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THE REPUBLIC OF UGANDA,  
 IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
 CIVIL APPLICATION NO OF 182 2021  
 (ARISING FROM CIVIL APPLICATION NO 171 OF 2021)  
 (ARISING FROM CIVIL APPEAL NO 148 OF 2021)  
 (ARISING FROM CIVIL SUIT NO 108 OF 2014)

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- 1. JUDITH RWAKISHUMBA}
- 2. DEPARTED ASIAN PROPERTY CUSTODIAN BOARD} ..... APPLICANTS

VERSUS

SIKH SAW MILLS & GINNERS LTD}

15 (Suing Through Lawful Attorney

Property Angels Ltd} .....RESPONDENT

RULING OF CHRISTOPHER MADRAMA, JA

(SITTING AS A SINGLE JUSTICE OF APPEAL)

20 The applicants filed this application for an interim order of stay of execution of all the orders of the High Court arising from the High Court decision in Civil Suit No 108 of 2014 pending the hearing and determination of the main application for stay of execution filed in this court. The applicants also seek for costs of the application to be provided for.

The grounds of the application set out in the notice of motion are briefly that:

- 25 1. the High Court of Uganda at Jinja gave judgment in Civil Suit No 108 of 2014 for the respondent where it declared the respondent as the lawful owner of the suit property comprised in LRV 233 Folio 11, Plot 33 Kisinja Road Jinja, that the applicants allocation letter was null and void, that the 2<sup>nd</sup> applicant's tenant who is the 1<sup>st</sup> applicant, should give



5 vacant possession of the suit property within 30 days from the date of judgment and payment of mesne profits to the respondent and awarded the respondent costs of the suit.

10 2. The applicants were aggrieved and appealed the decision to this court.

3. The applicants filed an application for stay of execution of the judgment and orders of the High Court to stay the execution of its judgment and orders but the application was dismissed.

15 4. The applicants filed an application for stay of execution of the judgment and orders of the High Court in this court which is pending hearing.

20 5. The applicants appeal has merit with a high likelihood of success.

6. The issues to be determined in the appeal are of great public importance.

25 7. The orders of the High Court were declaratory in nature meaning that they are self-executing.

30 8. If this honourable court does not stay execution in the interim of the said judgment and declaratory orders, the pending main application for stay will be rendered nugatory.

9. The applicants are likely to suffer irreparable injury that cannot be compensated by way of damages if the application is not granted.

35 10. There is an urgent need to preserve the status quo until the hearing and determination of the main application for stay of execution so as to prevent the defeat of justice.



5 11. It is in the interest of justice that this court stays execution in the interim of all orders of the High Court at Jinja in Civil Suit No 108 of 2014 pending the hearing and determination of the main application for stay of execution against the judgment and orders of the High Court.

10 The application is further supported by the affidavit of Bizibu George William, the Executive Secretary of the Departed Asians Property Custodian Board, the 2<sup>nd</sup> applicant who states that he is competent to swear the affidavit in support. The facts in the affidavit are that the respondent had  
15 sued the DAPCB for several declarations inclusive of declarations that it is the lawful owner of the suit property, the issuance of a temporary allocation of the property to the 2<sup>nd</sup> respondent was null and void, and for orders that the applicant gives vacant possession of the suit property, a permanent injunction to be issued restraining the applicant from trespassing or otherwise interfering with the respondent's quiet enjoyment of the suit  
20 property. The High Court sitting at Jinja delivered judgment in favour of the respondent granting all his prayers inclusive of an order for the respondent to be given vacant possession within 30 days from the date of judgment which was delivered on 26<sup>th</sup> of November 2020. The applicant was dissatisfied with the Judgment and filed an appeal in the Court of Appeal.  
25 The appeal was filed in May 2021. The applicant's application for an interim order of stay over execution was granted by the Deputy Registrar of the High Court but the main application when it came for hearing was dismissed by the learned trial Judge. Subsequently, the applicant filed an application for stay of execution in the Court of Appeal which is pending hearing.

30 On the advice from the Attorney General's Chambers, he deposed that the orders of the trial court were declaratory in nature and therefore took immediate effect. Secondly, on the advice of the Attorney General's Chambers, the applicant's appeal has a high likelihood of success. The appeal is intended to clarify on aspects of the law such as the 2<sup>nd</sup> applicant's  
35 powers to issue temporary allocations, right to recover property where the same was fraudulently repossessed or where repossession was not

A handwritten signature in black ink, appearing to be 'B. W. Bizibu', written in a cursive style.

5 properly done and the limitations under the Expropriated Properties Act.  
The rest of the deposition repeats the grounds in the notice of motion.

The affidavit in reply of the respondent was deposed by Parag Ghadhia, the  
General Manager of Property Angels Ltd who states that he read and  
understood the notice of motion together with the affidavit in support of the  
10 application. The facts in the reply are that the respondent was and at all  
material times has been the registered proprietor of the suit property.  
Secondly the suit property was then under DAPCB where it had been vested  
by the law. The respondent was issued a letter of repossession by the  
Minister of Finance on 8<sup>th</sup> April, 1992 reverting the property back to the  
15 proprietor. On 15<sup>th</sup> April, 1992, the 2<sup>nd</sup> applicant wrote to the occupants of the  
suit property confirming and communicating the respondent's repossession  
and change of ownership. The 2<sup>nd</sup> applicant introduced the respondents to  
the occupants and required them to negotiate a new tenancy agreement  
with the respondent as the new landlord. Further the respondent took over  
20 physical possession of the suit property and appointed property managers  
who executed tenancy agreements with the tenants in respect of the suit  
property and had an interrupted possession between 1993 to 2013.

On 19<sup>th</sup> March, 2013, the 1<sup>st</sup> applicant who was then the Deputy Resident  
District Commissioner of Jinja acting together with the 2<sup>nd</sup> respondent  
25 obtained a temporary allocation of the suit property and forcibly occupied  
it. The respondent instituted a suit in the High Court wherein judgment was  
delivered on 26<sup>th</sup> of November 2020 in favour of the respondent. The  
applicants filed separate notices of appeal but have since filed a joint appeal  
in this court.

30 On 21<sup>st</sup> of December 2020, the 1<sup>st</sup> applicant obtained an interim order  
maintaining the status quo until the determination of the main application  
in the High Court. On 26<sup>th</sup> May 2021 the main application for stay of execution  
was dismissed with costs and the interim order maintaining the status quo  
was vacated. The application for interim order was filed on 18<sup>th</sup> of June 2021  
35 after 23 days from the ruling and 18 days after the lapse of the 30 days  
within which the 1<sup>st</sup> applicant was ordered to hand over vacant possession



5 to the respondent. On the ground of information of his lawyers Messieurs K  
& K advocates, he believes that the 1<sup>st</sup> applicant is in contempt of the court  
order requiring them to hand over vacant possession to the respondent  
within 30 days from the date of judgment following the dismissal of the main  
application on 26<sup>th</sup> of May 2021. Further the application does not reveal any  
10 imminent threat of execution of the High Court judgment. Moreover, the  
Honourable Chief Justice of Uganda issued guidelines halting execution  
proceedings by courts in Uganda due to the Covid 19 pandemic and partial  
lockdown period.

Further on the basis of his lawyers advice, he deposed that the applicant is  
15 in abuse of court process in bringing an application without a step being  
taken by the respondent for execution of the decree and orders of the High  
Court. The respondent who is the registered proprietor of the suit property  
since 1960 stands to lose more than the 1<sup>st</sup> applicant who is a tenant paying  
monthly rent to the 2<sup>nd</sup> applicant and whose loss, if any, can be compensated  
20 for in monetary terms. The other depositions are more of arguments in  
support of the application and I have taken them into account.

The parties were directed to file written submissions. The applicant is  
represented by the Attorney General's Chambers and the respondent was  
represented by Messieurs K & K advocates.

25 I have duly considered the submissions.

Applications for interim orders before a single justice are determined on  
the basis of a few principles as held by the Supreme Court in **Uganda  
Revenue Authority versus Nsubuga Guster and another; Supreme Court  
Miscellaneous Application No 16 of 2018**. It was held *inter alia* that rule 2 (2)  
30 of the Judicature Supreme Court Rules gives the court very wide discretion  
to make such orders as may be necessary to achieve the ends of justice.  
This rule is in *pari materia* with rule 2 (2) of the Judicature (Court of Appeal)  
Rules and the same principles apply. Secondly, one of the ends of justice is  
to preserve the right of appeal and to preserve the status quo before the  
35 dispute can be considered on the merits by the full panel under the rules.



5 The main issue should be to determine whether there is a serious threat of execution that may be carried out before hearing of the substantive application.

10 Rule 6 of the **Judicature (Court of Appeal) Rules** may be invoked for stay of execution in the interim as well as in the main coupled with as **Rule 2 (2)** of the rules of this court. Rule 6 (2) (b) of **The Judicature (Court of Appeal) Rules** provides that:

6. Suspension of sentence and stay of execution

(2) Subject to sub rule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may-

15 (a) ...

(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 76 of these rules, order a stay of execution, an injunction, or a stay of the proceedings on such terms as the court may think just.

20 The applicant not only filed a notice of appeal but also filed the main appeal and therefore fulfilled some of the requirements of Rule 6 (2) (b) of the Rules of this Court. Secondly, the applicant filed a substantive application for stay of execution and the questions that remain are *inter alia* whether there is an imminent threat of execution and whether it is in the interest of justice that the interim order should be granted.

25 The rationale for stay of execution has always been to maintain the status quo on the ground that if it is not granted, the main application would be rendered nugatory and as held in **Wilson v Church (1879) Vol 12 Ch. D 454** that:

30 As a matter of practice, where an unsuccessful party is exercising an unrestricted right of appeal, it is the duty of the court in ordinary cases to make such order for staying proceedings in the Judgment appealed from as will prevent the appeal if successful from being rendered nugatory.

Without much ado, I have considered the orders and declarations issued by the High Court on 26<sup>th</sup> of November 2020 namely:

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- 5 (1) A declaration is made that M/s Sikh Sawmills & Ginnners limited is the lawful proprietor of the land comprised in LRV 223 Folio 11 Plot 33 Kisinja Road, Jinja.
- 10 (2) A declaration is made that the 2<sup>nd</sup> defendant's allocation of the suit property to the 1<sup>st</sup> defendant was void and unlawful.
- 15 (3) A declaration is made that the plaintiff is entitled to quiet enjoyment of the property comprised in LRV 2 to 3 Folio 11 Plot 33 Kisinja Road, Jinja.
- 20 (4) An order directing the 1<sup>st</sup> defendant to hand over vacant possession of the suit property to the plaintiff within 30 days of this judgment.
- 25 (5) A permanent injunction issues against the defendants restraining them, their agents, successors in title, assigns or persons claiming interest from them from trespassing or in any way interfering with the plaintiff's quiet enjoyment of the property comprised in LRV 2 to 3 Folio 11 Plot 33 Kisinja Road, Jinja.
- 30 (6) An order directing the 1<sup>st</sup> defendant to pay to the plaintiff mesne profits in the sum of Uganda shillings 182,000,000/=.
- (7) Interest at 12% on the (item 6) from the date of judgment until payment in full.
- (8) Costs of the suit.

35 The declaratory orders are statements of law and therefore orders Nos 1, 2, and 3 cannot be stayed because they are not capable of execution and can only be set aside on appeal after hearing the parties on the merits thereof. Secondly, the order directing the 1<sup>st</sup> defendant to hand over vacant possession of the suit property to the plaintiff within 30 days of the judgment has been overtaken by events. The Order was issued in November



5 2020. Thereafter the application in the High Court for stay of execution was heard and dismissed on the 26<sup>th</sup> of May 2021. This application was filed and on 18<sup>th</sup> of June 2021 and issued on 22<sup>nd</sup> June 2021 when there was a moratorium on all executions in this country due to the Covid 19 Pandemic. I further accept the submissions of the respondent's counsel that the applicants are in contempt of the court orders which required vacant possession to be given within 30 days from 26<sup>th</sup> of November 2021.

The application for stay of execution in the High Court had been filed on 15<sup>th</sup> of December 2020. This was about 19 days into the 30 days, leaving the Applicants with about 11 days. The application for stay of execution was not served and ought to have been dismissed under Order 5 rule of the CPR, but was erroneously extended contrary to the rules. Only a fresh application could have been filed within the period stipulated in the rules. Order 5 rule 1 (3) of the Civil Procedure Rules that commands dismissal is couched in mandatory terms. Where there is no extension of time as stipulated in Order 5 rule 1 (2) the motion shall be dismissed for failure to serve. Order 5 rule 1 (2) and (3) of the Civil Procedure Rules provides as follows:

(2) Service of summons issued under subrule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty-one days, showing sufficient reasons for the extension.

(3) Where summons have been issued under this rule, and—

(a) service has not been effected within twenty-one days from the date of issue; and

(b) there is no application for an extension of time under subrule (2) of this rule; or

(c) the application for extension of time has been dismissed, the suit shall be dismissed without notice.

The learned trial Judge in her ruling which is attached to the application at page 2 thereof clearly indicates that the application was filed on 15<sup>th</sup>





5 December, 2020 and issued by the registrar of the High Court on 16<sup>th</sup> of  
December 2020. She found that the application should have been served  
upon the respondent by the end of January 2020. By the time the application  
came for hearing on 24<sup>th</sup> of March 2021, time for service had already expired.  
10 In other words, there was no application before the court and a fresh  
application ought to have been filed. The 30 days' period had therefore  
expired. Even if one went by the interim order of the High court staying  
execution, this lapsed on the 1<sup>st</sup> of June 2021. This application was filed on  
18<sup>th</sup> of June 2021, 17 days which if added to the 19 days before the application  
15 was filed after the decree of the High Court, the 30 days had expired by the  
time an application was filed in this court. Subsequently, the court cannot  
grant an order which would in effect condone contempt or disregard of the  
orders of the trial court.

I therefore accept the submissions of the respondent's counsel that the  
applicants are in contempt of court orders. It follows that the applicant's  
20 application lacks merit. I decline to issue an interim order of stay of  
execution pending the hearing of the main application for the reasons given  
above. In any case, the 1<sup>st</sup> applicant is a tenant of the 2<sup>nd</sup> applicant and can  
negotiate her tenancy with the new landlord if they agree on the terms.  
Otherwise, she ought to have vacated the premises within 30 days at the  
25 pain of being in contempt of court orders.

In the premises, the applicant's application lacks merit and is hereby  
dismissed with costs.

Dated at Kampala the 8<sup>th</sup> day of July 2021



30 Christopher Madrama

Justice of Appeal

