

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 810 OF 2021**  
**CIVIL APPEAL NO. 55 OF 2021**

**(ARISING FROM THE CHAMBERS OF THE CHIEF REGISTRAR CR/BA.1)**

<b>1. NAKIRYOWA AMERIA (T/A Muliju General Agencies)</b>	}	:.....	<b>APPLICANTS</b>
<b>2. WANDERA MOSES (T/A Leaks Associates)</b>	}		

**VERSUS**

**KIWANUKA EDISON :..... RESPONDENT**

**HON. JUSTICE SSEKAANA MUSA.**

**RULING**

This application was brought under Section 98 Civil Procedure Act, Section 33 Judicature Act, Order 22 rule 23, and Order 43 rule 4 of the Civil Procedure Rules, seeking a stay of execution of the Orders of the Chief Registrar in Complaint No. CR/BA.1 issued on the 9<sup>th</sup> /11/2021 pending the determination of Civil Appeal NO.55 of 2021 and costs of the application. The application is premised on the following grounds:

1. That the applicants filed an appeal in this Court against the Orders of the Chief Registrar.
2. That the appeal has high chances of success, and
3. That the applicants followed the due process in executing the matters/warrant that resulted into the complaint.

The respondent filed an affidavit in reply in which he opposed the application and stated as follows:

1. That the applicants' application is devoid of any merit, the same is frivolous and vexatious and as such, ought to be dismissed with costs to the respondent.

2. That the Execution and Bailiff's Division of the High Court of Uganda at Kampala issued orders for the sale of immovable property comprised in a kibanja situate at Kabaawo Zone, Mutundwe LCI, Kampala measuring approximately 100ftX130ft and its developments belonging to a judgment debtor.
3. That the said warrant of attachment was returned by a bailiff in the names of Tushabe Louis of Louiza Bailiffs on May 23<sup>rd</sup>, 2018 wherein he indicated to the Court that he had failed to locate the land because the judgment creditor did not point out the land to facilitate the advertising process.
4. That another warrant of attachment with the same particulars and specifications as the previous warrant was issued to another bailiff in the name of Nakiryowa America of Muliju Agencies & Bailiffs on the 11<sup>th</sup> of June 2018, and the same was returned to Court on the 13<sup>th</sup> of July 2018.
5. That subsequently, the said warrant was advertised in the Monitor Newspaper of July 2018 and October 8<sup>th</sup> 2018, the Deputy Registrar authorized the sale of the attached land at UGX 75,000,000/= and the kibanja in issue was purchased by a one Bemanyisa Adonijah vide a sale agreement dated 31<sup>st</sup> December 2018.
6. That after purchasing the said kibanja, the Execution Court by an order to deliver a purchaser of land dated 5<sup>th</sup> February 2019 authorized another bailiff in the name of Wandera Moses of Leak Associates to remove the judgment debtor and place the applicant into possession of the property he had purchased.
7. That the said process was executed by the said bailiff who however other than evicting the judgment debtor also went ahead and evicted the respondent from his house and property where he was living peacefully with his family.
8. That the execution process was executed wrongly by the applicants and it is the reason why they were suspended for one year by the Disciplinary committee.

9. That the applicants were made aware of the decision to suspend them on the 22<sup>nd</sup> of September 2021 and therefore the application should not be allowed.
10. That it is not true that the applicants followed all the steps prior to disposing of the respondent's property and it's the sole reason as to why the Committee suspended her because her illegal actions have caused a lot of suffering to the respondent and his family since they have nowhere to stay and are now renting, having been deprived of their family home.
11. That it was proper for the applicants to be suspended as their actions towards the execution, subsequent sale of the respondent's property and eviction was illegal and a total manifestation of injustice.
12. That the applicants have no right of appeal from the decision of the Chief Registrar to suspend them for the period as stated in the Committee's decision and the application has no base of law on which it is premised as such, it ought to be dismissed with costs.
13. That it is in the best interest of justice that this application is dismissed with costs

The applicants were represented by *Ssemmanda David Malege* of Mugisa, Namutale & Co. Advocates and the respondent was represented by *Kakande Samuel* of M/s Silicon Advocates.

Both parties filed written submissions. I have carefully considered the submissions of both parties in this application.

### ***Submissions***

It was the applicants' submission that the applicants being aggrieved with the Chief Registrar's decision appealed to this Court, and as a result, filed this application for stay of execution of the said order. Counsel for the applicants further cited the case of ***THEODORE SSEKIKUBO & ORS V ATTORNEY GENERAL CONSTITUTIONAL APPLICATION NO. 3 OF 2004*** where the grounds warranting stay of execution were clearly laid down. These grounds are:

- a) That the applicant has lodged a notice of appeal,

- b) That substantial loss may result to the applicant unless a stay of execution is granted,
- c) That the application has been made without undue delay,
- d) That the applicant has given security for due performance of the decree or order as may ultimately be binding upon him.

With respect to the first ground, the applicants submitted that they had already filed an appeal. Reference was made to paragraph 11 of the 1<sup>st</sup> applicant's affidavit in support of the application which talks about Civil Appeal NO. 55 of 2021, which was filed by the applicants against the respondent, and paragraph 8 of the 2<sup>nd</sup> applicant's affidavit in support of the application as well.

With respect to the second ground, it was submitted that the applicants not working for one year as a result of an order which is appealed against amounts to substantial loss. The work of bailiffs is where the applicants earn a living. The applicants submitted that they are suffering loss and damage for not working yet they have a substantive appeal pending hearing. They further submitted that if the application is not granted, it will render the appeal nugatory

Thirdly, the applicants submitted that the application was made without undue delay. The order appealed against was issued on 9<sup>th</sup> November 2021, the memorandum of appeal was filed on 16<sup>th</sup> November 2021 which is 6 days from the issuance of the order. And accordingly, this is a reasonable time.

And finally, with respect to payment of security for performance of the Decree, it was submitted for the applicants that this ground is not applicable in the circumstances since the order being appealed against is an administrative order with no order as to costs or compensation. And in such orders, there is nothing to deposit as security.

### ***Analysis***

In this application only one issue arises:

1. Whether the applicants have satisfied the requirements for a grant of setting aside the orders of the Chief Registrar under the circumstances.

In case of ***Lawrence Musiitwa Kyazze vs. Eunice Busingye SCCA No. 18 of 1990[1992] IV KALR 55*** it was held that an application for stay of execution pending appeal is designed to preserve the subject matter in dispute so that the

right of the appellant who is exercising his/her undoubted rights of appeal are safeguarded and the appeal if successful, is not rendered nugatory.

The authorities provided by both the applicants' and respondent's counsel summarize the principles to be considered before allowing an application for stay of execution. In the case of ***Hon. Theodore Ssekikubo & others vs. The Attorney General and Another, Constitutional Application No. 06 of 2013*** the Constitutional Court re-stated the principles as follows:

1. The applicant must establish that his appeal has a likelihood of success;
2. It must also be established that the applicant will suffer irreparable damages or that the appeal will be rendered nugatory if stay is not granted.
3. If 1 and 2 above have not been established, court must consider where the balance of convenience lies.
4. That the applicant must also establish that the application was instituted without delay.

The appeal which is the subject of this application is against the decision (ruling) of Chief Registrar. The peculiarity of this application is that, it is an appeal arising out of disciplinary matters against the applicant as a court bailiff where the court must exercise extreme circumspection in staying orders against errant or undisciplined court bailiff found liable after a due process. Any stay would mean continued operations of such bailiff already found culpable and liable for misconduct to the detriment of the public of court users which may technically defeat the disciplinary orders of Chief Registrar through a long process of appeal.

The suspension orders took immediate effect from the date of Bailiffs Disciplinary Committee dated 16<sup>th</sup> September, 2021. Disciplinary decisions take immediate effect and only be stayed in exceptional circumstances in order to safe guard the public against such professionals found to be in breach of the law instead of procrastinating on endless appeals in defiance of the lawful disciplinary orders of the regulator or issuing authority. The principles set out in the different decisions must be appreciated in the circumstances of those cases where orders of stay of execution have been issued.

There must be a balancing act in ensuring that the orders of Chief Registrar are not rendered nugatory, the same way the applicants (appellants) have argued that the appeal should not be rendered nugatory. Whereas the prospects of any success at appeal are speculative, the ruling/finding made by the Bailiffs Disciplinary Committee has already found some wrongdoing on the part of the applicant.. This must be preserved in order to ensure discipline among the court bailiffs and the sanction against such errant bailiffs should not be strangled through endless appeal litigation. The court must assess the relative risks of injustice in not staying execution of the orders granted by Chief Registrar upon Bailiffs Disciplinary Committee findings as against putting right what was done wrongly or maintain status quo which is premised on abuse or misuse of court bailiff powers or allow further danger to the public.

This court guided by the above analysis, does not find an application for stay of disciplinary orders more appropriate in the circumstances. The main appeal should be expeditiously heard and determined in order to avoid making it nugatory.

The costs shall be in the cause

I so order.

**SSEKAANA MUSA**  
**JUDGE**  
**04/03/2022**