

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISCELLANEOUS APPLICATION NO. 0108 OF 2022
(ARISING FROM CIVIL SUIT NO. 0029 OF 2014).

KARUHANGA GEOFFREY APPLICANT

VERSUS

TULIHAMU BUDONGO SACCO RESPONDENTS

RULING

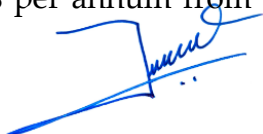
10 This application was brought under Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and Orders 43, rule 4, Order 19 rules 23 and 26, and Order 52 rules 1 and 2 of the Civil Procedure Rules S.I 71-1 seeking for the orders that.

1. A stay of execution of the judgment and decree in Civil Suit No. 0029 of 2014 be granted.
2. Costs of this application be provided for.

BACKGROUND

20 The respondent sued the applicant in this Honorable court for breach of contract, recovery of motor vehicle Registration Number UAB 151Z Nissan Hardbody double cabin or its money worth at the current market rate, a Logbook for motorcycle Registration No. UDY 864C, Centenary Bank Cheque book serial numbers 151-200, UGX 145,208,644/= as money had and received by the defendant, interest on the above amounts at the plaintiff 's lending rate of 3.5% per month amounting to UGX 41,301,644/=, damages for loss of property as a result of the defendant's actions, costs and interest thereon.

30 In the course of the trial, consent was entered by the parties, and hearing for the rest of the issues continued and were determined by this honorable court wherefore judgment was entered against the applicant and he was ordered to pay a principal amount of 94,000,000/=, general damages of 60,000,000/=, punitive damages of 40,000,000/= and an interest of 15% per annum from the date of filing the suit and costs. Being dissatisfied

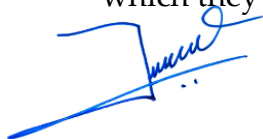


with the above decision the applicant filed an appeal pending before the court of appeal and later filed this application because.

- 1) The applicant has instituted an appeal against the respondent.
- 2) The applicant has since served the respondent with a notice of appeal and a request for the record of proceedings.
- 3) This honorable court has yet to furnish the applicant with a certified copy of the record.
- 4) That meanwhile the respondent has commenced execution proceedings and has applied for taxation of their bill of costs before this honorable court in Civil Suit No. 0029 of 2014.
- 5) That unless the execution of the decree and order is stayed the applicant will suffer substantial loss.
- 6) That the applicant is ready and willing to comply with any conditions the honorable court may deem fit attendant to the stay of execution or provide security for the due performance of the decree.
- 7) That it is fair, just, and equitable that this application is allowed.

In contest to this application the respondent in its affidavit in reply sworn by Akugizibwe Jacinta who serves as its secretary and manager contended that.

- 1) That, with information from its lawyers M/s Kasangaki & Co. Advocates the application is a nonstarter and ought to be dismissed with costs forthwith.
- 2) That the applicant entered consent mid-trial and did not pay the sum of money as agreed yet there was no reason for not paying the consent debt he had agreed to.
- 3) That the respondent was a successful party in Civil Suit No. 0029 of 2014 and that the respondent is entitled to the fruits of litigation.
- 4) That the judgment debt constitutes people's savings with the respondent and should be recovered immediately.
- 5) That the respondent is playing with public funds and people's savings which is unfair.
- 6) That the applicant is playing delaying tactics which this court should not approve.
- 7) That there is no reason for a stay of execution of the decree of this court.
- 8) That the application was misconceived, brought in bad faith, and in total abuse of the court process as it contains falsehoods that make it suspect and defective for which they prayed it to be dismissed with costs.



Issues for determination.

1. Whether the applicant has sufficient grounds for a stay of execution?
2. What remedies are available to the parties?

Representation

The applicant was represented by Counsel Katusabe Barbra of M/S Musinguzi & Co. Advocates and the respondent was represented by Counsel Kasangaki Simon of M/S Kasangaki & Co. Advocates. The litigants were given leave of court to file written submissions which complied promptly.

Determination of court

Appropriate consideration has been made as regards the submissions of the parties, however, I will not reproduce the same here. My decision on the same is as below.

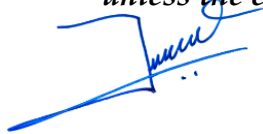
The purpose of staying execution pending appeal is to enable one who is aggrieved with a judgment in a trial court to realize the fruits of the appeal. If execution is left to go on, then the appeal if successful may be rendered nugatory as some events taken might be irreversible.

Stay of execution pending appeal from a decision of the high court is one of the areas that are not expressly provided for under the laws of procedure as such to handle such an application as one before me the inherent powers of the court must be invoked. **Section 98 of the Civil Procedure Act** gives the High Court powers to make decisions to ensure that justice is attained and an order for stay of execution falls under this category.

Order 43 rule 4 of the **Civil Procedure Rules** provides for a stay of execution as thus.

(1) Where an application is made for a stay of execution of an appealable decree before the expiration of the time allowed for appeal from the decree, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.

No order for a stay of execution shall be made under subrule (1) or (2) of this rule unless the court making it is satisfied –



(a) that substantial loss may result to the party applying for a stay of execution unless the order is made.

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for due performance of the decree or order as may ultimately be binding upon him or her.

(4) Notwithstanding anything in subrule (3) of this rule, the court may make an ex parte order for a stay of execution pending the hearing of the application.

Applications under subrules (1) (2) and (3) of this rule shall be by motion on notice; an ex parte order under subrule (4) of this rule may be made on summons in chambers.

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I concur with the authorities cited by both counsels regarding the conditions to be met to grant an application for a stay of execution pending appeal as thus.

- 1) The applicant must have lodged a notice of appeal.
- 2) That substantial loss may result to the applicant unless a stay of execution is granted.
- 3) That the application has been brought without unreasonable delay
- 4) That the applicant has given security for the due performance of the decree or order as may ultimately be binding upon him.

As such an applicant seeking a stay of execution must meet the conditions as set in the above provision of the law above.

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According to the record, there is no doubt that the applicant lodged an appeal in the Court of Appeal awaiting the court's disposal. The applicant attached a copy of a memorandum of appeal to the affidavit in support of this application. As such the first condition is proved in favour of the applicant.

Secondly, the applicant must prove that substantial loss may result to him unless a stay of execution is granted. The applicant in his submissions claims that in case execution commences upon him he will suffer a substantial loss. The respondent opposes the same with the argument that in the circumstances the applicant will not suffer any losses as he misappropriated funds that belonged to the public, that instead it is the respondent operating at a detriment. In addition, partly the applicant had

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entered consent where he agreed to pay the money in due course of the trial, and a judgment was endorsed to that effect however, he adamantly refused to pay the same as was agreed. All this affects the operations of the respondents and as such this application should not be granted.

In the case of *Tanzania Cotton Marketing Board vs Coget Cotton Co. S.A (1995-1998) E.A 312*, the court held that.

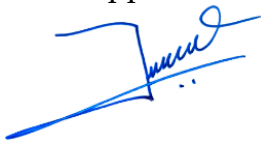
10 *“The words substantial loss cannot mean the ordinary loss to which every judgment debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case and since the code expressly prohibits stay of execution as an ordinary rule, it is clear the words substantial loss must mean something in addition to and different from.”*

20 The applicant was found guilty of having misappropriated funds which belonged to various community members in the trust of the respondent. In his submissions and affidavit in support of the application, the applicant has not shown that there is a peculiar loss that he is likely to suffer in any way if execution goes on. He merely asserts that he is likely to suffer the loss. It should be noted that part of the execution that the applicant is praying for this court to stay is a judgment that was obtained by consent, and he has failed to pay up the amount until this date. This act alone shows
30 that the applicant wants to hide under this application to delay the respondent from attaining the fruits of his judgment.

In the case of *Muhorro Town Council versus Rutalihamu Jacob (Miscellaneous Application No. 0016 of 2022) 2022 UGHCCD 90(6 May 2022)* while defining substantial loss *Byaruhanga Jesse Rugyema J* stated that.

“The applicant should go beyond the vague and general assertions of substantial loss in the event a stay is granted. It follows from the foregoing that to amount to substantial loss, the deprivation must be over and above the ordinary loss resulting from litigation.”

30 In the premises, the applicant failed to show that he is likely to suffer any substantial loss if this application is not granted.



On the third test as to whether there was a delay in bringing this application, counsel for the respondent submitted that the consent judgment was entered in 2014 and that the applicant is bringing the application after 8 years this only shows that the applicant is not willing to end the litigation. On the other hand, the applicant submits that the application has not been brought in with delay. According to the record, the consent judgment was entered on the 19th day of November 2014 and the applicant agreed to pay. However, to date the applicant has failed to pay the same. The major reason for the appeal according to the submissions of the applicant is that the trial judge used the wrong file while making his final decision. It should be noted that the consent judgment settled some issues, and the rest went on for trial.

In such an application as has been decided by various cases, the essence is not to deny a successful litigant the fruits of their judgment. I find that the 8-year period taken to bring this application was a lot of time as thus the applicant was caught up by laches.

That the applicant has given security for the due performance of the decree or order as may ultimately be binding upon him, the applicant didn't show any proof for the same.


Issue No.2

What remedies are available to the parties?

The applicant has failed to show sufficient cause for granting this application. This application is intended to delay justice to the respondents in the enjoyment of their fruits of success, yet the matter has been in court since 2014. In this circumstance, this application is dismissed with costs to the respondent.

I So Order.

DATED and Delivered this 29th day of February 2024.



Isah Serunkuma
JUDGE