

THE REPUBLIC OF UGANDA.....
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 004 OF 2023
{ARISING FROM CIVIL APPEAL NO. ... 2023}
{ARISING FROM COURT OF APPEAL CA NO.120 OF 2019 AND HIGH COURT}
{ADMINISTRATION CAUSE NO.1588 OF 2018}

Kasolo Robins Ellis.....Applicant

Versus

Julius Joseph Delahaije Geertruda.....Respondent


Ruling of Mwondha JSC (Single Justice)

This application was brought under Rule 2 {2,} 6 (2), 42 and 43 (1) of the Judicature {Supreme Court rules}, S.I 13 10 and s. 6 {1} of the Judicature Act seeking for orders that:

- (a) An interim order to stay execution be issued against the respondent and his agents, restraining them from executing the part of the orders of the Court of Appeal in Civil Appeal NO. 120 OF 2019, to reseal the uncertified grant of probate from the High Court of Kenya against an earlier decision by the High Court of Uganda vide HCCS No. 235 of 2017 for lack of jurisdiction to grant probate in respect of movable property/shares of the deceased's Estate who was domiciled in the Netherlands pending the hearing and determination of the main application for stay of execution pending in this honourable court.
- (b) Costs of the Application be provided in the cause.

The Application was supported by the grounds contained in an affidavit deponed by Kasolo Robins Ellis, the applicant and briefly, they were as follows:

- 1) That on the 23rd of January, the Court delivered its judgment in Civil Appeal NO.120 OF 2019 in favour of the Respondent.
- 2) The applicant was dissatisfied with part of the orders of the said judgment and filed a Notice of Appeal in the Court of Appeal and filed a Copy in the Supreme Court Registry.

- 3) That the Notice of Appeal is competent, among others.
- 4) That the Applicant had earlier written a letter requesting for the typed certified copy of the record of proceedings on the 23rd day of January 2023 and served a copy to Ms K&K Advocates Counsel for the Respondent.
- 5) That the applicant had filed in this court a substantive application for stay of execution pending the hearing and determination of the intended appeal.
- 6) That the intended appeal has a high likelihood of success given the proposed grounds of appeal as stated in the substantive application for stay of execution.
- 7) That there is eminent threat of execution of part of the orders of the judgment of the court of appeal to reseal the said uncertified grant of probate by the High Court of Kenya at Nairobi in succession cause N0.584 of 2018. That it's a direct order to execute the resealing of the grant by the Court of Appeal itself before the final determination of the substantive application pending hearing before this court.
- 8) That if the interim order of stay of execution is not granted by this court, the applicant's substantive application for stay of execution and the intended appeal will be rendered nugatory, as the order to reseal uncertified grant of probate from the High Court of Kenya would have been resealed which is sought to be challenged in the intended appeal.
- 9) That this application has been brought without undue delay.
- 10) That it is fair and just, and equitable that the application for the interim order to stay execution of part of the judgment is issued pending the determination of the substantive application of stay of execution. 

The Respondent, in his reply, opposed the application in his affidavit in reply. The grounds he based on to oppose included the averment that the orders of the Court of Appeal have already been completed and have rendered the application moot and academic. Further that the applicant's intended appeal and main application for stay of execution had no merit or prospects of success. He prayed that the application for the interim order of stay of execution is dismissed with costs.

Representation

At the hearing, the applicant was represented by Mr Richard Mugenyi of Kasolo and Kiddu Advocates and was assisted by Michael Mayambala. Mr Esau Isingoma of K&K Advocates represented the Respondent.