

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL FOR UGANDA AT KAMPALA
[Coram: Egonda-Ntende, Musota & Tuhaise, JJA]
(CIVIL APPLICATION NO. 30 OF 2018)
(Arising from Civil Application No. 272 of 2017)

BETWEEN

1 Kanyankore Bernard
2 Kasolo
3 Lusongola William **Applicants**
4 Mutabazi
5 Busalabwe John

AND


1 Baligira Yofesi
2 Kwetsiza George
3 Kaveyi Nushaki
4 Mazi Bukira Ruzoka **Respondents**
5 Bunyenyezi
6 Rwakilenga Sam
7 Ntambala F.K.
8 Kakondo

Ruling of Hon. Lady Justice Percy Night Tuhaise, JA

I have had the benefit of reading in draft the Ruling of my brother Hon. Mr. Justice Fredrick Egonda-Ntende, JA.

I agree with his analysis, reasoning and conclusion that this application is without merit and that it should be dismissed with costs.

Dated at Kampala this ^{27th} day of ^{May} 2019.


Percy Night Tuhaise JA,
Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
CIVIL APPLICATION NO. 30 OF 2018

(Arising from Civil Application No. 272 of 2017)

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1. **KANYANKOLE BERNARD**
2. **KASOLO**
3. **LUSONGOLA WILLIAM**
4. **MUTABAZI**
10 5. **BUSALABWE JOHN**

.....:APPELLANT

VERSUS

15 1. **BALIGIRA YOFESI**
2. **KWETSIZA GEORGE**
3. **KAVEYI NUSHAKI**
4. **MAZI BUKIRA RUZOKA**
5. **BUNYENYEZI**
6. **RWAKILENGA SAM**
7. **NTAMBALA F. K**
20 8. **KAKONDO**

.....: RESPONDENT

CORAM: HON. MR. JUSTICE F. M. S. EGONDA-NTENDE, JA
HON. MR. JUSTICE STEPHEN MUSOTA, JA
HON. LADY JUSTICE NIGHT PERCY TUHAISE, JA

RULING OF JUSTICE STEPHEN MUSOTA, JA

I have had the benefit of reading in draft the ruling of my learned brother Hon. Mr. Justice F. M. S. Egonda Ntende, JA.

I agree that for the reasons he has given, this application should be dismissed with costs and I have nothing useful to add.

Dated at Kampala this.....^{27th}.....day of ^{May}.....2019



.....
Stephen Musota
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL FOR UGANDA AT KAMPALA


[*Coram: Egonda-Ntende, Musota & Tuhaise, JJA*]

CIVIL APPLICATION NO. 30 OF 2018

(Arising from Civil Application No. 272 of 2017)

BETWEEN


1 Kanyakore Bernard
2 Kasolo
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Applicants

AND

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Respondents

Ruling of Fredrick Egonda-Ntende, JA

1. This is an application for stay of execution of the judgment and decree of this court in Civil Appeal No. 100 of 2014 until the determination of Civil Application No. 272 of 2017 in which the applicants are seeking leave for a third appeal to the Supreme Court. The application also seeks provision be made for costs of this application.
2. The grounds upon which this application is made are stated as follows in the notice of motion:

‘1. That Civil Appeal No.100 of 2014 was decided in favour of the respondents to this application who were the appellants in the appeal.

2. That the applicants herein have applied to this court for leave to appeal to the Supreme Court in Civil Application No. 272 of 2017.

3. That the respondents have had the Bill of Costs in the High Court taxed and have also filed a Bill of Costs in this court which is due for taxation.

4. That the respondents may at any time now apply for execution of the Judgment of this Court.

5. That if an order for stay of execution is not granted and execution proceeds the application will be rendered nugatory.

6. It is in the interest of justice and equitable that the application be granted and the respondent be restrained from continuing with the construction on the suit land or in other manner dealing therein pending final disposal of the main suit.’

3. The notice of motion is supported by an affidavit of Mr Lusongola William who is applicant no.3. The affidavit is simply a regurgitation of the grounds set out in the notice of motion without more.
4. The respondents oppose the application.
5. Mr Moses Okwalinga appeared for the applicants while Mr Raymond Mwebesa appeared for the respondents. Mr Okwalinga dropped the applications of applicants nos. 1 and 5 who died prior to the filing of this application. He proceeded with the application only in respect of applicants nos. 2, 3 and 4. He also conceded that execution of the subject matter or suit property was completed at the time the appeal before this court was heard. The land is actually in possession of the respondents. What he now seeks in this application is an order of this court staying the payment of costs in this court and the court below.
6. The applicants presented a different application in writing from the one they now present orally before this court. The execution of the decree of the trial court was executed before the hearing of this appeal. And in the appeal before this court the applicants lost and the decree of the court of first instance was reaffirmed by the Court of Appeal. It is now no longer

possible to stay execution in relation to the suit property. This application is without merit.

7. The application before this court did not seek to stay payment of the costs adjudged against the applicants in this court and below. Neither were any grounds advanced on the application why this court should stay payment of costs. All these matters were advanced from the bar. This is simply not acceptable. The applicants cannot present one case and advance another at the hearing of the application. I must hold them to their pleadings.
8. This application has been made before the full court on the ground that an earlier application before a single justice was dismissed. I would have thought, in those circumstances, and in accordance with Rule 55 of this court, the proper procedure would have been a reference to a full panel. This would have been easier and less costly to the parties. Rule 55 states,

'55. Reference from decision of a single judge.

(1) Where under section 12 (2) of the Act, any person being dissatisfied with the decision of a single judge of the court—

- (a) in any criminal matter wishes to have his or her application determined by the court; or
- (b) in any civil matter wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the court,

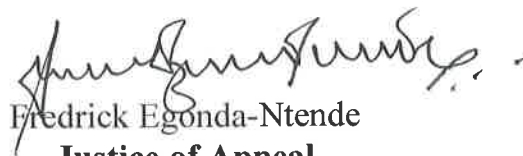
the applicant may apply for it informally to the judge at the time when the decision is given or by writing to the registrar within seven days after that date.

(2) At the hearing by three judges of the court of an application previously decided by a single judge, no additional evidence shall be adduced except with the leave of the court.'

9. In the result I would dismiss this application with costs.

10. As Musota and Tuhaise JJA agree this application is dismissed with costs.

Dated, signed and delivered at Kampala this 27th day of May 2019


Fredrick Egonda-Ntende
Justice of Appeal