

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL APPEAL NO. 0011 OF 2022
ARISING FROM MISCELLANEOUS APPLICATION NO. 0096 OF 2022
ARISING FROM CIVIL SUIT NO. 0044 OF 2016

BUNYORO KITARA REPARATIONS AGENCY LTD APPELLANT

VERSUS

1. KIBAALE DISTRICT LAND BOARD
2. HOIMA DISTRICT LAND BOARD
3. MASINDI DISTRICT LAND BOARD
4. KIRYANDONGO DISTRICT LAND BOARD
5. BULIISA DISTRICT LAND BOARD
6. KAKUMIRO DISTRICT LAND BOARD
7. KAGADI DISTRICT LAND BOARD RESPONDENTS

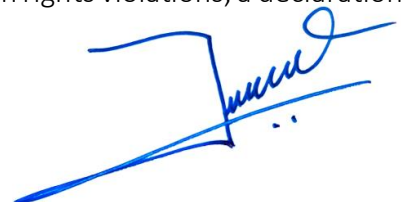
BEFORE: Hon. Justice Isah Serunkuma.

JUDGEMENT

This appeal is brought before this court under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, and Order 50 rule 8 & Order 52 rules 1, & 3 of the Civil Procedure Rules. The appeal is brought against the ruling of the Assistant Registrar in Miscellaneous Application No. 0096 of 2022 where the appellant seeks the following orders;

1. The ruling and orders of the assistant registrar in Miscellaneous Application No. 0096 of 2022 be set aside.
2. The execution of the ruling/orders in Miscellaneous Application No. 0096 of 2022 be set aside or stayed.
3. The appeal be allowed.
4. Costs of the appeal be provided for

The background of this appeal is that the appellant filed Civil Suit No. 0044 of 2016 against the respondents in this court on behalf of the indigenous people of Bunyoro-Kitara kingdom from the Albertine Graben for; a permanent injunction, a declaration that the actions and conduct of the respondents were not only unconstitutional but were clearly human rights violations, a declaration

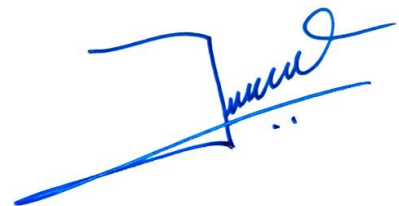


that all land titles granted by the respondent land boards contrary to or in contravention of the provisions of the constitution relevant to the law are null and void, cancellation of land titles so issued to individuals in the suit land, general damages for trespass to land by the respondent land boards, aggravated damages in compensation for the unconstitutional conduct of the respondent land boards aimed at enriching themselves from the fraudulent, unlawful seizure/allocation/grant of titles to the appellants' land and violent eviction of the indigenous people from the suit land and costs of the suit.

Upon determination of the matter by this court, it was dismissed with costs to the respondents. It was on that premise that the appellants having filed an appeal vide notice of appeal, lodged an application before the assistant registrar vide Miscellaneous Application No. 0096 of 2022, dated 21 June 2022 for an order of stay of execution and or enforcement/operation of the decree in Civil Suit No. 0044 of 2016 pending the disposal of the appeal before Court of Appeal. Upon determining the application, the learned Assistant Registrar dismissed the same on the ground of being largely speculative. It is thus on the above premise that the appellants bring this appeal against the assistant registrar's orders.

The grounds upon which this appeal was lodged are clearly stated out under paragraph 8 of the affidavit in support deponed by Charles Wandera a Director of the Appellant and thus include;

1. The learned assistant registrar erred in law when he held that the entire decretal amount has to be deposited in court by the appellant as a condition of precedent to a grant of stay of execution pending appeal.
2. The learned assistant registrar erred in law and fact when he held that the appellant did not demonstrate willingness to deposit security for due performance of the decree or order.
3. The learned assistant registrar erred in law when he held that the appellant did not demonstrate a serious threat of execution that might cause substantial loss.
4. The learned assistant registrar erred in law when he held that the appellant failed to demonstrate the substantial loss it would suffer if the order sought was not granted.



5. The learned assistant registrar erred in law and fact when he dismissed Miscellaneous Application No. 0096 of 2022 with costs and held that the application was speculative.

In reply, this court has noted that it is only the 3rd respondent who deponed an affidavit in reply through a one Kisakye Ruth the Secretary. The 3rd respondent states;

- 5 1. That based on the advice of the advocates, the current application is frivolous, vexatious and an abuse of court process.
2. That the Plaintiff's/Applicant's/Appellant's suit had no merits and was rightly dismissed.
3. That the Plaintiff's/Applicants/Appellants have not demonstrated any reason or grounds for stay of execution of the judgement of this court or setting aside the dismissal order of this court entered in Miscellaneous Application No. 0096 of 2022.
- 10 4. That the Plaintiffs/Applicants /appellants should pay the costs of these frivolous applications.

Representations and hearing.

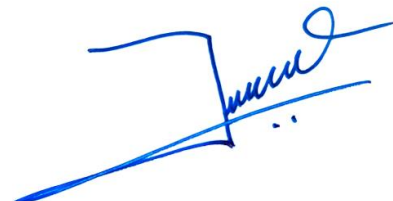
The appellant is represented by Counsel Godfrey Malinga of M/S Malinga, Kinyiri & Co. Advocates whereas the respondents are represented by Counsel Nabirye Gertrude holding brief for Counsel Kasangaki Simon of M/S Kasangaki & Co. Advocates. Both parties were directed to file their written submissions.

Applicant's submissions

Counsel for the plaintiffs/applicants /appellants relied on the grounds raised in making his submissions as hereunder;

Ground one

Counsel submitted that it has never been the position of the law that when an appeal is preferred, then the appellant has to deposit in court the entire decretal sum as a condition precedent to the grant of the order of stay of execution pending appeal. Counsel submitted that security for due performance of the decree is not a condition precedent for granting of a stay of execution as per *Imperial Royale Vs Ochan Daniel; HCMA No. 111/2012* cited with approval in *Bazira Vs Kagimu;*



HCMA No. 01138 /2016. Counsel added that the rationale of these cases is that security for due performance should not be a fetter on the right of the appellants to pursue the Appeal.

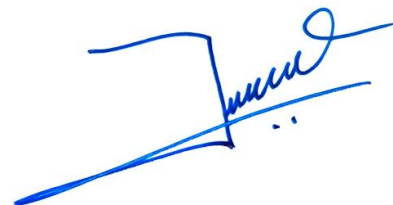
Ground 2.

Counsel submitted that the holding of the Assistant Registrar that the appellant did not demonstrate willingness to deposit security for due performance of the decree or order, presupposes that court had made a ruling determining the amount of security to be deposited by the appellant which it has defied or has expressed unwillingness to comply with. Counsel added that this is not the case and that no such order has been made by court. Counsel submitted that in Ground 5 of Miscellaneous Application No. 0096 of 2022 out of which this instant appeal arises, stated that, *“the applicant is ready to obey any orders court may give as to security for the due performance of the decree as may be ultimately binding upon it”*. Counsel added that this does not seem to be the position of a party that has not demonstrated willingness to deposit security for due performance of the decree.

Counsel further submitted that security for due performance of the decree is not a condition precedent for a grant of a stay of execution pending appeal since the order is discretionary. Counsel concluded that there is requirement under the law to make a deposit for security for due performance of the decree before court can exercise its discretion.

Ground 3

Counsel submitted that the issue of whether there is a serious threat of execution or not is not applicable in applications for stay of execution pending appeal. Counsel stated that it only applies to application for interim orders as per *Kyambogo University Vs Prof. Isaiah Omolo Ndiege; CACA No. 0341/2013*. Counsel relied on *T.M.K Vs Busingye & Another [1992-1993] HCB 157* where it was held that, *“there was no provision in the laws, CPA, CPR and the Judicature Act that expressly authorizes institution of application for stay of execution before an application for execution of proceedings is made. In the instant case therefore, the application for stay of execution was not prematurely made”*.



Ground 4

Counsel relied on *Tropical Commodities Suppliers Ltd & Ors Vs International Credit Bank Ltd (In Liquidation)* (2004) 2 EA 331 where Ogoola J (as he then was) opined that, “substantial loss does not represent any particular amount or size for it cannot be quantified by any particular mathematical formulae. It refers to any loss, great or small that is of real worth or value as distinguished from loss without a value or that which is merely nominal”. Counsel submitted that substantial loss in the context of the instant case is the likelihood of execution of the decree in the suit before the disposal of the appeal, thereby making the result of the appeal a nugatory and exposing the appellant to the risk of suffering irreparable damage which cannot be atoned by monetary compensation.

Ground 5


Counsel submitted that there was nothing speculative about Miscellaneous Application No. 0096 of 2022 as it met the threshold for grant of orders in applications for stay of execution pending appeal as demonstrated herein above. In conclusion, counsel prayed that this court be pleased to grant the instant appeal and all the orders sought therein given that this appeal is unopposed by the respondents.

Respondent’s submissions

Counsel for the respondents made joint submissions on all the grounds raised by the appellant as hereunder;

Counsel first reiterated the duty of this court as a first appellate court as well as the law regarding the burden of proof. Counsel submitted that this is not a proper case for the grant of stay of execution. Counsel submitted that this court has inherent jurisdiction under section 98 of the Civil Procedure Act to stay execution of its orders/decrees pending appeal. Counsel relied on Order 43 rule 4(3) of the Civil Procedure Rules and submitted that according to that order, no stay of execution is to be ordered unless the court making it is satisfied that;

- a) Substantial loss shall result to the party applying for the stay unless the order is made.
- b) The application has been made without unreasonable delay.



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

With reference to substantial loss, counsel submitted that an applicant for stay of execution must demonstrate that substantial loss will occur to the applicants unless the order is issued. Counsel
5 relied on *Tanzania Cotton Marketing Board Vs Cogecot Cotton Co. SA (1995-1998) EA 312* where it was held that,

10 *“It is not enough merely to repeat the words of the code and state that substantial loss will result; the kind of loss must be specified; details must be given and the conscience of the court must be satisfied that such a loss will really ensure..... the words substantial loss cannot mean the ordinary loss to which every judgement 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 all different from that”*

15 Counsel relied on paragraph 2 of the affidavit in support of Miscellaneous Application No. 0096 of 2022 where the appellant stated that the respondent is likely to execute the decree in this suit before hearing the appeal. Counsel added that the appellant never demonstrated that substantial loss it would suffer if the stay of execution order is not granted by this court. Counsel submitted that it is the appellant who sued the respondents on behalf of the people whose numbers are not
20 disclosed and the cancellation of land titles whose details and numbers are not known by the appellant. Counsel added that there is no any bill of costs that has been filed and taxed in this court and no recovery process of even the decreed sums in damages has been undertaken by the respondents all which make it vividly clear that there is no any substantial loss as anticipated by the applicant herein.

25 In conclusion, counsel submitted that there was no threat at all, none of the respondents had taken out any execution proceedings against the appellant by way of notice to show cause. Counsel thus invited this court to uphold and find that the appellants did not satisfy this condition



and that the appellant will not likely or will suffer substantial loss if the miscellaneous application no. 96 of 2022 application is not granted.

Payment of security

5 Counsel submitted that the ruling of the learned trial assistant registrar clearly stated that case law authorities confirm that the entire decretal amount has to be deposited in court as condition precedent to grant of a stay of execution. Counsel relied on ***International Credit Bank Limited (In Liquidation) Vs Tropical Commodities Supplies & 2 Others*** where it was held that it was mandatory for the respondents who were appellants in the high court to give security for the due performance of the decree or order as may ultimately be binding upon them/him or her.

10 Counsel submitted that the appellant cannot seek refuge under Order 43 rule 6 of the Civil Procedure rules which only exempts payment of security by government and/ or a public officer but rather a public legal entity with capacity to sue and be sued. The applicant is neither government nor public officers as defined under section 2 (r) of the Civil Procedure Act. Counsel added that the appellant therefore ought to have paid security for the due performance of the
15 decree before filing the instant application. Counsel concluded that failure by the appellant to pay security for costs rendered the miscellaneous application incompetent before this court and thus the learned trial Assistant Registrar rightfully dismissed the same with costs to the respondents and thus inviting this court to similarly find that the appellant did not satisfy this condition.

20 With regard to probability of success, counsel submitted that Miscellaneous Application No. 0096 of 2022 sought for an order for stay of execution and or enforcement/operation of the decree in Civil Suit No. 0044 of 2016 pending the disposal of Miscellaneous Application No..... of 2022. Counsel added that the number of the miscellaneous application was never mentioned that was pending disposal.

25 Counsel further submitted that the appellant sued the respondents on behalf of the indigenous people of Bunyoro Kitara being beneficiaries of the suit land but never got a representative order to bring this suit on their behalf. Counsel added that the number of indigenous people is not known



neither was it disclosed in Civil Suit No. 0004 of 2014. Counsel submitted that the learned trial assistant registrar ably evaluated the evidence on record before reaching his findings.

Court Analysis

I have perused the pleadings, record of proceedings and ruling presented before this court by the parties and I believe that there is one crucial pertinent issue that this court is mandated to handle first before delving to the merit of this appeal despite the fact that none of the parties made any submissions about it. This is the issue of the jurisdiction of the assistant registrar in substantive matters such as the application for a stay of execution of a decree granted in a decision of the High Court Judge in HC Civil Suit No. 0044 of 2016.

According to the citation hereinabove, this matter is cited as Civil Appeal No. 0011 of 2022 arising from a Miscellaneous Application No. 0096 of 2022 where a substantive order for a stay of execution was denied by the learned trial assistant registrar and upon which the appellant has lodged this appeal. The law as per Order 50 rule 8 of the Civil Procedure rules states that, “Any person aggrieved by any order of a registrar may appeal from the order to the High Court. The appeal shall be by motion on notice”. However, as already noted above the issue of jurisdiction of the assistant registrar requires to be considered first.

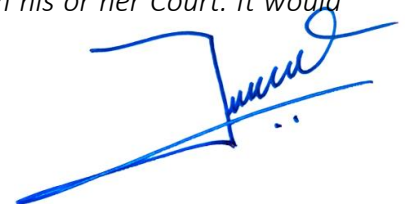
Order 50 of the Civil Procedure Rules and its Amendment of 2019 lays out the powers of the registrars inclusive of the assistant registrars. Rule 3 states,

“3. Formal and interlocutory matters.

A Registrar shall handle interlocutory matters within fourteen days of the filing of an application”.

In the case of *Kalisa v Karumu & 2 Ors (Civil Reference No. 0139 of 2013) [2014] UGCA 16*, it was held that;

“There is no doubt in our minds that a Registrar is an important clog in the Judicial Machinery however we agree with the findings of Justice Kakuru that the Registrars of this Court (Court of Appeal) in the exercise of their enhanced jurisdiction cannot issue a lawful order to a High Court Judge to stay execution or proceedings in his or her Court. It would



not be proper to do so. The fact that this court may be overwhelmed at times by work before it is no compelling reason for this short cut to expeditious disposal”.

It was further held that;

5 *“The best course of action in our finding that a Registrar can do is to refer the matter to Court of Appeal Justice exercising their powers under Section 12 (1) of the Judicature Act to issue the necessary stay. We are sure there are other interim orders that the Registrar can issue that do not fall within this category. Injunctions and or interim Orders are intrusive Orders and great caution should be exercised when granting them”.*


10 In the instant matter before this court, judgement in Civil Suit No. 0044 of 2016 was delivered on the 2nd day of June 2022. The appellant filed Miscellaneous Application No. 0096 of 2022 on the 21st day of June 2022 for an order of stay of execution doth issue staying execution and/or enforcement/operation of the decree in Civil Suit No. 0044 of 2016 pending the disposal of Miscellaneous Application No..... of 2022. The appellant also filed Miscellaneous Application No. 15 0095 of 2022 on the 21st day of June 2022 for orders that; an interim order doth issued staying execution of orders in main Suit No. 0044 of 2016 until determination of the main application for stay of execution.

The application for an interim stay of execution was entertained by the assistant registrar then on the 21st day June 2022 where he denied to grant the interim order as hereunder;

“I decline to grant the application and the same is dismissed with costs. I so order”.

20 In addition to that, the application for a substantive stay of execution was also entertained by the assistant registrar then on the 28th day of September 2022 and made a ruling on the 10th day of November 2022 where he also declined to grant the order for stay of execution. Despite the decline to grant both orders in both applications, I have not come across any law granting an assistant registrar of the high court jurisdiction to entertain such both applications without the 25 enforcement of the provision under Order 50 Rule 7 of the Civil Procedure Rules.

Order 50 rule 8 of the Civil Procedure Rules provides that;



“7. Reference to High Court.

If any matter appears to the registrar to be proper for the decision of the High Court the registrar may refer the matter to the High Court and a judge of the High Court may either dispose of the matter or refer it back to the registrar with such directions as he or she may think fit”.

5

In the result, the second question that arises before this court is whether the decision/ruling made by the assistant registrar then was lawful and whether an appeal can arise from the same. Whereas it is acceptable that the assistant registrar has powers to entertain interlocutory matters, I find no such jurisdiction vested with them so as to enable them entertain a substantive stay of execution. The assistant registrar then as per the records already handled the interim order for a stay of execution, he should have referred the substantive stay for the trial judge to handle as per Order 50 rule 7 of the Civil Procedure Rules, rather than handling both thus assuming powers of a High Court Judge he does not have.

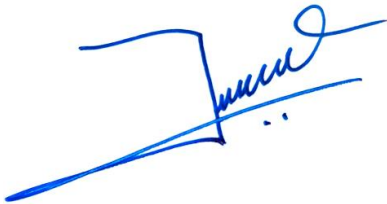
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The ruling delivered by the assistant registrar was granted in error and thus illegal to warrant the appellant to appeal against it. In my view, the appellant with the knowledge of their advocate ought to have applied instead for a review or revision of the order of the assistant registrar despite the fact that he denied granting the substantive order. It is on this basis therefore that I cannot entertain this appeal based on decisions made in error neither can I consider the grounds raised by the appellant out of it. This appeal is dismissed with no orders as to costs.

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20 I so order.

Dated and delivered on this 20th day of October 2023.



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Isah Serunkuma
JUDGE