowed would mean that the Applicants appeal would have been disposed/determined using this Application since the Applicants would have achieved the

orders they are seeking in the appeal.

- [18] Counsel submitted further that the appeal has no chance of success because the appeal to the court of appeal is not bona fide and does not raise any serious and pertinent legal questions worth adjudication and pronouncement by the Court since the 1st Applicant had never been coronated and or taken over office since abdication was to take effect from 1st November 2024, yet the judgment was delivered on 31st October 2024. That the 1st Applicant was illegally gazetted.
- [19] Counsel submitted that the Applicants have no substantial loss they will suffer because if the Court of Appeal was to declare the 1st Applicant's election as valid, he would be at liberty to assume the office of Paramount Chief since it has not been abolished. That similarly by the reigning Paramount Chief Yosum Odur continuing to serve as he has been doing for the past 24 years, there is no loss or hardship that will be occasioned to the people of Lango or denial of their cultural rights as submitted by the Applicants because he was never chased from the throne, not rejected by his people or voted out and he is currently performing his duties as Paramount Chief since his abdication did not take effect due to the court judgment. That the Applicants have not adduced any evidence to demonstrate that the reigning Paramount Chief is having any problems being on the throne as ordered by Court. That to the contrary the grant of the orders prayed for in the instant application will occasion more hardships and confusion in Lango chieftdom as it will mean Lango will now have three reigning Paramount

Chiefs to wit; Yosum Odur, the 1st Applicant and Ogwang Dickson Okul. That the current status quo is that Yosum Odur is performing his duties as Paramount Chief.

Rejoinder by Applicant

- [20] Counsel submitted that the judgment delivered a day before the former Paramount Chief Yosum Odur hands over office does not change the status quo so long as the decree is not formally executed. That it is not automatic that a judgment changes status quo and in the instant case the status quo was that the former Paramount Chief abdicated and a new Paramount Chief gazetted and indeed started working on 2nd November 2024 and he is still working.
- [21] Further that the Respondents have no justification to fight for a man who abdicated on his own and has not shown concern that the 1st Applicant's occupation of the office of Paramount Chief of Lango hurts him in any way.
- [22] Counsel further submitted that a stay can only be granted in favour of the Applicants and therefore Ogwang Dickson cannot benefit from it not being a party and having admitted that he lays no claim to the Paramount Chieftainship. That there is only one gazetted Paramount Chief who is the 1st Applicant and a stay of execution would help him remain gazetted and useful to his people until determination of the appeal. That Yosum Odur has not approached Court for protection or stated anywhere that he intends to be re-gazetted. That

Yosum Odur is no longer laying any claim except he is conducting activities as an ex-Paramount Chief of Lango without pretense of resuming the position of Paramount Chief.

- I23l Counsel further submitted that denying the Applicants a stay while trying the appeal would be a continued violation of their fundamental human rights in a manner that can never be atoned as the cultural dignity and time lost can never be recovered or compensated.

Analysis

I24l I have carefully considered the submissions and the authorities cited by both parties.

The jurisdiction of this Court to grant a stay of execution is set out in Rule 6(2)(b) and Rule 2(2) of the Rules of this Court which mandates the Court to grant a stay of execution, an injunction or order of stay of proceedings on such terms as the Court may deem fit. This Court has inherent powers to make such order as may be necessary for attaining the ends of justice.

[25] The principles upon which an application of such a nature can be granted were clearly stated by the Supreme Court in the case of Hon. Theodore Ssekikubo & Others v The Attorney General and Another, Constitutional Application No. 06 of 2073 as follows;

"In order for the Court to grant an application for stay of execution;

- 1. The Applicant must establish that his appeal has a likelihood of success; or a prima facie case of his right to appeal.
- 2. It must also be established that the Applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted.
- 3. If 1 and 2 above have not been established, Court must consider where the balance of convenience lies.
- 4. That the Applicant must also establish that the application was instituted without delay."

[27]. I shall therefore set out to consider whether the current Application meets the criteria set out in Ssekikubo.

[28] Before proceeding with the consideration, I must deal with the point raised by Counsel for the Respondents; as to whether this application is moot. I have noticed that this point was handled by the lower court in Eng. Odongo & Others v Obia & Anor, High Court Miscellaneous Application No. 126 of 2024, I find no reason to depart from the decision of the High Court in this case, where the judge at page I ¹ paragraph 20 stated that;

"In the instant case, the declaratory orders in High Court Civil Suit No. 10 of 2024 are not stand-alone declaration of rights. They are accompanied by orders of injunctions and consequential orders directing the Minister of Gender, Labour and Social Development to de-gazette the 1st Applicant as the Paramount Chief of Lango and to re-gazette His Highness Yosum Odur Ebii as the Paramount Chief of Lango. This Court can therefore grant an order of stay of execution of the declarations if the conditions set out in the law are met by the Applicants."

1291. In light of the above, it is my finding that the orders of Court arising from the judgment of the High Court are not moot but are executable orders against which an application for stay of execution can be instituted and entertained by a relevant Court of law such as this.

I will thus proceed to delve into the substance of the application itself.

[30]. Regarding whether there is a prima facie case with likelihood of success established in this Application by the Applicants, the 1st Applicant listed under paragraph 14 of his affidavit what the proposed grounds of appeal which are 13 in number. Upon my perusal of the 13 grounds of appeal, I find that the Applicants have raised points of law and fact which merit argument before this Court. I am persuaded by the decision in *Stanleg Kang'ethe Kinyanjui V Tong Ketter & 5 Others* (2013) 1 KLR that:

"An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the Court; one which is not frivolous." The listed grounds of appeal read together with the Judgment indicate that the appeal raises serious grounds that merit argument before, and serious consideration by this Court.

[31]. I therefore find that the Applicants have established that they have a prima facie case with a likelihood of success.

[32]. As to whether the Applicants will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted, the Applicants under paragraphs 10, 11, 12, 13, 15, 16, 17, 1A, 79 of the 1st Applicant's affidavit in support of the

notice of motion, as well as under paragraphs 4, 5, 6, 7, 8 and 9 of the supplementary affidavit state that the Applicants stand to suffer irreparable loss once execution and implementation of the judgment of the High Court dated 31st October 2024 is allowed. The Applicants demonstrated that the judgment reinstated Yosum Odur Ebii who had voluntarily abdicated the office of Paramount Chief of Lango and replaced by the 1st Applicant whose recognition and election was pending coronation. That the 1st Applicant had taken several steps to conform to his new office after overwhelmingly being voted as the new Paramount Chief. The 1st Applicant demonstrated that he being a qualified engineer he had resigned his job by reducing his post-retirement contract period with the Ministry of Works and Transport from the 3 years period down to merely 4 months in anticipation of carrying out his duties as Paramount Chief (Won Nyaci). Furthermore, that upon his election to the office of Paramount Chief, he resigned his cultural position of clan chief which was immediately taken up by another person. Moreover, Yosum Odur upon what appeared to be his voluntary abdication, was de-gazetted by the Minister of Gender, Labour and

Social Development, as the Paramount Chief of Lango and also gazetted the 1st Applicant as the new Paramount Chief of Lango.

[33] Black's Law Dictionary, 9th Edition defines the term irreparable damage to mean damage that cannot be easily ascertained because there is no fixed pecuniary standard measurement.

[34] I find that indeed there is irreparable loss to be suffered by the Applicants seeing that the Respondents and not Yosum Odur Ebii, went to the High Court to challenge the election of the 1st Applicant. Yosum Odur Ebii did not go to Court to challenge this election. It could therefore be argued that Yosum Odur having abdicated Paramount Chieftainship voluntarily, he could not and he did not challenge the election of his successor, the 1st Applicant which occurred subsequent to his voluntary abdication. Therefore, having taken several irreversible actions such as resigning his job and his office of Clan Head to be present himself for the office of Paramount Chief, the 1st Applicant will suffer irreparable harm if this application is not granted, as implementing the decree

would mean that the process of reinstalling the abdicated Paramount Chief could be completed, and the 1st Applicant is degazetted, which would take him out of reach of the seat of Paramount Chief, should he win the appeal. I find that this is harm that is not only substantial but also irreparable.

[35] As to where the balance of convenience lies, it is trite, as reiterated in *Sekikubo* (supra), that this ground applies if the Court is in doubt as to the likelihood of success of the appeal, or the existence of irreparable harm. If there were to be any doubt in this case, I have to consider where the balance of convenience lies.

[36] The Applicants averred under paragraphs 21 of the affidavit in support of the application that the balance of convenience lies in favour of the Applicants. That the 1st Applicant was elected as Paramount Chief of Lango and gazette as such, and it would be grave inconvenience to him and the people of Lango to be degazetted. as Paramount Chief and to have the abdicated Yosum Odur, a non-party to the matters, to be reinstated through re-gazettement, as Paramount Chief, before the appeal is heard and determined. That the Respondents are two individuals who lose nothing if a stay is granted because they do not represent the entire Lango community and have nothing to lose as individuals.

[37]. I agree that the Applicants, and in particular the 1st Applicant, stand to suffer more inconvenience than the Respondents if the judgment and decree are executed. This is because Yosum Odur Ebii had abdicated his position as Paramount Chief voluntarily and did not put up or join any legal challenge against the 1st Applicant's election as his replacement, and as such there would be no inconvenience or lesser inconvenience suffered by Yosum Odur Ebii, or the Respondents if the current status quo is maintained pending the hearing and disposal of the appeal.

[38]. I am fortified in this reasoning by the definition of abdication in Black's Law Dictionary, the Edition which defines abdication to be the act of renouncing or abandoning privileges or duties of a high office, such as a King. Since Yosum Odur

Ebii appears to have abdicated his office voluntarily, the High Court's reinstatement as Paramount Chief would be argued to be forcing him to act contrary to his wishes without according him a fair hearing on whether he wished to once again perform the requisite duties. The Respondents who were not his representatives in the suit would in any event suffer no inconvenience if the abdicated Yosum Odur is not regazetted as the Paramount Chief.

[40] It is not in contention or doubt that this application was instituted without delay.

[41] In conclusion, and for the reasons stated above, I find that the Applicants have satisfied the conditions for the grant of a stay of execution. I accordingly grant the Application with the following orders;

- 1. An order of stay of execution of the decree in Lira High Court Civil Suit No 10 of 2024 is hereby granted pending the hearing and determination of the Appeal emanating from the said suit.
- 2. Costs of this application shall abide the outcome of the Appeal.

I so order. Dated at Kampala this ... P*.Ila^v ot 2025 t\ Cheborion Barishaki JUSTICE OF APPEAL dq.

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Prepared on 12 October 2026 · Esheria