

UGANDA / JUDGMENT

Tekereza & Others v Kyaligonza & Others (Civil Application 1284 of 2023) [2024] UGCA 64 (20 March 2024)

[2024] UGCA 64

COURT

Court of Appeal of Uganda

BEFORE

Monica K. Mugenyi, JA

CASE / FILE NUMBER

Civil Application 1284 of 2023

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THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Monica K. Mugenyi, JA, sitting as a Single Judge)

CIVIL APPLICATION NO. 1284 OF 2023

(Arising from Civil Application No. 1130 of 2023)

- 1. TEKEREZA HELLEN BARYAYANGA
- 2. BETTY RWAKAIJA
- 3. BIKURU ROBERT (Administrators of the Estate of the Late Birigenda Kaija Benjamin)
- 4. NSGNDUGARI SECURITY GROUP LTD

VERSUS

- 1. KYALIGONZA SYLVIA
- 2. BABYESIZA CORNELIUS
- 3. KYALIMPA GODFREY (Administrators of the Estate of the Late Tibamanya Johnson)

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RULING**A Introduction**

- 1. This application is brought under Rules 2(2), 6(2)(b), 42(2), 43 and 44(1) of the of the Judicature (Court of Appeal Rules) Directions S.I '13-10 ('the Court of Appeal Rules'). The application seeks to have the ruling of this Court striking out Civil Application No. 1130 of 2023 reviewed and set aside. The application additionally seeks an interim order to stay the execution of the ruling and orders of the High Court in Miscellaneous Cause No. 24 of 2023 pending the disposal by the Court of Appeal of the substantive application for stay of execution, Civil Application No. 1114 of 2023. The application is supported by an affidavit deposed by the first applicant that inter alia states that Civil Application No. 1130 of 2023 before the applicants' advocate could show the appellate judge proof of efforts to have the matter first heard in the lower court before accessing this Court.
- 2. The Application is opposed by the Respondents, who rely on an affidavit in reply deposed by the first respondent to inter alia contend that there is no error on the face of the record to warrant this application and therefore the applicants ought to have filed a fresh application rather than this application for review. An affidavit of rejoinder deposed by the first applicant essentially reiterates the views in her affidavit and the merits of the present application.
- 3. At the hearing, the applicants were represented by Ms. Kasande Vennie Murangira and Martin Asingwire, while Mr. Simon Kasangaki appeared for the respondents.

B. Parties' Submissions

- 4. Both parties filed written submissions in the matter but they did also present oral arguments before the Court. Ms. Kasande referred to paragraph 7 of the first applicant's affidavit in rejoinder in respect of Civil Application No. 1130 of 2023, which highlights the trial court's refusal to entertain an application for interim orders before it, to argue that this Court erroneously dismissed the application. On the other hand, opposite counsel complained that the said affidavit in rejoinder was never served upon them and indeed there was no proof of such service furnished

in court. the only stamps of receipt on the affidavit were by the High Court and the Court of Appeal.

- 5. In rejoinder, Mr. Asingwire conceded that when counsel for the applicants were asked to respond to the preliminary objection raised in Civil Application No. 1130 of 2023, they erroneously referred to paragraph 7 of the affidavit in support of the application as proof that the lower court had refused to entertain the application for interim orders hence their recourse to this Court. In his view, it is that wrong reference that misled this court into dismissing that application for having been improperly filed before this court.

- 6. Learned Counsel for the Applicants cites the case of *Hwano Sunq Industries Ltd v Taidin & 2 Others*. Civil Application No. 19 of 2008 for the proposition 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.' He does also defer to the additional requirement alluded to in *Theodore Ssekikubo & 2 Others vs. The Attorney General & 4 Others*. Constitutional Application No. 4 of 2014 that such an application should additionally be supported with a Notice of Appeal. Mr. Mafabi argued that a case had been made for the grant of interim orders for stay of execution given that there was an Appeal and substantive application pending determination by the Court, namely Civil Appeal No. 129 of 2021 and Civil Application No. 177 of 2021. In his view, the affidavits in support of the application do demonstrate the imminent threat of execution of the orders in Miscellaneous Cause IVo. 185 of 2024, which depict the threat of execution by contempt of court proceedings. Mr. Mafabi intimates that there are serious questions for determination on appeal that should not be rendered nugatory.

C. Court's Determination

- 7. Rule 2(2) of the Court's Rules recognizes the inherent power of the 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 shall be exercised to prevent abuse of the process of any court caused by delay.' The circumstances of this application are that there was evidence on record that the lower court (High Court of Uganda at Masindi) declined or frustrated the applicants' efforts to have it hear their application for interim orders. Consequently, this was a matter that warranted consideration under rule 42(2) of this Court's Rules of Procedure. For ease of reference, Rule 42 of the Court of Appeal Rules is reproduced below.
 - (1) Whenever an application may be made either in the court or in the High Court, it shall be made first in the High Court.
 - f2) Notwithstanding subrule (1) of this rule, in any civil or criminal matter, the court may, on application or of its own motion, give leave to appeal and grant a consequential extension of time for doing any act as the justice of the case requires, or entertain an appeal of these Orders notwithstanding the fact that no application for that purpose has first been made to the High Court. [emphasis added]
- 8. In *Theodore Ssekikubo & 2 Others vs. The Attorney General & 4 Others* Constitutional Application No. 4 of 2014, the preservation of parties' right to appeal was adjudged by the Supreme Court to speak to the ends of justice. The Supreme Court did additionally allude to the role of interim orders in preserving the status quo so as to allow for the determination of the substantive application by the full court.

- 9. Consequently, I deem it necessary for the ends of justice to preserve the status quo of the parties as at the date of the Ruling in the judicial proceedings before the trial court until the determination of the substantive application for stay of execution pending appeal.

D. Conclusion

10. In the result, this application for review is allowed with the following orders

- 1. Civil Application No. 1130 of 2023 is hereby reinstated.
- 11. It is directed that the matter be heard inter partes before another single judge of this Court.

It is so ordered

-//, Dated and delivered this 29th day of 2024.

rMonica K. Mugenyi Justice of Appeal

. This ruling was drafted and delivered before the judge ceased to hold this office.

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