

were successful. The applicant who was dissatisfied with the decision of the Court of Appeal, appealed to this court vide Civil Appeal No. 08 of 2008.

Anxious to reap the fruits of their success in the Court of Appeal, the respondents applied for execution of the decree of the Court of Appeal. The applicant who got wind of that application, applied in this court, vide Civil Application No. 18 of 2008, for an order of stay of execution of the decree in court of Appeal Civil Appeal No. 71 of 2005, pending the disposal of appeal No. 08 of 2008. He also filed the instant application for interim order for stay.

In the meantime, the Registrar of the Court of Appeal, acting on an application by the respondents, issued warrant of attachment and sale of the applicant's property in execution, when the applicant failed to respond to the "**Notice to show cause**" issued under 022 r 39 of the Civil Procedure Rules. On receipt of the warrant of attachment and sale in execution, the Court Bailiff proceeded to attach the plaintiff's property.

At the hearing, Mr. George Omunyokol appeared for the applicant while Ms. Verma Jivram represented the respondents.

Presenting the applicant's case, Mr. Omunyokol submitted that the application seeks the court's interim intervention to preserve the status quo pending the disposal of the main application for stay of execution now pending in this court as Civil Application No. 18 of 2008. He acknowledged that attachment of the applicant's property in execution of the decree has already been effected on 15-09-

08, but that the execution was not yet complete. Sale of the attached property has not yet been done. Referring to paragraph 7 of the supporting affidavit of Mr. Tenywa, a quality controller of the applicant, learned counsel contended that if the order sought was not granted, the applicant's pending appeal would be rendered nugatory. He suggested that the applicant was willing to deposit some money as security for performance of the decree of the Court of Appeal, pending the disposal of the pending appeal.

Ms. Jivram opposed the application on a number of grounds, firstly that the application has been overtaken by event. Attachment of the applicant's property on 15-09-2008 in execution of the decree has already altered the position. The fact of the attachment is contained in paragraphs 3 - 10 of the affidavit of James Birungi, Court Bailiff. Learned counsel argued that to grant this application in this circumstance would be to reverse rather than to maintain the status quo.

Secondly, that neither the number nor a copy of the stated pending substantive application for stay of execution has been disclosed or made available. The respondent was left to assume the existence of the said substantive application for stay of execution.

Thirdly, citing *Editor - in - Chief New Vision, News paper - vs - Ntabgoba, Civil Application No. 63 of 2005, Court of Appeal* (un reported), learned counsel submitted that there is no evidence of special circumstance and good cause to justify grant of such an application. The burden is on the applicant to show the special circumstance and good cause to justify grant.

Fourthly, that there is also no evidence of inability of the respondent to refund the decretal amount, if paid, in the event of the appeal succeeding. The burden to show that inability is also on the applicant.

Fifthly, that the application for stay of execution needs to be brought without delay. Normally such an application should be made informally as soon as the judgment is delivered. Learned counsel pointed out that in the instant case, the application was filed nearly two years after the judgment was delivered. In her view, this application was not brought without delay and that there is no special circumstance and good cause to justify granting it.

She prayed that the application be dismissed.

Having heard both counsel on this matter, it is important to point out that rule 2(2) of the Rules of this court preserves the inherent power of this court to make any orders to achieve the end of justice or to prevent abuse of its process.

In the instant application, the justice of the case requires that the main application for stay of execution, now pending before this court, be heard before the execution is effected otherwise that main application would be rendered nugatory.

It was argued by Ms. Jivram that this application has been overtaken by event since attachment in execution has already been effected on 15-09-08. I find no dispute about the attachment having been effected in execution of the decree in question but I accept Mr. Omunyokol's submission that the attachment alone did not

complete the execution. In an execution by attachment and Sale, both components must be completed in order to complete the execution. This was not the case in the instant case.

Ms. Jivram further submitted that the applicant did not show any special circumstance and good cause to justify grant of this application. She cited the ***Editor - in Chief of the New Vision News paper - vs - Jeremiah Ntabgoba, Civil Application No. 63 of 2004, COA*** (un reported). That case was a substantive application for stay of execution and the matter to be considered for grant of a substantive application for stay are not necessarily the same in considering application for an interim order for stay pending disposal of the substantive application.

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. It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.

In the instant application, I am satisfied that there is pending in this court a substantive application for stay of execution of the decree in Civil Appeal No. 71 of 2003, which is the subject of appeal in this court. I am also satisfied that there is a real threat to execute the decree before the disposal of the substantive application. When that is done, the substantive application would be rendered nugatory. The attachment that was effected on 15-09-08, did not complete the execution of that decree, therefore, this application has not been overtaken by event.

In the result, I allow the application and order as follows:

- (1) ***Sale of the property attached on 15-09-08 as shown in the inventory signed by a representative of the applicant and attached to James Birungi's affidavit must stay pending the disposal of Civil Application No. 18 of 2008 or until 17-11- 08, whichever comes first.***
- (2) ***If by 17-11-08, the substantive application (No. 18 of 2008) is still pending, this matter must be brought to court for review.***
- (3) ***Costs of this application to abide the result of the substantive application.***

Dated at Mengo this: 19th day of September, 2008.

**G. M. OKELLO
JUSTICE OF THE SUPREME COURT**