



**IN THE HIGH COURT OF UGANDA SITTING AT GULU**

Reportable  
Civil Application No. 184 of 2018

In the matter between

**ABWOLA VINCENT**

**APPLICANT**

And

1. OYET BOSCO }
2. ANYWAR CHARLES }

**RESPONDENTS**

**Heard: 26 February 2019**

**Delivered: 1 April 2019**

**Summary: Temporary injunction and stay of execution pending appeal.**

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**RULING**

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**STEPHEN MUBIRU, J.**

Introduction:

[1] This is an application made under section 38 (1) of *The Judicature Act*, section 98 of *The Civil Procedure Act*, and rule 42 of *The Court of Appeal Rules*, seeking a temporary injunction pending appeal to the Court of appeal from a decision of this court or in the alternative an order for stay of execution. The grounds are that; the respondents have forcefully entered and taken possession of the land intending to sell it off. By that conduct, they are threatening to execute the decree. The appeal will be rendered purgatory unless the activities are stopped and that the family of the late Too Francis have been living on this land which

was their grandfather's land and the applicant believes he has high chances of success in the appeal.

[2] In their joint affidavit in reply, the respondents oppose the application. They refute the applicant's claim that their family lives and derives its livelihood from the land in dispute. They also contend that no step has been taken to execute the decree and therefore the application is premature and that the intended appeal has no likelihood of success.

[3] The background to this application is that during the year 2014, the applicant sued the respondents before a Grade One Magistrate's Court seeking an order of vacant possession of land and a permanent injunction. A decision was delivered in the applicant's favour. The respondents appealed to this court and the decision of the court below was reversed on 25<sup>th</sup> October, 2018. The respondents have since extracted a decree but have not taken any further step.

The application for a temporary injunction is misconceived:

[4] As regards the application for a temporary injunction, the order can only be sought when there is a pending suit before the court which is yet to be disposed of (see *Godfrey Sekitoleko and four others v. Seezi Peter Mutabazi and two others, [2001 – 2005] HCB 80*). This is because one of the considerations for its grant is the applicant showing that he or she has a *prima facie* case with a probability of success. Upon delivery of the judgment on 25<sup>th</sup> October, 2018 there is no suit pending before this court over the subject matter in dispute any more. On that account alone the application for a temporary injunction is misconceived.

The application for a stay of execution too is misconceived:

[5] On the other hand, the principles under which an application of stay of execution pending an appeal from this court to the Court of Appeal can succeed include:-

the applicant must show that he or she lodged a notice of appeal; that substantial loss may result to the applicant unless the stay of execution is granted; that the application has been made without unreasonable delay; and that the applicant has given security for due performance of the decree or order as may ultimately be binding upon him. The applicant must make such application after notice of appeal has been filed and should be prepared to meet the conditions set out in Order 43 Rule 4 (3) of *The Civil Procedure Rules* (see *Lawrence Musiitwa Kyazze v. Eunice Businge, S. C. Civil Application No 18 of 1990*).

[6] The Court of Appeal in *Kyambogo University v. Prof. Isaiah Omolo Ndiege, C. A. Misc. Civil Application No 341 of 2013* expanded the considerations to include:- that there is serious or eminent threat of execution of the decree or order and if the application is not granted, the appeal would be rendered nugatory; that the appeal is not frivolous and has a likelihood of success; that refusal to grant the stay would inflict more hardship than it would avoid. Substantial loss does not represent any particular size or amount but refers to any loss, great or small that is of real worth or value as distinguished from a loss that is merely nominal (see *Tropical Commodities Supplies Ltd and Others v. International Credit Bank Ltd (in Liquidation)* [2004] 2 EA 331).

[7] In the instant application, although the applicant has filed a notice of appeal, there is no proof provided of a serious or eminent threat of execution of the decree or that if the application is not granted, the appeal would be rendered nugatory. The proposed grounds of appeal have not been furnished and for the court to hold that the appeal is not frivolous and has a likelihood of success, would be mere speculation. Similarly, to find that refusal to grant the stay would inflict more hardship than it would avoid cannot be determined based on the scanty material provided by the applicant. There is no proof of the claim that the applicant and his entire family lives on the land in dispute.

[8] Consequently, in the absence of proposed grounds of appeal, in the absence of evidence of security for costs having been furnished and in the absence of

evidence of potential substantial loss, this court is reluctant to grant any of the reliefs sought by the application. The circumstances tend to show that the applicant is using the appeal process only to frustrate the future execution of the orders of this court.

Order :

[9] In the final result, The application is accordingly dismissed with costs to the respondents.

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Stephen Mubiru  
Resident Judge, Gulu

Appearances

For the applicant : Mr. Ojok Julius.

For the respondents: Mr. Ocorobiya Lloyd.