

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISC. APPLICATION NO. 276 OF 2016

(ARISING FROM MISC. APPLICATION NO. 275 OF 2016)

(ARISING FROM CIVIL SUIT NO. 041 OF 2014)

**THE REGISTERED TRUSTEES OF THE
ANJUMAN AHIL-I-SUNNAT WAL
JAMAT, JINJA**

..... APPLICANT

VERSUS

**1. MUHAMMAD FAISAL
2. ASHRAF MUHAMMAD
3. SALEH ADAM
4. SHERO MUHAMMAD
5. HUSSEIN NGOBI**

..... RESPONDENTS

RULING

BEFORE JUSTICE MICHAEL ELUBU

This is an application by Chamber Summons brought by The Registered Trustees of the Anjuman Ahil-I-Wal (Applicant) under O. 22 r. 26 where the Applicant Trust seeks orders that:-

- Execution in Civil Suit No. 41/2014 be stayed pending the determination of the appeal.
- That costs of the application be in the cause.

The Respondents were Plaintiffs in the trial Court who brought a representative suit against the Applicants.

The application is supported by the affidavit of one Ahmed Mubiru who deposed that judgment in Civil Suit No. 41/2014 was passed on 08th April, 2016 and that a Notice of appeal has been filed. A copy was attached. The Applicants have also filed a Memorandum of appeal attached to the affidavit in rejoinder.

It is averred further that the Respondents were planning to convene an illegal meeting to take over the leadership of the Trust property to the detriment of the members of the Trust. It is sworn that the said meeting may spark off chaos if it resolves to retrieve titles from the Applicants and when the tenants are antagonised by forceful change of registered proprietorship.

That the Trust has a clear membership responsible for the property and if the Respondents are allowed to conduct an election, then it would amount to being deprived of the property without a hearing; that the appeal has a real prospect of success and the Applicants

would suffer irreparable injury if the stay of execution is not granted as the new trustees would deal with the property in a manner prejudicial to the Trust.

The Respondents, in reply, filed an affidavit sworn by Ashraf Muhammad. He averred that the appeal filed by the Applicants has no prospect of success as the learned trial Judge properly addressed his mind to the law and the facts before arriving at the decision made.

It is averred that the worries expressed by the Applicant that a meeting would be convened and new Trustees elected no longer exist as the Respondents convened the meeting on 12th August, 2016 and elected new members who have already been registered with the Ministry of Lands, Housing and Urban Development. The minutes of the said meeting, the instrument approving the new Constitution and a letter from the Hon. Minister of Lands, Housing and Urban Development, noting the new Trustees dated 13th October, 2016 are all attached to the affidavit in reply.

It is deposed that the judgment and decree of The High Court was passed on the 08th of April, 2016. The application for stay was filed on the 17th of June, 2016 and fixed for hearing on 13th December, 2016 after the election of the new trustees complained of had already taken place.

It is his contention that the application has been overtaken by events and the reliefs sought are not available.

Counsel for the Applicant submitted that the main consideration for a grant of an order of this kind was laid out by the Supreme Court of Uganda in the case of ***Gashumba Maniraguha Vs. Sam Nkundiye Supreme Civil Application No. 24/2015.***

He contends the Applicant meets all of them. An appeal has been filed in the Court of Appeal vide No. 161 of 2016. If a stay is not granted it would render the appeal nugatory as a change of management and Trustees would lead to disposal of Trust property. That the balance of convenience lies with the Appellants who are responsible to the Trust membership to preserve the Trust property. That the application was filed in this Court without delay.

It was further submitted that though the Respondent has registered another Constitution with the Ministry of Lands, Housing and Urban Development, the said registration was done in bad faith to defeat this application and for that reason this Court should grant this application.

For the Respondent, it was the contention of the suit was a representation action on behalf of more than 300 faithful. The balance of convenience therefore tilts in this favour as the Applicant was only parties disguised as a Trust.

- iv. The Applicant must also establish that the application has been instituted without delay.

In the instant case it is clear that the Applicant who filed this application on the 17th of June, 2016 after judgment was rendered on the 08th of April, 2016, did so without delay.

The Applicant in his Memorandum clearly raises triable issues though from the limited evidence available to this Court. I cannot determine one way or the other if he has a clear chance of success.

What is certain here is that the Respondents implemented part of the orders of the trial Court. I am in agreement with Counsel for the Respondents that the judgment took effect immediately and in the absence of any restraint order from Court there was no bar to the Respondents enforcing the judgment. I therefore do not agree that the registration shown in R₁, R₂ and R₃ was done in bad faith.

It was submitted for the Applicant that not all the trial Court orders have been executed. I find however that once registration has been effected as ordered in (e) and new Trustees were in place, then 'a', 'b', 'c' and 'd' must follow as a consequence.

In effect the orders of the lower Court have practically been enforced.

Secondly, I have seen no evidence of disposal of Trust properties feared by the Applicants. It was not established by their affidavit evidence.

In that light therefore the feared waste or disposal of property has not been shown. It would appear to this Court therefore that in the circumstances the orders the Applicant wishes to stay have already been substantially executed and this application has been overtaken by events.

In light of that this Court deems it proper to decline the grant of this application.

In the result the application is hereby dismissed. The costs in the cause.

Michael Elubu (15/3/17)

MICHAEL ELUBU
JUDGE

17/18. Repetition of the applicant's
1st page, para.
2nd 5th pages added.
71 Page Mr. Habokume of the page.
Hobbs: Clerk
CMA, of which delivered in the presence of
the above. 12.7.18