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THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
AT KAMPALA

CIVIL APPLICATION NUMBER 48 OF 2015

[ARISING OUT OF CIVIL APPLICATION NO. 47 OF 2015

[ARISING OUT OF CIVIL APPEAL NO. 180 OF 2014].

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MAYIMUNA MUYE AMIN:.....APPLICANT

VS

METROPOLITAN PROPERTIES LTD:.....RESPONDENT

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BEFORE: HON. MR. JUSTICE. A.S NSHIMYE, JA (Single Justice)

RULING

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The applicant brought by way of Notice of Motion an application under **Rules 2 sub rule 2, Rule 43 of the Judicature Court of Appeal Rules**, seeking an interim order of stay of execution of the judgment and decree of the High Court (Land Division) in **Civil Suit Number 41 of 2011** delivered by the Hon. Mr. Justice Joseph Murangira on the 23rd day of December 2011, until the main application for stay of execution is heard and determined by a full bench of three justices. She also prayed for costs of the application.

5 The application is supported by the main affidavit of the applicant and an affidavit in rebuttal which set out in detail the background to the application.

At the hearing, Counsel Caleb Alaka together with Kyazze Joseph, Kenneth Paul Kakande and Livingstone Ojaku appeared
10 for the applicant while Counsel Gerald Kakuba appeared for the respondent

Counsel Caleb Alaka submitted that the application satisfies the condition for the grant of an interim order.

He referred to the case of **Hon. Theodore Ssekikubo and others Vs. The Attorney General; Constitutional Application Number 4**, in which the Supreme Court stated that Rule 2 (2) of the Judicature Supreme Court rules gives Court very wide
15 discretion to make such orders as maybe necessary to achieve the ends of justice.

20 One of the ends of justice was, to preserve the right of appeal. He cited the case of **Sinba K. Ltd and 4 others Vs UCB, Supreme Court Civil Application N0. 5/2014** and **Amos Nzeyi Vs Bank of Uganda, Constitutional Application N0. 1 of 2013**. He also
25 referred to the cases of **Yakobo MS Sekungu and others Vs Precisio Mukasa**; civil application number 5 of 2013 and **Gurayano vs. Kasidyo**; civil application number 3 of 2013 in which this Court stated that the granting of interim orders is meant

5 to help the parties to preserve the status quo and then have the main issues between them determined by the full court as per the rules.

He submitted further that consideration for the grant of an interim order of stay of execution or interim injunction are:

- 10 **(a) Whether there is a Notice of Appeal.**
 (b) Whether is a substantive Application for stay pending.
 (c) Whether there is a serious threat of execution before the hearing of the substantive application.

Counsel Alaka pointed out that **Rule 2 Sub rule 2 of the Supreme Court** rules is similar in wording to **Rule 2 sub rule 2** of the Rules this Court.

He referred to the evidence in the supporting affidavit and the one in rebuttal and submitted that the applicant had established the conditions for grant of the application.

20 In finality, counsel prayed that I find that this application satisfies the conditions precedent for the grant of an interim order as prayed. He undertook to first track the conferencing of the appeal.

In reply Counsel Gerald Kakuba for the respondent opposed the application and read through the opposing evidence contained in the affidavit in reply. In his view, the interim order for the stay of execution was not justified. However he stated that in accordance

5 with the respondent's affidavit in reply, should this court in its own discretion decide to grant the order sought then, Court should add an additional order to the Registrar of lands stopping any dealings or entries whatsoever being entered on the freehold register V01. 210 folio 11.

10 He prayed that the application be dismissed and in the alternative the title be encumbered.

I have listened and considered the submissions of both counsel and the evidence in support and against the application and the authorities referred to me. I am satisfied that on the balance of
15 probabilities the applicant has made out a case justifying granting an interim order of stay.

There is uncontroverted evidence that the applicant is an appellant in this court. There is also evidence that there is a
20 substantive application for stay pending hearing. This court takes Judicial Notice of fact that this court is currently running a civil appeal session which is likely to go on until the end of April 2015.

There is also undisputed evidence that at some time, the respondent applied for execution. Threat of execution is therefore
25 apparent.

In the result, I grant the application and issue an interim order of stay which will remain in force for 60 days from the date of delivery of this ruling. The said time frame will encourage the

5 applicant not to sit back and relax, but to be vigilant in obtaining
an early fixture for the pending application and preferably the
appeal itself. I decline to grant the prayer of the respondent that I
direct the Registrar of Titles to encumber the title comprised in
freehold VOl. 210 folio 11 because the application is misplaced
10 and misconceived.

I direct the Registrar to find room on the cause list for the appeal
in the next convenient civil session. Costs of this application will
abide the outcome of the appeal.

15 DATED AT KAMPALA THIS 26th DAY OF March 2015.



**JUSTICE A.S NSHIMYE,
JUSTICE OF APPEAL**

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