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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(EXECUTION AND BAILIFFS DIVISION)
MISC. APPLICATION NO. 345 OF 2019
[ARISING FROM EMA 103 OF 2019 & HCMA NO. 306 OF 2016]

1. DDUMBA GEOFREY
2. NAKASI IRENE
3. DAVID MULOKWA

APPLICANTS

V

KATO JOSEPH SENTAMU

RESPONDENT

BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA

RULING

Representations:

Mr. Senfuka Robert for the Applicants

Mr. Mafabi Godfrey for the Respondent

Background:

- [1] Mr. Ddumba, Ms. Nakasi, and Mr. Mulokwa (the Applicants herein), who were also the applicants in HCMA No. 306 of 2016, withdraw their application (306 of 2016) and were condemned to pay costs.

The said costs were taxed and allowed by consent of learned Counsel at **UGX.**

11,868,000/= on October 15, 2018.

Masaka... 28/2

[2] In HCMA No. 306 of 2016, Mr. Ddumba, Ms. Nakasi, and Mr. Mulokwa sought for *inter alia*, for;

- a) An interim order against Mr. Kato J. Sentamu, Mr. Ddumba Gerald and Ms. Eva Nyanzi (Respondents therein), to prevent them from dealing in the Estate of the late Kanani Kasibante
- b) An order that the caveat by Mr. Kato Sentamu against their application for the grant of letters of Administration to the deceased's estate, be removed
- c) A declaration that the letters of administration granted to Mr. Kato Sentamu, Mr. Ddumba Gerald and Ms. Eva Nyanzi (the Respondents therein), were illegal and should be cancelled.
- d) A declaration that they be granted letters of administration to the deceased's estate.

[3] Vide EMA No. 103 of 2018, the Respondent; Mr. Kato Sentamu applied for execution of the award of costs in HCMA No. 306 of 2016 by way of the arrest and committal of the Applicants to civil prison.

[4] This application was brought by chamber summons under **Sec. 98 of the CPA and Order 22 Rules 26 & 89 (1) of the CPR**, by which the Applicants seek for an order to stay the execution vide EMA No. 103 of 2019, until the disposal of HCCS No. 429 of 2016 still pending between the parties.

Nakasi

The Applicants' case:

[5] The gist of the Applicants' case as stated in their application and supporting affidavit is that;

- a) They (the 1st and 3rd Applicants) are the rightful beneficiaries of the estate of the late Kanani Kasibante and are holders of a certificate of no objection.
- b) That the Respondent; Mr. Kato Sentamu has no blood connection with the late Kanani Kasibante and they connived and fraudulently obtained letters of Administration to the deceased's estate.
- c) There is a pending suit vide HCCS. No. 429 of 2016 between the parties on the same subject matter as the subject matter in the withdrawn suit. To wit; for cancellation of the Respondent's letters of administration to the deceased's estate.
- d) It is in the interests of Justice that execution is stayed.

The Respondent's case:

[6] The gist of The Respondent's case as shown in his affidavit in reply is that;

- a) Letters of Administration to the estate of the late Kanani Kasibante were lawfully obtained.
- b) The 2nd Applicant is also a granddaughter of the late Kanani Kasibante.

Masaka Wamun 20/2

- c) There is nothing pending to justify a stay of execution in EMA No. 103 of 2019 as HCCS No. 429 of 2016 has no roots to the withdrawn application.

Issue for determination:

- [7] Whether the Order sought for stay of execution should be granted?

Submissions of Counsel:

- [8] In support of and in opposition to this application, learned Counsel for each party made their respective oral submissions. I shall not re-capture them here but I shall refer to them, where and when necessary, in my analysis below.

Analysis:

- [9] **As a rule of practice**, the Courts have adopted the following principles as a guide when exercising their discretion in applications to stay execution. The applicants must show;
 - a) That substantial loss may result to them unless the order for stay of execution is made.
 - b) That the application has been made without unreasonable delay.
 - c) That security has been given by them for the due performance of the Decree or order as may ultimately be binding upon him or her.

M. S. Khan 28/2

See these principles listed in a wealth of authorities including; Lawrence Musiitwa Kyazze vs. Eunice Busingye¹

[10] On the first principle;

Learned Counsel for the Applicants, Mr. Senfuka argued that allowing the Respondents to execute, would be to facilitate fraud, if the case pending against them in the family division, is determined in favor of the Applicants. That the matter in the family division involves a large estate.

[11] In rebuttal, Mr. Mafabi, learned Counsel for the Respondent argued that there is no pending suit, the basis for which the costs arose. The costs were lawfully granted in a withdrawn application. There is no nexus between HCCS No. 429 of 2016 and HCMA 306 of 2016.

That even if the main suit is determined in favour of the Applicants, they would still pay costs. The Order awarding costs in HCMA No. 306 of 2016 is very clear and has never been challenged.

[12] Mr. Senfuka rejoined that the entire content of HCMA No. 306 of 2016 rotates around the deceased's estate and administration thereof, which is the entire gist of the pending Civil Suit between the same parties at the family court.

[13] I have carefully looked at the circumstances of this matter as presented in each party's case, and carefully listened to the arguments of both learned Counsel.

Masakulwanu 28/2

¹ SCCA No. 18 of 1990

It has been held in a number of authorities that payment of a Judgment debt by a Judgment debtor would not cause the Applicant for a stay of execution, any injustice, unless there are special circumstances to justify the grant of the Order. See Kampala City Council vs. National Pharmacy Ltd². In that case, the Justices of the Court of Appeal (then the highest Court in Uganda) held that there were no special circumstances in that case, to justify the grant of a stay of execution.

[14] Distinguishing the Kampala City Council case (supra) from the present case, I see special circumstances in the present case.

First, it is imperative to take it into account that the matters in controversy between the parties are matters of the estate of a deceased person. In my view, such matters need to be dealt with holistically and not in separate parts and or in a piecemeal manner. To this end, I find that there is a strong nexus between the suit for which the costs were awarded (HCMA 306 of 2016) and the main suit HCCS No. 429 of 2016.

[15] Secondly, I find that the consented taxed costs of **UGX. 11, 868,000/=** are outrageously high in a matter of this nature which was simply withdrawn before hearing.

[16] Thirdly, I hold the further view that it would be premature, in the interests of equity and justice, for execution of any part of the matters of the deceased's

Masaka Mwanuzi 28/2

² [1979] HCB 215 – 216

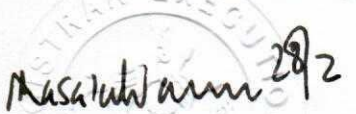
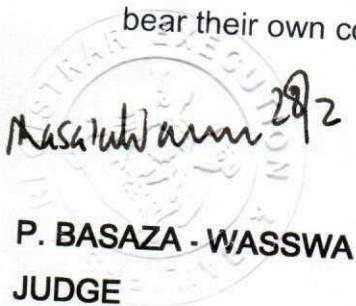
estate to ensue, before the final determination and disposal of the pending suit in the family Division vide HCCS No. 429 of 2016. Substantial loss and disharmony would result to the estate and the beneficiaries of the estate if the outcome of HCCS No. 426 of 2016 turns out against Mr. Kato Sentamu, after execution were allowed to issue.

It is essential that the position and rights of the parties, if any, in the deceased's estate are first established before any monies or properties can exchange hands.

[17] Following my conclusions above and the fact that this application arises from unresolved matters of a deceased's estate, I will not impose any condition for the grant of a stay of execution.

Decision and Orders of this Court:

[18] For the reasons given, this application succeeds. An Order of stay of execution of the orders in HCMA No. 306 of 2016 is hereby granted. Each party shall bear their own costs.



P. BASAZA - WASSWA
JUDGE

February 28, 2020

Ruling read in Court on February 28, 2020 at 12:05 pm in the presence of: -

1. For the Applicant: Ms. Nakazzi Margaret H/B for Mr. Senfulka
2. For the Respondent: None.
3. Court Clerk: Ms. Esther Nasazi.

Masakabirum ²/₂

Judge