

UGANDA / JUDGMENT

Uwizera v Dr. Pito Jjemba (Miscellaneous Application No. 1751 of 2024) [2025] UGHCLD 98 (23 June 2025) [2025] UGHCLD 98

COURT

HC: Land Division (Uganda)

BEFORE

Echokit, J

CASE / FILE NUMBER

Miscellaneous Application No. 1751 of 2024

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THE REPUBLIC OF UGANDA

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

MISCELLANEOUS APPLICATION NO. 1751 OF 2024 (ARISING OUT OF CIVIL SUIT
NO. 887 OF 2018)

NOBERT UWIZERA APPLICANT

VERSUS

DR. PITO JJEMBA RESPONDENT

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

RULING

INTRODUCTION:

- [1] The Applicant brought this application under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules for orders that;
- a) Execution of the Decree and orders arising from Civil Suit No. 887 of 2018; Dr Pito Jjemba Vs Nobert Uwizera be stayed or set aside.
- b) Costs of the application be provided for.

GROUNDINGS OF THE APPLICATION:

- [2] The grounds in support of this application are set out in the affidavit in support deposed by Nobefi Uwizera. Briefly they are that;
 - tr a) The Respondent filed Civil Suit No. BB7 of 2018; Dr. Pito Jjemba Vs Nobert Uwizera claiming trespass and judgement was delivered in his favour by Hon. Lady Justice Alexandra Nkonge on 15th day of May 2024.
 - b) The court in the said judgement ordered cancellation of the certificate of title created from the original Plot 226 and re-survey of the entire area.
 - c) Dissatisfied with the decision of the court, the Applicant filed a Notice of Appeal and requested for a certified record of proceedings.
 - d) The appeal has a high likelihood of success and shall be rendered nugatory if execution is not stayed.
 - e) The Applicant shall suffer substantial loss and irreparable damage if execution is not stayed.
 - f) The application for stay of execution has been filed without undue delay from the date of issuance of the decision of this Honourable Court.
 - [3] The application was filed on 1st July 2024. There is no affidavit of service on ECCIVIS and therefore it is not evident when it was served so as to determine whether the affidavit in reply filed on 2nd April 2025 was filed in time. That is the same for the affidavit in rejoinder filed on 17th day of April 2025. In the interest of justice, I will proceed to consider all the affidavit evidence.
 - [4] The Respondents filed an affidavit in reply to the effect that,
 - a) The Applicant sold part of the suit land during the pendency of the suit to hide the property from the hands of justice, which was irregular.
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- b) The intended purchaser was notified about the pending suit, but despite that, he purchased with full knowledge of the fact that part of the land encroached into the Respondent's land.
 - c) The Applicant brings this application in bad faith since the decision of the Court only affirmed the recommendations of the numerous survey reports that were always available to the Applicant and those that were jointly conducted. Further, that the parties conducted joint surveys, and they all concluded that the Applicant had encroached onto the Respondent's land, and he was always aware of the same but waited for the Court to confirm the very position that experts kept confirming.

- d) The affected land does not include the Applicant's house; the Respondent's Plot 428 is only enclosed in the Applicant's fence by one decimal. The rest of the encroached-on land is where the Applicant ostensibly trespasses through the Respondent's property to access his land, having blocked and enclosed within his perimeter wall the titled access road that serves all the neighboring plots, including the Applicant's land (residual by balance from the mother title 113)
- e) The onus lies with the Applicant to resolve his encroachment on the access roads with Buganda Land Board, a matter the genesis of which he is best placed to explain.
- f) In further reference thereto, the Court order requires Buganda Land Board to conduct a resurvey, boundary opening and mark the access road to the Applicant's property and that serving the neighboring plots.

[5] In rejoinder, the Applicant avers that;

- a) The Respondent's affidavit is full of falsehoods, unsubstantiated and contradictory statements belatedly intended to mislead court.
- b) He the Applicant sub-divided and sold portions of his land comprised originally in f Block 268 Plot 226 in 2015 way before Civil Suit No. 887 of 2018 was filed by the

Respondent and so it is not true that it was done during the pendency of the suit so as to hide the same from the hands of justice.

- c) The Respondent is not challenging the Applicant's ownership of the land comprised in Plot 226. The dispute is only over one decimal as claimed by the Respondent in his reply.

REPRESENTATION AND HEARING:

- [6] The Applicant was represented by M/s KTA Advocates while the Respondent was represented by M/s CMS & Co. Advocates. None of the parties filed written submissions.

ISSUES FOR DETERMINATION BY THE COURT:

- [7] There is one issue for determination by the court;
- ¹. Whether the Applicant is entitled to an order of stay of execution pending the hearing of the appeal?

DETERMINATION OF THE ISSUES BY COURT:

- [8] Since the parties did not file written submissions, this court will rely on the affidavit evidence of the parties, the decision of court in Civil Suit No. BB7 of 2018; Dr. Pito Jjemba Vs Nobert Uwizera and the applicable law and precedents, to arrive at its decision.

- [9] 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).

[10] In the case of Lawrence Musiitwa Kyazze Vs Eunice Busingye SCCA No. 18 of 1990, it was held that;

"An application for stay of execution pending appeal is designed to preserve the subject matter in dispute so that the rights of the appellant who is exercising his/her undoubted rights of appeal are safeguarded and the appeal if successful, is not rendered nugatory."

[11] 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; w[12] 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 (4) 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. "

[13] Perusal of the record shows the Applicant filed a Notice of Appeal dated 23^d May 2024 and marked annexure "8" to the Applicant's affidavit in support of the application; and lodged the same with court on 23rd May 2024.

The first requirement has been satisfied

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

[14] In the case of Formular Feeds Ltd. & 3 Ors Vs KCB Bank Ltd. Misc. Application

No. 1647 of, 2022, court held that;

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"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 "

- [15] The Respondent in his affidavit in reply stated that he would raise a preliminary objection that the application is misconceived and superfluous since there is no executable order against the Applicant to be stayed. That there is no actual or even perceived threat of execution whatsoever or any attempt by the Respondent to execute the orders of Court against the Applicant and the application is an abuse of Court process and a waste of Courts time.
- [16] In re-litigation, the Applicant stated that on 16th January 2025, the surveyors from Buganda Land Board led by Mr. James Wamala went to the suit land in the company of the Respondent with the purpose of re-surveying the suit land in Civil Suit No BB7 of 2024. That he was informed by his lawyers that the court orders in that suit are self-executing. That there is an actual threat of execution of the said orders as a re-survey has been concluded and the Respondent and the Respondent together with Buganda Land Board are in the process of forwarding the deed prints to the Registrar of Titles for cancellation of the Applicant's certificate of title.
- [17] 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.

In the present matter, the Respondent admits that the parties have previously undertaken joint surveys, that the Respondent's Plot 428 is only enclosed in the Applicant's fence by one decimal and is quick to state that the Applicant has

encroached on the access road that serves all the neighboring plots, including the Applicant's own land. He further states that the onus lies with the Applicant to resolve his encroachment on the access roads with Buganda Land Board, and that the Court order requires Buganda Land Board to conduct a resurvey, boundary opening and mark the access road.

The Applicant in rejoinder avers that a correction of his alleged encroachment will necessitate breaking of his perimeter wall and a substantive part of his residential house which is likely to irreversibly and substantially prejudice him.

[18] Hence, I am convinced that the Applicant has shown that if the re-survey occurs and action is taken to implement the court order, his land will possibly be greatly impacted upon beyond the one decimal of his Plot 428 that the Respondent as having been enclosed the Applicant's fence. Therefore, the objection by the Respondent that there is no executable order against the Applicant to be stayed and that there is no actual or even perceived threat of execution whatsoever or any attempt by the Respondent to execute the orders of Court against the Applicant cannot stand. The judgement and decree of this court in Civil Suit No. 887 of 2018 is self-executing.

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

[19] 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 is sealed and becomes enforceable." M'

[20] The judgement in Civil Suit No. 887 of 2018 was made on 15th day of May 2024. The Notice of Appeal was filed on 23rd day of May 2024. The request for a certified copy of the proceedings was made by letter of 23rd May 2024. The decree was extracted on 25th June 2024. The present application was filed on 1st July 2024.

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 substantial loss may result to the Applicant unless stay of execution is granted;

[21] 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).

The Applicant's avers in paragraph 9 of his affidavit in support that there is danger of cancellation of his title and destruction of his house. The Respondent on his part asserts that only one decimal of his Plot 428 is enclosed in the Applicant's fence.

Where court directs a cancellation of titles and re-survey, it is more likely that the result will be more than just about the one decimal. Hence, it is prudent that the process is halted to prevent any deprivation that is above and beyond that which a litigant who loses a case would ordinarily suffer. However, this does not mean that the Applicant's claim that his house will be destroyed has been accepted by this court. From the affidavit evidence on record, I do not find anything to support that proposition.

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;

[23] The learned Hon. Justice Stephen IVubiru in *Formular Feeds Limited Vs KCB Bank*

Ltd (supra) stated that;

"The term 'nugatory' has to be given its full meaning. It 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 all 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 lost 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.

- [24]The Applicant stated in paragraph 10 of his affidavit in support of the application that he would suffer irreparable damage if his cedificate of title is cancelled and if his house is destroyed. He attached as annexure "C" to his affidavit a letter from M/s CMS & Co. Advocates counsel for the Respondent dated 27th day of June 2024 lo the residents and neighbours of Lubowa Block 268 King's Close. The said letter notifies all parties to cease trespass on the Respondent's property and informs them that the Respondent is taking immediate possession of his land.
- [25] In my view, that alone is not evidence of imminent threat of execution that would render the appeal nugatory.

To be nugatory, the appeal must be threatened with imminent execution of the decree. Ordinarily, there must be an application for execution of the decree and a notice to show cause why execution should not issue. But in the present matter, the judgement of this courl cancelled the subdivisions and titles created over Plot 226 and reverted the said plot to its original form. It further directed a re-survey of the entire area with the purpose of creating another access road over Plot 226. Hence, it is evident that the judgement and decree of the court is self-executing. This constitutes an imminent threat with a possibility of permanent loss of property.

In view of the above, it is my opinion that the Applicant is likely to suffer substantial loss if execution is not stayed. If indeed the Respondent executes the decree the appeal would be rendered nugatory and damages will not reasonably compensate the pplicant

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:

- [26] In the case of **National Enterprise Corporation Vs Mukisa Foods Misc. Application No. 7 1998**, the Court of Appeal held that;

"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).

[27] In the present matter, since the judgement and decree of this court is self-executing, I am of the view that the Applicant would suffer specific hardship and disruption to him, 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.

[28] 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 Lussejere, CA 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.

- [29]The Applicant did not indicate willingness to commit security for the due performance of the decree. In the circumstances of the present matter, I am inclined to grant this application on condition that the Applicant furnishes to this court security for the due performance of the decree.
- [30]Accordingly, the Applicant shall deposit to this court 120,000,000/= (Twenty Million Shillings) for the due performance of the decree within thirty days of this ruling.

DECISION OF COURT:

[31] In the final result;

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

I so order

Dated at Kampala this ²³ day of April 2025

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

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