

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**MISCELLANEOUS APPLICATION NO. 4 OF 2021**  
**(ARISING FROM ELECTION MIS APPL NO. 3 OF 2021)**  
**AND**  
**ELECTION MISCELLANEOUS APPLICATION NO. 2 OF 2021**  
**AND**  
**ELECTION MISCELLANEOUS APPLICATION NO. 1 OF 2021**  
**AND**  
**(ELECTION APPEAL NO. 5 OF 2020)**

**Before: The Hon Mr. Justice Geoffrey Kiryabwire, JA (Single Justice)**

**RULING**

**Introduction**

This matter was referred to me as the duty Justice for the grant of a Certificate of Urgency during this existing period of national partial lockdown for 42 days due to the Covid 19 pandemic. The application (Ex-parte) is brought under Rule 21(2) of the Judicature (Court of Appeal) Directions SI 13-10 (herein after referred to as the “Rules of this Court” seeking for orders that; A certificate of urgency be granted to have Misc Application **No. 3 of 2021** for an interim stay of execution heard during the ongoing lockdown/vacation and Costs of this Application be provided for.

### **The brief facts:**

The facts as presented by counsel for the Applicant are as follows. The Applicant is currently the Chairperson LC 1 Nsaggu Central Cell at Kajjansi having been declared so by the High Court in Election Appeal No. 11 of 2019. The Respondent one Kitandwe Amir filed an **ELECTION APPEAL NO. 5 OF 2020** (hereinafter referred to as "the Appeal") in this Court and Judgment was subsequently delivered in his favour. Counsel for the Applicant however submitted that the said Appeal was determined without the consideration of the applicant's submissions and yet he submits that the submissions were filed and duly received by this Court. The Applicant then filed an application to set aside the said Judgment of this Court and also filed an application for temporary stay of execution which are yet to be fixed by this Court.

Counsel submits that despite the guidelines of the Honourable the Chief Justice of Uganda suspending the conduct of most Court business during the partial lock down, there are moves by various persons to have Kitandwe Amir sworn in as the new LC 1 Chairman. In support of this the Applicant has attached Copies of letters dated 7<sup>th</sup> June 2021, 8<sup>th</sup> June 2021, 11<sup>th</sup> June 2021, 23<sup>rd</sup> July 2021 and 28<sup>th</sup> June 2021 which are attached on the Applicant's affidavit dated 5<sup>th</sup> July 2021 (as annexure "C1", "C2", "C3" "C4" and "C5" respectively).

It is the case for the Applicant that he will suffer substantial loss and furthermore his applications for an interim stay of execution, a

temporary stay of execution and setting aside the Judgment will be rendered nugatory if this application is not granted since there is an immediate threat of execution.

### **Determination and decision**

I have perused the Notice of Motion and its supporting affidavit. I have also considered the submissions of counsel for which I am grateful.

Rule 21(2) of the Rules of this Court provides: -

*“...No business will be conducted during a vacation, unless the Chief Justice otherwise directs, except the delivery of judgment and, **when the matter is shown to be one of urgency**, the hearing of applications and the taxation of bills...”* (emphasis mine).

Clearly the test under this rule is clear. In order to be granted a Certificate of Urgency it must be shown to the court that there is an urgent matter or occurrence that is imminent and or about to happen and which cannot wait for period under vacation to end to be attend to by court. The onus is on the Applicant to discharge this test.

Rule 21 (2) of the Rules of this Court in the circumstances of application, also has to be read together with The Circular of the Chief Justice dated 21<sup>st</sup> June, 2021 titled “**Revised Contingency Measures by The Judiciary to Prevent and Mitigate the Spread of Covid 19**” [hereinafter referred to as “the CJ’s Circular”]. I shall

review the pertinent provisions of the CJ's Circular relevant to this application.

Paragraph 5 of the CJ's Circular reads: -

*"All Court hearings and appearances remain suspended with the exception of only urgent matters"*

Paragraph 6 further provides: -

*"All execution proceedings and processes remain suspended, including matter(s) where execution process has commenced".*

Paragraph 7 provides: -

*"Judicial Officers must operate from home, except where there is an urgent matter that requires their physical attendance at the Court."*

Finally, Paragraph 17 provides: -

*"These Guidelines may be amended or reviewed from time to time in line with the National Health Policy"*

Clearly the Rules as to a matter of urgency of this Court read together with the CJ's Circular place an even a higher onus than usual on an applicant to justify the grant of a certificate of urgency during this period of lockdown as the courts and all their processes including execution as a general rule have been suspended.

It is the case of the Applicant that there is a serious threat of execution of the decree in **ELECTION APPEAL NO. 5 OF 2020** since the respondent's agents want to swear in Kitandwe Amir as the Chairperson LC 1 Nsaggu Central Cell at Kajjansi during this

lockdown or immediately after. With the greatest of respect, I am not persuaded. Execution process and even those already commenced have been suspended by the CJ's Circular until subsequently reviewed by the Hon. The Chief Justice. The CJ's Circular in itself amounts to a *defacto* stay of all court proceedings and executions. I have perused the pleading and letters and there is no date that has been set for the purported swearing in within this partial lockdown period. To my mind therefore there is no imminent occurrence set to happen within this short period of lockdown. All I see is a fear which is not well founded during this period of lockdown because the CJ's Circular is firmly in place and must be respected by all Government entities. When the lockdown is lifted and the CJ's Circular **reviewed** to lift the imposed suspension, the Applicant can still pursue their application for an interim order and or stay in the normal way.

The application is disallowed with no Order as to costs

**I SO ORDER**

Dated at Kampala this 7<sup>th</sup> Day of July 2021



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Justice Geoffrey Kiryabwire JA