

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
MISCELLANEOUS APPLICATION NO. 1103 OF 2018
(Arising from Civil Suit No. 170 of 2005)

1. PATRICK SENYONDWA
2. ROSE NAKITO:.....APPLICANTS

VERSUS

LUCY NAKITO [*Suing through her*
Lawful appointed Attorney Bunjo Francis]:.....**RESPONDENT**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought under Section 98 Civil Procedure Act Cap 71, O.43 rr1,2,3 & 5 of the Civil Procedure Rules SI 71-1 seeking for orders that;

1. Substantive order of stay of execution doth issue against the Respondent staying the execution of the judgment and decree passed in Civil Suit No.170 of 2005 pending the hearing and determination of the Applicant's application.
2. Costs of the application be provided for.

The grounds of this application briefly are; that the Applicants intend to appeal against the judgment of this Court delivered vide Civil Suit No.170 of 2005 on the 5th April, 2018. That the Applicants have lodged a notice of appeal and also written to this Court requesting for typed record of proceedings. Further, that the Respondent intends to execute the orders of this Court and thereby render the intended appeal nugatory lest this application is granted. Additionally, that this application was made without undue delay and; that the intended appeal has merit and a high likelihood of success.

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The application was supported by affidavit sworn by 1st Applicant. It was deponed therein that the Applicants are aggrieved with the judgment of this Court in favour of the Respondent and also dismissing their counterclaim. That the Applicants have lodged a notice of appeal and written to this Court requesting for the record of proceedings. A copy of notice of appeal and letter requesting for record of proceedings were attached as “A” and “B”. Further, that the Respondent intends to execute the orders of this Court before their appeal can be heard and; also that she lodged a bill of costs for taxation whose hearing was due on the 14th July, 2018. A copy of the said bill of costs was attached as “C”. Additionally, that their intended appeal will be rendered nugatory lest this application is granted.

The application was opposed by the Respondent through an affidavit sworn by Noah Kiboome. Counsel for the Applicants however raised an objection to this affidavit on ground that it was filed out of time. I wish to address this first before considering it.

It was apparent that this affidavit was filed four (4) months after the application was served upon the Respondent without leave of Court. Counsel for the Respondent submitted that it ought to have been filed within 15 days from the date of service and; that since it was filed out side time, it should be struck out so that the application remains unopposed. He relied on O.12 r.3 (2) of the Civil Procedure Rules and **Stop and See (U) Ltd vs. Tropical Africa Bank Ltd HCMA No.333 of 2010** to support his submission.

Counsel for the Respondent admitted filing outside the 15 days cited by Counsel for the Applicants. He however prayed for Court’s leniency so that it is considered or that the Respondent be given leave to file outside time. He cited Article 126(2)(e) of the Constitution of the Republic of Uganda, 1995, in support of his submission. His submission was refuted by Counsel for the Applicants in rejoinder who reiterated that the affidavit I reply ought to be struck out.

Well, I have addressed myself to the arguments of both Counsel and the law. In the case cited above by Counsel for the Applicants, which I entirely associate with; it was noted that O.12 r.3(2) of the Civil Procedure Rules only sets time lines for all interlocutory applications envisaged after the completion of the scheduling conference or alternative dispute resolution.

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The current application not being one of the kind, I am of the opinion that the said provisions are inapplicable to it. It was however observed further in that case that time lines applicable to plaints and written statement of defenses also apply to interlocutory applications. It was then noted that a reply or defence to an application must be filed within 15 days failure of which puts the affidavit in reply out of time. Because the affidavit in reply in this case was filed outside time, without leave of Court, I have no option but to find that it is improperly before this Court. I am unable to exercise the leniency sought by Counsel for the Respondent as such would encourage sloppy behaviours and noncompliance with Court procedures. This is especially so when no reason was furnished why the Respondent did not exercise the option of seeking leave to file out of time. Consequently, I strike out the Respondent's affidavit in reply.

This leaves the application unopposed. I shall now determine its merit only on matters of law. The points raised relate to stay of execution and I will however not consider them. There is a division of the High Court specifically set up to handle all such matters. This application was filed in a wrong forum and this Court does not have jurisdiction to handle the same.

I therefore decline so to do and order the parties to seek audience from the execution division. The application is rejected and is dismissed with costs to the Respondents.

I so order.

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Henry I. Kawesa

JUDGE

12/03/2019

12/03/2019:

Opio Moses for the Respondent.

Pearl Bekunda for (Charles Nsubuga) for the Applicant.

Court: Ruling delivered.

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Henry I. Kawesa

JUDGE

12/03/2019