

UGANDA / JUDGMENT

The Board of Governors/Directors Caltec Academy Makerere and Another v Luwedde Kasule (Miscellaneous Application No. 2190 of 2024) [2025] UGHCLD 99 (23 June 2025)

[2025] UGHCLD 99

COURT

HC: Land Division (Uganda)

BEFORE

Echookit, J

CASE / FILE NUMBER

Miscellaneous Application No. 2190 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 2190 OF 2024 (ARTSTNG FROM MISC. APPLICATION NO. 688 OF 2024) (ARTSTNG FROM MISC. APPLICATION NO. 1861 OF 2021) (ALSO ARISING FROM MISC. APPLICATION NO. 2398 OF 2021) (ALL ARISING OUT OF CIVIL SUIT NO. 970 OF 2020)

1. THE BOARD OF GOVERNORS/DIRECTORS CALTEC ACADEMY MAKERERE

APPLICANTS

2. THE REGISTERED TRUSTEES OF THE NATIVE AFRICAN BROTHERS OF CHRISTIAN INSTRUCTION

VERSUS

- 1. ELIZABETH LUWEDDE KASULE
- RESPONDENTS (Suing through their lawful Attorney Bisaso Edith)

Before: Hon. Lady Justice Dr. Christine A. Echokit

RULING

INTRODUCTION:

- [1] The Applicant brought this application under Article 126 of the Constitution, Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 22 rule 23(1) and 89(1), Order 41 rule 1 and 9 of the Civil Procedure Rules for orders that;
- issued in Misc. Application No. 1861 of 2022 arising from N/isc. Application No. 2398 of 2021, all arising from Civil Suit No. 970 of 2020 pending determination of the application for setting aside the ex parte order, ex parte judgement, decree and order in the said suit. a) An order of stay of execution be issued of the judgement, ruling, decree and orders
- Costs of the application be provided for. #)

GROUND OF THE APPLICATION:

- [2] The grounds in support of this application are set out in the affidavit in support deposed by BROTHA JOHN PAUL the Principal of Caltec Academy in Vakerere and a member of the 2nd Applicant, and are briefly that;
- a) The Applicants were not heard in [isc. Application No. 1861 of 2022 wherein court ordered the Applicants inter alia to pay UGX 50,000,000/= in general damages, 150,000,000/= as mesne profits and interest at 15% from the date of filing the suit till payment in full.
- b) The Applicants' right to a fair hearing was curtailed by mistake of counsel, which mistake should not be visited on the Applicants.
- c) The Applicants have a good reply to the application for review and ought to be given a chance to argue it.
- d) The Applicants filed an application to set aside the ex parte proceedings, judgement, decree and resultant order in [isc. Application No. 1861 of 2022 vide [isc. Application No. 688 of 2024 which is pending hearing before this Honourable Court and that the application has high chances of success.
- e) The Applicants are faced with imminent threat of execution by the Respondents attaching/garnishing their bank accounts - Centenary Bank Account No. 3100010078.
- f) If this application is not granted, the Applicants' application to set aside the ex parte proceedings, judgement, decree and order in [isc. Application No. 1861 of 2022 will be rendered nugatory.
- g) The Applicants shall suffer irreparable damage if this application is not granted

- h) The Applicants are willing and ready to comply with any further reasonable orders of this court.
- i) The application was brought without undue delay.
- j) It is in the interest of justice that this application is granted.
- [3] The Respondents filed an affidavit in reply deponed by SHAFIC RAIVIATHAN an advocate working with t\4/s Kabayizi, Kavuma, l/ugenrva & AliAdvocates to the effect that;
- a) The Applicants seek to stay execution and or dismiss the application for execution in Misc. Application No. 176 of 2024.
- b) The Respondents applied to jointly execute two valid court orders in Misc Application No. 176 of 2024 The first order is in respect of [\4isc. Application No. 2398 of 2021 and the second order arises from IVlisc. Application No. 1861 of 2022.
- c) This application only seeks to stay execution of the order in IVlisc. Application No 1861 of 2022 where the Respondents were awarded general damages and mesne profits and the Applicants have also filed an application for setting aside the ex pade proceedings in the said application.
- d) The Applicants on the other hand have no pending substantive application whatsoever in respect of the order in IVisc. Application No. 2398 of 2021 where the Respondents were awarded compensation for their encroached area of land, and neither do the Applicants have any pending appeal in respect to the said order.

- e) In the absence of any substantive application to set aside the orders in Misc. Application No. 2398 of 2021 or an appeal, court ought to pronounce itself only on the stay of execution in respect of the orders in Misc. Application No. 1861 of 2022 and allow the Respondents to proceed with the execution of the orders in Ivdisc. Application No. 2398 of 2021.
- f) The application therefore lacks merit and the Applicants will not be prejudiced in anyway if the same is dismissed with costs to the Respondents.
- g) In the alternative but without prejudice to the foregoing, the Respondents pray that a conditional interim stay be issued ordering the Respondents to deposit the sum of UGX 271,315,800/= which was awarded and valued as compensation to the Respondents in [/isc. Application N0.2398 of 2021, which is not being challenged in any way by the Applicants.
- [4] In rejoinder, GITTA ROBERTOf M/s Eyotre & Co. Advocatesthe lawfirm representing the Applicants averred that;
- a) The Respondents appealed against the judgement on admission under [\4isc. Application No. 2398 of 2021 through their Notice of Appeal filed on ECCIMS on the 15th of August 2022.

- b) The Said Notice of Appeal has never been withdrawn, implying there is still an ongoing appeal against that judgement on admission; hence, the Respondents cannot execute the orders from IVisc. Application No. 2398 of 2021 in the subsistence of the appeal.
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- c) The application for stay is for all the orders in IVisc. Application No. '176 of 2024 not just Misc. Application No. 1861 of 2022. That the Respondents in [/isc. Application No.1T6of2024soughttoexecuteordersinbothMisc. ApplicationNo.1861 of2022 and 2398 of 2021 and cannot now be seen to seek to execute partially
- d) That KAKAIRE FRED the person who allegedly served court process was not a process server.
- e) It is fair, equitable and just that the application is granted pending determination of IVisc. Application No. 688 of 2024.

BACKGROUND TO THE APPLICATION:

Since there are many I\4isc. Applications referenced to, I would like to make a summary of the proceedings as follows;

- [5] ELIZABETH LUWEDDE KASULE and EVALYN SSEZIBWA (the Respondents in the present matter) filed Civil Suit No. 970 of 2020 against the Applicants inter alia for trespass on their land comprised in Block 3 Plot 859 at IVakerere.
- [6] They again filed IVisc. Application No. 2398 of 2021. On the 14th day of July, 2022, the Hon. Lady Justice Alexandra Nkonge Rugadya disposed of the application and gave judgement on admission against the Applicants in the present matter for trespass on land comprised in Block 3 Plots 859 and 860, land at I\4akerere. The order endorsed by the registrar of thrs court on the 7th of February 2023 in the said application stated that 'Civil suit No. 0970 of 2020 is hereby concluded'. Court also ordered the KCCA survey partment to conduct a survey to determine the actual area and size of encroachment

The Chief Government Valuer was to assess the total amount of compensation payable to the Applicants.

- [7] On the 17th of October 2023by letter ref. VAL11361274101, a one Andrew Nyumba who signed for the Chief Government Valuer wrote to this court reporting the results of the valuation and stating that; "[...] we are of the considered opinion that the Value for the Encroached Land Block 3 Plots 859 and 860 Land at IVakerere measuring a total of 0.151 acres is in region of Ug. Shs. 221,315,800/= [...]".
- [8] A subsequent IVlisc. Application No. 1861 of 2022 was filed by ELIZABETH LUWEDDE KASULE and EVALYN SSEZIBWA. I\4isc. Application No 1861 of 2022 was an application to review the orders of this court in [/isc. Application No. 2398 of 2021, to provide for mesne profits, general damages and interest prayed for in Civil Suit No. 970 of 2020. The said

application came up for disposal on the 12th day of June, 2023, and court awarded ELIZABETH LUWEDDE KASULE and EVALYN SSEZIBWA general damages of UGX. 50,000,000/=, Mesne profits of UGX. 150,000,000/= and interest of 15% per annum in respect of both from the date of filing the main suit till payment in full. An order in that regard was endorsed by the registrar on the 30th of August 2023

- [9] The Applicants in the present matter purport not to have received service of IVlisc. Application No. 2398 of 2022.

The Respondents on their part attach an affidavit of service of a one KAKAIRE FRED of IM/s Kabayiza, Kavuma, I\4ugerua & Ali Advocates, dated 7th day of IVlarch 2023. The Notice of Motion attached to the said affidavit bears the received stamp of M/s A, I\4webesa & Co. Advocates and signature of the recipient. The attachments to the affidavit of service shows that the application, the Applicant's written submissions and

court's directions for filing the Respondent's reply and the submissions of the parties were received on 7th day of February 2023 at 4.03pm. The Respondent also attaches a formal approval dated 13th May 2008 by the Registrar of the High Court showing that KAKAIRE FREDRICK a court clerk is approved to generally effect service of court process.

The Applicants aver that the IVI/s A. I\4webesa & Co. Advocates were their former lawyers and did not have instructions. That the said lawyers failed to inform the Applicants of any service of court process so as to enable the Applicants ably oppose the application.

[10] Counsel for ELIZABETH LUWEDDE KASULE and EVALYN SSEZIBWA also filed an Amended Bill of Costs vide Taxation Application No. 314 of 2023 against the Applicants pursuant to Civil Suit No. 970 of 2020 & Misc. Application No. 2398 of 2021 which was served on A. I\4webesa & Co. Advocates on 22nd day of September 2023 at 12 02pm

The Applicants claim that they got to know about the said Bill of Costs only after instructing their new lawyers IV/s Eyotre & Co. Advocates.

176 of 2024 by Chamber Summons (Ex Parte) to compel the Garnishee Centenary Bank (U) Ltd to honour the garnishee order for UGX.271,315,800/= as the decretal sum, UGX 200,000,000/= as general damages and mesne profits, UGX. 95,000,000/= as interest thereon, and UGX 28,546,3421= as costs; all against Account No. 31000'10078, the Account held by the Applicants. Hence, it is true, as stated in the affidavit evidence of the Applicants that the Respondents seek to execute orders in both Misc. Application No. 1861 of 2022 and 2398 of 2021. [1 1] ELIZABETH LUWEDDE KASULE and EVALYN SSEZIBWA filed tVlisc. Application No.

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REPRESENTATION AND HEARING:

[12]The Applicants were represented by lvl/s Eyotre & Co. Advocates while the Respondents were represented by M/s Kabayizi, Kavuma, l/ugeruva & Ali Advocates. None of the parties filed written submissions.

ISSUES FOR DETERMINATION BY THE COURT:

- t13l There is one issue for determination by the court;
- 1. Whether the Applicant is entitled to an order of stay of execution pending determination of the application for setting aside the ex parte order, ex parte judgement, decree and order in the said suit?

DETERMINATION OF THE ISSUES BY COURT:

- [14]Since the parties did not file written submissions, this court will rely on the affidavit evidence of the parties, the decision of court in both Misc. Application No. 1861 of 2022 and IVisc. Application No. 2398 of 2021, the applicable law and precedents, to arrive at its decision. Also, in regard to the credentials of KAKAIRE FRED alias FREDRICK the court clerk cum process server, I will not be drawn into that since the record seems to speak for itself in terms of effecting of service.
- [15] Under Section 98 of the Civil Procedure Act, the High Court has inherent powers to make decisions in the interest of justice. The order of stay of execution is one such decision (Singh Vs Runda Coffee Estates Ltd [1966] EA 263).

[16]This application is brought inter alia under Order 22 rule 23(1) and 89(1), Order 41 rule 1 and I of the Civil Procedure Rules unlike the usual applications pending appeal.

[17] In order for a stay of execution to issue, the Applicant must prove that;

- (i) There is a notice of appeal lodged with court
- (ii) The appeal is not frivolous and has a likelihood of success
- (iii) The application for stay of execution has been made without unreasonable delay
- (iv) Substantial loss may result to the applicant unless stay of execution is granted
- (v) There is serious or imminent threat of execution of the decree or order and if the application is not granted, the appeal would be rendered nugatory
- (vi) The refusal to grant a stay of execution would inflict more hardship than it would avoid
- (vii) The Applicant has given security for due performance of the decree or order as may ultimately be binding upon him

(See; Order 44 rules 1 (2), (3) and (4) of the Civil Procedure Rules; the Supreme Court case of Hon. Theodore Ssekibubo & 4 Ors Vs The Attorney General & 3 Ors, Constitutional Application No.03 of 2014 [2014] UGSC 11; and Kyambogo University Vs Prof. Isaiah Ndiege C. A. Misc. Civil Application No, 341 of 2013. See also: Eluju Martin Vs Itobu Margaret High Court Misc. Application No. 160 of 2022 High Court of Uganda at Soroti).

That there is a notice of appeal lodged with court;

[18] The right to appeal is a creature of Statute (see; Shah Vs Attorney General (1971) EA 50). Where there is no right of appeal, a party must seek leave of court to do so.

Order 44 rules 1 (2), (3) and (a) of the Civil Procedure Rules set out which Orders are appealable as of right to this Court.

In the case of Attorney General of the Republic of Uganda Vs The East African Law Society & Anor. EACA Application No. 1 of 2013, the court observed that;

'We [] respectfully associate ourselves with the position that a notice of appeal is ^a sufficient expression of an intention to file an appeal [.] and that such an action is sufficient to found the basis for grant of orders of stay in appropriate cases. "

[19] Perusal of the record on ECCMIS shows under Misc. Application No.2398 of ²⁰²¹ that on the 15th day of August 2022, the Applicants filed a Notice of Appeal dated 12th August 2022, intending to appeal against the decision of this court made on 14th of July 2022. The same, however, is still in draft form and the System still reflect Hon. Lady Justice Alexandra Nkonge Rugadya who has since retired.

They also filed Misc. Application No. 688 of 2024 on 21st of March 2024, which is pending hearing before this Honourable Court. The said application is for setting aside the ex parte proceedings, judgement, decree and resultant order in Misc. Application No. 1861 of 2022 arising from Misc. Application No.2398 of 2021 all arising from Civil Suit No. 970 of 2020, including the Bill of Costs; and the striking out of Misc. Application No. 176 of 2024 and the notice to show cause why execution should not ensue. By the wording of Misc. Application No. 688 of 2024, it is apparent that the Applicants intend for all the applications to be reviewed. However, only the latter application Misc. Application No. 1861 of 2022 may be a subject of review as there is a Notice of Appeal arising from the decision in Misc. Application No. 2398 of 2021.

The first requirement has been satisfied, V

That the application is not frivolous and has a likelihood of success;

[20] Under Order 22 rule 23(1) and 89(1), Order 41 rule 1 and 9 of the Civil Procedure Rules, there must be a realistic chance of the appeal succeeding.

In the case of Formular Feeds Ltd. & 3 Ors Vs KCB Bank Ltd. Misc. Application No. 1647 of 2022, court held that:

"The appeal will be considered frivolous if prima facie the grounds intended to be raised are without any reasonable basis in law or equity and cannot be supported by a good faith argument. [...] Additional evidence indicating a frivolous appeal is the applicant's conduct of prior litigation which may show that the appeal is merely part of a series of suits, applications and appeals over the same subject matter in which the applicant has engaged with no success or no chance of success. The prior litigation or procedural history can be used to establish the lack of merit in the present appeal or the bad faith of the applicant in filing the present appeal."

The learned Hon. Justice Kakuru in the case of **Commissioner Customs Uganda Revenue Authority Vs Kayimba CACA No. 62 of 2014**, stated that the circumstances for consideration include whether the subject matter of a case is in danger of being destroyed, sold or in any way disposed of.

[21] In the present matter, the Applicants filed an application to set aside the ex parte proceedings, judgement, decree and resultant order in Misc. Application No. 1861 of 2022 vide Misc. Application No. 688 of 2024 which is pending hearing before this Honourable Court, with a likelihood of success.

[22] The Respondents' counsel avers in his affidavit that both the Applicants and Respondents participated in the survey and valuation processes which took place took

place after the application for Misc. Application No. 186'1 had been fully determined, and that the Applicants were always represented by their lawyers, li4/s A. tVwebesa & Co. Advocates. Thal the Applicants have never filed any notice of change of advocates or notice of withdraw of instructions from their previous lawyers and hence cannot deny representation through their lawyers who always acknowledged receipt of the court process on their behalf and with their full knowledge.

That the Respondent's bill of costs which was taxed later on after the application for review had been concluded was served on the Applicants' previous lawyers of A. Mwebesa & Co. Advocates who also represented the Applicants in the negotiations on the costs and later on the taxation of the bill of costs and brother Tamale was actually present in court at the time of taxation of the bill of costs. That the Applicants got to know about the application for garnishee through their previous lawyers of A. Mwebesa & Co. Advocates who were duly served with the same after court insisted that the Respondents serve it, despite the same being an ex parte application. And that therefore it not true that the Applicants were not aware of the court proceedings in N4isc. Application No. 1861 of 20220r the subsequent court processes.

- [23]The Applicants aver on their part that they were prevented by the negligence of their former lawyers, IVI/s A. Mwebesa & Co. Advocates from receiving service of the court process arising from the filing of IVisc. Application No 1861 of 2022, and have shown that garnishee proceedings await hearing by court in [t/isc. Application No. 176 of 2024 for garnishee proceeding.
- 124I am curious, however, how counsel for the Respondents purports to depone an affidavit in their clients' case in circumstances where they are required to prove emselves - other than in instances calling into question counsel's professional

conduct. Both SHAFIC RAIV1ATHAN an advocate working with tVis Kabayizi, Kavuma, Mugenva & Ali Advocates counsel for the Respondent and GITTA ROBERT of t\4/s Eyotre & Co. Advocates counsel for the Applicant are faulted in this regard.

[25]That aside, garnishee proceedings are seltexecuting when completed, and ought to be taken seriously. That the Applicants did not participate in the proceedings of court and where not even granted audience to challenge the findings of the Chief Government Valuer certainly brings to court notice that they ought to be given a chance to present their case.

That the application for stay of execution has been made without unreasonable delay;

[26]In the case of Formular Feeds Limited (supra), it was found that,

"Applications for a stay of execution ought to be made within a reasonable time. Whether delay is unreasonable will depend on the peculiar facts of each case. Delay must be assessed according to the circumstances of each case. The reckoning of time to determine if a delay is unreasonable begins at the time the decree or order ls sea/ed and becomes enforceable."

[27]I\4isc. Application No. 2398 of 2021 was disposed of on the 14rh day ol July,2022 Misc. Application No. 1861 of 2022 was disposed of on 12th day of June, 2023. The present application for stay of execution was filed on 16rh August 2024. On 21il of [Vlarch 2024,|he Applicants filed Misc Application No. 688 of 2024 to set aside the ex parte proceedings, ludgement, decree and resultant order in Misc. Application No. 186'1 of 2022. fhe said application is pending hearing before this Honourable Court. IVisc. Application No. 176 of 2024 forgarnishee proceedings is also still pending in this court

It is evident from the above that the Applicant filed this application without undue delay Hence, I find that this requirement has been satisfied.

That substanfia/ loss may resultto the Applicant unless stay of execution is granted; [28] Substantial loss refers to loss of real worth or value whether great or small that is irreparable - cannot be undone once inflicted and cannot be adequately atoned for in damages and is not merely nominal (see Tropical Commodities Supplies Ltd. & 2 Ors. Vs International Credit Bank Ltd. (In Liquidation) Misc. Application No. 379 of 2003).

It should not be ordinary loss to which every judgement debtor is necessarily subjected when he or she loses a case and is deprived of his or her property or freedom as a consequence.

(Tanzania Cotton Marketing Board Vs Cogecot Cotton Co. SA [1995 -1999] E. A, 312 cited with approval in Hoima Municipal Council Vs Karamagi (Misc. Application No. 0032 of 2021) [2022] UGHCCD 138 (7 September 2022); Pan African Insurance Co. (U) Ltd. Vs International Air Transport Association HCMA No. 86 of 2006).

[29] The Applicants avers a garnishee application vide Misc. Application No. 176 of 2024 is pending determination by this court. Should the said application be granted, the Applicants are likely to suffer substantial loss.

That there is serious or imminent threat of execution of the decree or order and if the application is not granted, the appeal would be rendered nugatory;

[30] The learned Hon. Justice Stephen IVlubiru in Formular Feeds Limited vs. KCB Bank Ltd (supra) stated that;

"The term "nugatory" has to be given its full meaning. /l does not only mean worthless, futile or invalid, it also means trifling Whether or not an Appeal will be rendered nugatory if a stay is not granted depends on whether or not what is sought to be stayed if allowed to happen will be reversible, or if it is not reversible, whether damages will reasonably compensate the party aggrieved, or it is in the public interest to grant a stay. This may include a// cases where it is necessary to preserve the status quo pending appeal, in aid of and to preserve the appellate power, so that the rights involved in the appeal may not be /ost or reduced by reason of an intervening execution of the judgment.

If the judgment is of a nature to be actively enforced by execution and its execution does not delay or impair the character of the appeal, a stay will ordinarily not be granted."

Where there is imminent threat of execution, it means that execution is reasonably certain and impending.

[31] To be nugatory, the Applicants must be threatened with imminent execution The threat that IVisc. Application No. 176 of 2024 for garnishee poses is real as these proceedings are self-executing. The threat of execution is imminent should the application be granted by attaching/garnishing the Applicants' Centenary Bank Account No. 3100010078. This is likely to lead to permanent loss of earnings in the said account.

In view of the above, it is my opinion that the Applicant is likely to suffer substantial loss if execution is not stayed.

Accordingly, I find that this condition has not been satisfied

That refusal to grant a stay of execution would inflict more hardship than it would avoid;

[32] In the case of National Enterprise Corporation Vs Mukisa Foods Misc. Application

No. 7 1998, the Court of Appeal held that;

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"The Court has power in its discretion to grant stay of execution where it appears to be equitable so to do with a view to temporarily preserving the status quo. [...] 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. " (See P. ^K Sengendo Vs Busulwa Lawrence and anor. Court of Appeal Civil Application No. 207 of 2014).

[33] In the present matter, since the Garnishee proceedings if granted will be self-executing, I am of the view that the Applicants would suffer specific hardship and disruption to them, to the extent beyond which a judgment debtor is necessarily subjected when he or she loses his or her case and is deprived of his or her property in consequence.

Whether security has been given by the Applicant for the due performance of the decree.

[34] In applications of such a nature, the provisions of Order 44 rule 4 (3) (c) of the Civil Procedure Rules have to be complied with and the same provides that:

"No order for stay of execution shall be made under sub rule (1) or (2) of this rule unless the court making it is satisfied that security has been given by the Applicant for the due performance of the decree or order as may ultimately be binding upon him or her".

Security for due performance of a decree is required to protect the Respondent from the risk that the Applicant may not be able to satisfy the decree. In most cases, however, courts have preferred to order security for costs so as not to stifle appeals. (see Formular Feeds Limited (supra) citing Tropical Commodities Supplies Ltd and others Vs International Credit Bank Ltd (in liquidation) [2004] 2 EA 331 and DFCU Bank Ltd Vs Dr. Ann Persis Nakate Lussekere, CACA No. 29 of 2003). In the case of Imperial Royale Hotel Ltd & 2 Ors Vs Ochan Daniel, Misc. Application No. 11 of 2022, court held that security for costs is not a condition precedent to the grant of stay of execution. Security for costs is, however, required to ensure that a losing party does not intentionally delay execution by bringing unnecessary applications; and also to assure the Respondents that their costs are catered for.

- [35] The Applicants indicated willingness to comply with any other orders of court, although they did not mention security for the due performance of the decree. Considering the orders of this court in IV Misc. Application No. 1861 of 2022 and 2398 of 2021, it is only prudent that the Applicants furnish to this court security for the due performance of the decree, as I grant this application.

- [36]Accordingly, the Applicant shall deposit to this court 60,000,000/= (Sixty Million Shillings) for the due performance of the decree and orders of court, within thirty days of this ruling.

DECISION OF COURT:

[37] In the final result;

- a) This application is granted
- b) Each party shall bear its own costs

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I so order.

Dated at Kampala this. 23rd day of. June 2025.

Hermit

Hon. Lady Justice Dr. Christine A. Echokit Judge.

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