

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**MISCELLANEOUS APPLICATION NO. 648 OF 2021.**

**(ARISING FROM EMA NO. 65 OF 2021)**  
**(ARISING FROM MISCELLANEOUS APPLICATION NO. 380 OF 2020)**  
**(ARISING FROM HCMC NO. 48 & 84 OF 2016)**

- 1. THE CHIEF ADMINISTRATIVE OFFICER  
NAKASEKE DISTRICT LOCAL GOVERNMENT**
  
- 2. NAKASEKE DISTRICT LOCAL GOVERNMENT.....APPLICANTS**

**VERSUS**

**DR. BADRU SSESIMBA.....RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

This application was brought under section 98 of the civil procedure act, section 33 of the Judicature Act, Order 22 rule 26 & 89 of the Civil Procedure Rules. The applicant sought orders that;

1. Execution orders from High Court Miscellaneous Application No. 380 of 2020 be stayed pending determination of the appeal lodged in the court of appeal.
  
2. Costs be provided for

The grounds in support of this application are set out in the affidavit of Ssentongo Badru Waliggo- Principal Assistant Secretary and now Acting Deputy Chief Administrative Officer briefly stating that;

1. The applicant being dissatisfied with ruling and orders in Miscellaneous application No. 380 of 2020, has decided to appeal against the whole ruling and orders made therein.
2. That the applicant has already lodged a notice of appeal in accordance with rules 76(1) and 121 of the judicature court of appeal rules SI 13-10.
3. That the applicant has already filed the substantive appeal.
4. That the applicant shall suffer substantial loss if the application is not granted
5. That the appeal is not frivolous and vexatious and has reasonable chance of success.
6. That it would of great inconvenience to both parties if execution is to proceed and the appeal is allowed.
7. That it is in the interest of justice that this application be granted.

The respondent opposed this application and filed an affidavit in reply contending;

1. The parties have been in court since 2016 for unlawful interdiction and unlawful termination of employment in the position of District Health Inspector.
2. The court found in favour of the respondent and ordered that the applicant now respondent be reinstated in his position of District Health Inspector; salary arrears be paid from the date of the alleged termination upto the time of reinstatement with interest at court rate; respondents pay damages of 10,000,000/= and costs of the suit.

3. The respondent made an application to execute the said orders but the applicant filed this application to stay execution and that the applicants have not deposited security for due performance.
4. That the applicants have not sought any leave of court to lodge the appeal and therefore their appeal is incompetent.

## **Issues**

1. Whether the application has merit to grant a stay of execution?
2. What remedies are available to the parties?

The applicants were represented by *Counsel Muhanguzi Bob* while the respondent was represented by *Counsel Bukenya Abbas*

I have read the submissions of both counsel, which I have considered but will not reproduce.

## **Whether the application has merit to grant a stay of execution?**

The applicants' counsel submitted that a party must satisfy three conditions before a stay of execution can be granted namely;

- Substantial loss unless the order of stay is made.
- The application has been made without unreasonable delay and
- Security for costs has been given by the applicant.

Counsel expounded on the above three grounds and contended further that the applicant has a pending appeal in the Court of Appeal.

The respondent counsel submitted that the application is irregular, void, incompetent, bad in law and an abuse of court process. The applicant did not seek leave of court to appeal against the decision of the court since it arose from the

application. Therefore, according to counsel there is no valid appeal in this matter.

Counsel further argued that the applicant has not given security for due performance of the decree.

### ***Analysis***

The general rule is that an appeal does not operate as a stay of execution. The general proposition is that “the court does not deprive a successful litigant of the fruits of litigation, and lock up funds which prima facie he is entitled, pending an appeal. If however, the appellant (who is seeking the stay) can persuade the court that he/she will not be able to recover the sums he is required to pay if his appeal succeeds, this may be a basis on which to order a stay.

If, the government or a department or the concerned official fails to comply with the court order then it commits contempt of court for which, in suitable cases, can be punished by the concerned court. Punishment may amount to fine, imprisonment of the concerned government official, attachment of government property. Wilful disregard or disobedience, or non-compliance, of a court order constitutes contempt of court.

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 High Court. The peculiarity of this application is that, it is an appeal arising out of a judicial review matter where the court must exercise extreme circumspection in staying orders against abuse of power or actions found to be illegal, irrational or procedurally improper since the stay would mean a continued illegality or perpetuating wrongful exercise of power or legitimizing abuse of authority until the appeal is determined after about 4 or 5 years at the bare minimum and thus technically defeating the orders of court.

The refusal to respect orders of court like a *Mandamus/Certiorari* is automatically punishable by contempt of court proceedings to force a public servant to do what the law compels him to do instead of procrastinating on endless appeals in defiance of the lawful orders of court. The principles set out in the different decisions must be appreciated in the circumstances of cases where orders of stay of execution have been issued in ordinary suits vis- a-vis judicial review or enforcement of rights matters.

The court which has found an illegality or abuse of power may be constrained to allow the party (public body or officer) any further delay in continuing to act illegally or contrary to the law for which they have been found to be in breach unless there are 'special circumstances' which would justify suspending the successful litigants rights or allowing the continued breach of the law.

There must be a balancing act in ensuring that the orders of court in judicial review 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 made by the court has already found some wrongdoing on the part of the applicants and has vested some rights

to the respondent. This must be preserved in order to ensure the rule of law flourishes and is not strangled through endless appeal litigation. The court must assess the relative risks of injustice in not staying execution of the orders granted by court as against putting right what was done wrongly or maintain status quo which is premised on abuse of authority or misinterpretation or misapplication of the law.

The orders granted under judicial review are normally enforced through an application for contempt of court with exception of damages. A delay in obeying the court order is an act of defiance of court order and the court would use its power to punish for its contempt. This court emphasizes that in a government of laws and not of men, such as exists in Uganda; the Executive branch of the government bears a grave responsibility for upholding and obeying judicial orders. Using judicial process through appeals to delay obedience of the court order in judicial review is abhorred and should be discouraged as much as possible except in the rarest of the cases that justify and uphold the rule of law. See ***Uganda Development Bank & Dr. Patrick Bitonder Birungi v Tumuhimbise Hellen Hannah HCMA No. 292 of 2021***

While exercising the discretion conferred under the law of stay of execution, the court should duly consider that a party who has obtained a lawful decree/order is not deprived of the fruits of that decree except for good and cogent reasons. So long as the decree/order is not set aside by a competent court, it stands good and effective and should not be lightly dealt with so as to deprive the holder of the lawful decree/order of its fruits.

The respondent was successful in the main judicial review application and the court found that the interdiction was erroneous and the same was quashed by certiorari. The applicants refused to heed to the order given by court and decided to made funny interpretation of the order by refusing to obey the same. They filed the application which was a disguised appeal or application for review contending that the court never made any specific order of reinstatement of the respondent as District Health Officer.

This court clarified in its ruling and the application was dismissed with general damages and costs. The applicants are bringing this appeal in a disguised manner and yet they did not appeal against the original judicial review decision which

found them to have wrongly interdicted the respondent. As noted earlier, an order passed by a competent court should be allowed to be executed unless a strong case is made out on cogent grounds no stay should be granted. Where the stay is to be granted, the court must be mindful of the time frame within which the final orders shall be made so as not to defeat judicial review orders ineffective or become overtaken by events due to lapse of time.

This application is disallowed for reasons that the respondent has already suffered enough financial constraints due to the unfair treatment by the respondents when he was wrongly interdicted. This application for stay is part of the ploy to defeat the orders of court.

This application is dismissed with costs to the respondent.

I so order

***Ssekaana Musa***  
***Judge***  
***14<sup>th</sup> October 2022***