

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
(FAMILY DIVISION)**

**MISCELLANEOUS APPLICATION 1450 OF 2023**

5     **(ARISING OUT OF HCMA NO. 86 OF 2023; EMA NO. 24 OF 2023 AND  
DIVORCE CAUSE NO. 0002 OF 2018)**

**JOHN KADDU BWABYE=====APPLICANT**

**VERSUS**

**TEDDY KYEYUNE KADDU=====RESPONDENT**

10

**BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA**

**RULING**

**Introduction**

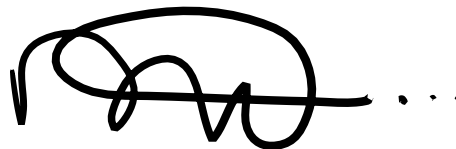
15    This is a Ruling in respect of an Application by Chamber Summons for Orders that:

(a) An Order for stay of execution of EMA No. 0024 of 2023 be issued pending the hearing and disposal of the main Appeal to the Court of Appeal;

20    (b) That Divorce Cause No.0002 of 2018 was concluded *ex parte* and the Applicant filed Miscellaneous Application No. 0086 of 2023 which was dismissed. The Applicant has since filed a Notice of Appeal, a letter requesting for Record of Proceedings and the Applicant is waiting for Court to release a typed record of proceedings so that they can prepare and file a Record of Appeal before the Court of Appeal.

(c) Costs of this Application provided for.

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## **Representation**

When the Application came up for hearing, the Applicant was represented by Mr. Muwonge Emmanuel of Katende Ssempebwa & Co. Advocates while the Respondent was represented by Mr. Blasto Byabakama of Tamale & Co. Advocates.

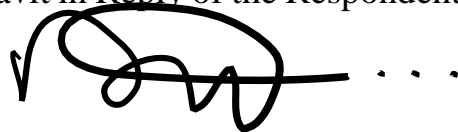
5 Both Counsel filed written submissions and the same have been considered in this Ruling.

## **Background of the Application**

A very detailed background to this case was given in Divorce Cause No.0002 of 10 2018 and repeated in Miscellaneous Application No. 0086 of 2023 arising from the Divorce Cause. Therefore, I will not repeat the same in this Application but it is worth reading so as to appreciate the context of this Application. (See the decisions in those matters).

## **15 The Application**

This Application is supported by the Affidavit of the Applicant, Mr. John Kaddu Bwabye while the same is opposed by the Affidavit in Reply of the Respondent, Ms. Teddy Kyeyune Kaddu.



20 The gist of the Affidavit in Support of the Application is that there is a threat of execution vide EMA No. 0024 of 2023 and a Notice to Show Cause why execution should not issue had been set for hearing. The Applicant further avers that Divorce Cause No.0002 of 2018 was heard *ex parte* and he filed MA No. 0086 of 2023 to set aside the *ex parte* Judgment and the same was dismissed and he has since filed a 25 Notice of Appeal and also written a letter requesting to be availed with the Record of Proceedings in MA No. 0086 of 2023. The Applicant also states that the property that is subject of execution comprised in Kyadondo Block 246 Plot 1635 land at

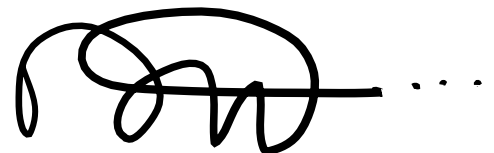
Kyeitabye is in possession and use of a third party Kigundu Erick who purchased the same before the Judgment in Divorce Cause No. 0002 of 2018 was delivered. Kigundu Erick bought the property from Johka Print Machinery and neither he nor Johka Print Machinery were parties in the Divorce Cause. If execution is allowed, it  
5 will be issued against third parties.

On the other hand, the Respondent avers that this Application is an abuse of Court process, incompetent, and not tenable at law for being res judicata. She further avers that the Judgment and Decree in Divorce Cause No. 0002 of 2018 was long executed  
10 when the suit property was registered in both her name and that of the Applicant as tenants in common and EMA No. 0024 of 2023 has already been conclusively entertained. That this Application was therefore overtaken by events and there is nothing to stay. She also avers that the issue of the property being in possession of a third party has already been exhaustively handled by this Court in Divorce Cause  
15 No. 0002 of 2018, Miscellaneous Applications Nos. 0086 and 0542 both of 2023.

### **Issues**

Counsel for the Respondent raised the following issues for determination in his written submissions:

- 20 1. Whether the Application before this Honorable Court is tenable at law;
2. Whether the Application before this Honorable Court raises grounds for grant of an Order of stay of execution; and
3. What remedies are available to the parties.



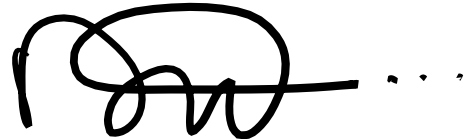
### **Resolution of Issues**

**Issue No. 1: Whether the Application before this Honorable Court is tenable at law.**

Counsel for the Respondent while citing Section 7 of the Civil Procedure Act submitted that this Application is not tenable at law for being *res judicata* and an abuse of Court process. She argued that the issues of ownership of the suit property were exhaustively addressed in Divorce Cause No. 0002 of 2018, Miscellaneous Applications Nos. 0086 and 0542 both of 2023.

In reply, Counsel for the Applicant contended that this is an Application for stay of execution pending appeal. He argued that this Honorable Court has ordered that the suit property be subjected to an Order of attachment and sale vide EMA No. 0024 of 2023 and the Respondent has filed an Appeal Vide CACA No. 1528 of 2023 seeking for determination of his ownership rights to the suit land.

### Court's Consideration



Section 7 of the Civil Procedure Act provides that:

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try the subsequent suit in which the issue has been subsequently raised, and has been heard and finally decided by that Court.”

As submitted by Counsel for the Respondent, the issue of ownership of the suit property and the alleged third party interests was exhaustively discussed in *Divorce Cause No. 0002 of 2018*. The same issue was also later discussed in *Miscellaneous Application No. 0143 of 2023 (Arising from Divorce Cause No. 0002 of 2018): John Kaddu Byabye, Kigundu Erick and Commissioner Land Registration versus Teddy Kyeyune*. I therefore, agree with Counsel for the Respondent that this Application is *res judicata* in as far as the issue of ownership of the suit property is concerned.

However, in addition to the ownership of the suit property, this Application also raises another matter related to stay of execution of EMA No. 0024 of 2023 which this Court will proceed to handle.

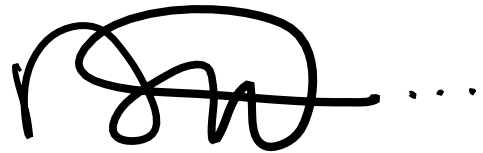
5 Therefore, issue No. 1 is partly answered in affirmative and partly in the negative. This leads me to issue No. 2.

**Issue No. 2: *Whether the Application before this Honorable Court raises grounds for grant of an Order of stay of execution.***

10 Counsel for the Respondent submitted that there is no Appeal filed by the Applicant to warrant stay of execution. He also argued that the Decree in Divorce Cause No. 0002 of 2018 was long executed when the suit property was transferred into the name of the Applicant and the Respondent as tenants in common, and at the conclusion of execution proceedings in EMA No. 0024 of 2023 which ordered sale and attachment  
15 of the suit property and even appointed a bailiff to carry out the execution.

On the other hand, Counsel for the Applicant insisted that there is Court of Appeal Civil Appeal No. 1528 of 2023 seeking for determination of the ownership rights of the Applicant to the suit land.

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**Court's Consideration**

Order 43 Rule 4 provides for stay of execution by the High Court.

Rule 4 (1) provides that:

25 ***“An Appeal to the High Court shall not operate as a stay of proceedings under a decree or order appealed from except so far as the High Court may order, nor shall execution of a decree be***

*stayed by reason only of an appeal having been preferred from a decree; but the High Court may for sufficient cause order stay of execution of the decree”*

Rule 4 (2) provides that:

5 “Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing from the decree, the Court which passed the decree, may on sufficient cause being shown order the execution to be stayed”

Rule 4 (3) thereof provides that:

10 “No Order for stay of execution shall be made under sub-rule (1) or (2) of this Rule unless the Court making it is satisfied-

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

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

15 (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.” [Emphasis Mine]

This Application seeks for an Order for stay of execution of Execution Miscellaneous Application (EMA) No. 0024 of 2023 pending the hearing and the disposal of the main Appeal to the Court of Appeal. I need to note that this Application was filed on 16<sup>th</sup> November 2023 seeking to stay the execution of EMA No. 0024 of 2023 and the Ruling in EMA NO. 0024 of 2023 was delivered on 23<sup>rd</sup> November 2023. This has left me wondering what the Applicant wanted to achieve in this Application. If he intended to stay the hearing of EMA No. 0024 of 2023, then this Application has been overtaken by events because as I have observed, EMA No. 0024 of 2023 was handled by the Deputy Registrar of this Court and the Ruling was delivered electronically on 23<sup>rd</sup> November 2023.




However, if he wanted to stay the execution of the Order in EMA No. 0024 of 2023, then this would cause more confusion because as at 16<sup>th</sup> November 2023 when this Application was filed, no decision had been made in EMA No. 0024 of 2023 and therefore, there would be no Order to stay. This finding would be sufficient to  
5 dispose of this Application. However, given the checkered history of this matter, I find it prudent to dispose of it substantively and conclusively.

Judgment in *Divorce Cause No. 0002 of 2018: John Kaddu Bwabye versus Teddy Kyeyune Kaddu* was delivered on 23<sup>rd</sup> August 2022 in favour of Teddy Kyeyune  
10 Kaddu (Respondent). The Respondent extracted the Decree immediately and the same was duly signed. I will reproduce Orders 3 and 4 because they are relevant to this Application. They read as follows:

“3. The Commissioner Land Registration is hereby ordered to strike out the entry of  
    *Johka Print Machinery Limited as registered proprietor of the suit property;*  
15 “4. The Commissioner Land Registration is hereby ordered to register the suit property in the names of John Kaddu Bwabye and Teddy Kyeyune Kaddu as tenants in common”

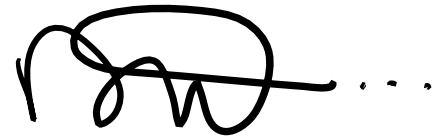
The Applicant did not appeal the decision. Instead, on 6<sup>th</sup> February 2023, he filed an Application to set aside the Judgment vide *Miscellaneous Application No. 0086:*  
20 *John Kaddu Bwabye versus Teddy Kyeyune Kaddu*. The Application was dismissed on 5<sup>th</sup> October 2023. By the time of that Application, (MA 0086 of 2023), Orders 3 and 4 in the Decree of Divorce Cause No. 0002 of 2018 had already been executed. The property had already been registered in the names of both the Applicant and the Respondent as tenants in common.

25  . . .  
At the time *Miscellaneous Application No. 0086 of 2023* was filed, another Application, *Miscellaneous Application No. 0542 of 2023: Johka Print Machinery*

*Ltd, Kiggundu Erick versus Teddy Kyeyune Kaddu and Commissioner Land Registration* seeking to set aside the Judgment in Divorce Cause No. 0002 of 2018 and to reinstate the Certificate of Title comprised in Kyadondo Block 246 Plot 1635 land at Kyeitabye to its former position before the Judgment was also filed. At the same time, another *Miscellaneous Application No. 0143 of 2023: Johka Print Machinery Ltd, John Kaddu Bwabye and Kiggundu Erick versus Commissioner Land Registration and Teddy Kyeyune Kaddu* seeking for declarations and orders that the several transactions done on the Certificate of Title of the suit were illegal was also filed in the Court. All these Applications were dismissed with costs.

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On 3<sup>rd</sup> November, 2023, the Respondent/ Judgment Creditor had filed for taxation of the Bill of Costs vide Taxation Application No. 0105 of 2022 which was handled by the Deputy Registrar in the presence of Counsel for both parties and after taxation, the same was allowed at UGX 46,415,450 (Uganda Shillings Forty-Six Million Four Hundred Fifteen Thousand Four Hundred Fifty only). It was after that, that the Respondent/ Judgment Creditor filed an Application for execution on 3<sup>rd</sup> April 2023 (EMA No.0024 of 2023). She sought to recover the above-taxed cost of UGX 46,415,450 (Uganda Shillings Forty-Six Million Four Hundred Fifteen Thousand Four Hundred Fifty only) by way of attachment and sale of the Judgment Debtor's property comprised in Kyadondo Block 246 Plot 1635 land at Bukasa. The Application was handled by the Deputy Registrar in the presence of both parties and it was allowed and a Bailiff was appointed to do the attachment and sale of the suit property. The Ruling was delivered on 23<sup>rd</sup> November 2023.

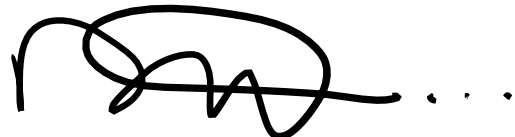


In light of the above, it is my finding that the Order of the Court in Divorce Cause No. 0002 of 2018 in respect to the suit property was issued against the Commissioner Land Registration for cancellation of the Certificate of Title from the name of Johka



Print Machinery Limited and have the same registered in the name of both the Applicant and Respondent as tenants in common. The same has already long been done. This, therefore, means that the Orders of the Court in Divorce Cause No.0002 of 2018 in relation to the suit property were long executed at the time the transactions were effected on the Certificate of Title in compliance with the Court Order. Attempts to reverse the transactions on the Certificates of Title through multiple Applications as discussed above were futile because the Applications were dismissed.

10 This Court, in Divorce Cause No. 0002 of 2018 did not make any orders regarding the attachment and sale of the suit property. The Order for attachment and sale was made by the Deputy Registrar in EMA 0024 of 2023 for recovery of the taxed cost of UGX 46,415,450. I need to emphasize that upon perusal of the Taxation Record vide TA No. 0105 of 2022, I find that the Applicant was represented and his Counsel readily agreed to the amount of the taxed Bill of Costs. I am therefore wondering why the Applicant does not want the Respondent to recover the costs which was approved on 30<sup>th</sup> March 2023 with the consent of his Counsel. Clearly, the intention is to deny or delay the Respondent from enjoying the fruits of her Judgment because it defeats logic for the Applicant and or his Counsel to concede to the amount of costs recoverable and purport to stay its recovery with no justification. The Applicant and or his Counsel are unfortunately using the Court process to achieve their ill intentions. However, this Court shall not permit this blatant abuse of the Court process.



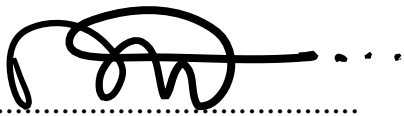
25 It also suffices to note that until now, there is no Appeal filed against the Decision of the Court in Divorce Cause No. 0002 of 2018. What the Applicant has attached is a copy of the Notice of Appeal against the decision of the Court in *Miscellaneous*

*Application No. 0086 of 2023* which was for the review/setting aside of the Judgment in Divorce Cause No. 0002 of 2018 which was dismissed for lack of merit.

Miscellaneous Application No. 0086 of 2023 that is being Appealed has no bearing  
5 on the Execution of EMA No. 0024 of 2023 because that Order for Execution does not arise from Miscellaneous Application No. 0086 of 2023 because there is another pending Taxation Application which arises from the costs in Miscellaneous Application No. 0086 of 2023. I find that whether the intended Appeal arising out of MA No. 0086 of 2023 is successful or not, will not affect the Execution Order in  
10 EMA No. 0024 of 2023 because it was issued for a different purpose which is, settlement of a Bill of Costs, a Bill of Costs that was agreeable to both parties who even went ahead to agree on how the said Bill of Costs shall be settled. There is no reason as to why the Execution Order in EMA No. 0024 of 2023 that arises from T.A No. 0105 of 2022 should be stayed especially seeing that there is no Appeal that  
15 has been filed so far against the Judgment in Divorce Cause No. 0002 of 2018. It would be different if there was an Appeal filed in respect to Divorce Cause No. 0002 of 2018 because that would directly affect T.A No. 0105 of 2022 which would in turn affect EMA No. 0024 of 2023.

20 In light of the above, therefore, this Application lacks merit and it is accordingly dismissed with costs.

**Dated at Kampala this 1<sup>st</sup> day of July 2024.**

  
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25 Alice Komuhangi Khaukha

**JUDGE**

01/07/2024