

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO. 35 &38 of 2021**  
**(Arising from Misc. Application No. 234 of 2021)**  
**(All arising out of Civil Suit No.0079 of 2011)**

**DANIEL KABOMBO:.....APPELLANT/RESPONDENT**

**VERSUS**

- 1. MAGOMBE AYUB**
- 2. AOL LILLIANE**
- 3. KALULE KIZITO FRANCIS**
- 4. SENFUKA PETER**
- 5. KATO HERMAN**
- 6. NANYONJO ESTHER**
- 7. NAKAFERO RUTH DAISY**
- 8. KENTARO JULIET                   :.....RESPONDENTS/APPLICANTS**
- 9. AYAA IRENE AKOT**
- 10.BUSINDE ROBERT**
- 11.FAISAL NYANZI**
- 12.KADDU JOSEPH**
- 13.MAKERERE UNIVERSITY COUNCIL**
- 14.GOVERNING COUNCIL OF THE UGANDA INSTITUTE FOR ALLIED HEALTH  
AND MANAGEMENT SCIENCE, FORMERLY MULAGO PARAMEDICAL  
SCHOOLS.**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

## **RULING**

The appellants filed this appeal under Section 98 of Civil Procedure Act 71, Order 50 Rule 8 and Order 52 Rule 1 and 3 of the Civil Procedure Rules SI 71-1 for the rulings and orders delivered in Miscellaneous Application No. 234 of 2021 arising from Civil Suit No. 079 of 2011 be quashed and set aside on grounds as herein below;

- a. The Learned Deputy registrar erred in law and in fact in making orders against a non-existent Judgment Debtor (Attorney General)
  - b. The Learned Deputy Registrar erred in law and fact in proceeding ex parte against 13<sup>th</sup> and 14<sup>th</sup> respondent.
  - c. The Learned Deputy Registrar erred in law in ordering that the said money be paid to the beneficiaries by the Registrar of High Court, which duty is not mandated by law.
  - d. The Learned Deputy Registrar erred in law in making orders for the addition of parties to the suit at the stage of execution of judgment.
  - e. The Learned Deputy Registrar erred in law and fact when he departed from the prayers sought by the applicants and granted those not sought after.
  - f. The Learned Deputy Registrar erred in law and fact when making orders as to execution whereas there is an order of stay of execution and the matter is on appeal.
  - g. The Learned Deputy Registrar erred in law and fact when he acted out of jurisdiction.
  - h. The Learned Deputy Registrar erred in law and fact when he failed to evaluate the evidence as a whole.
2. Costs of the application be provided for.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of the application sworn by Daniel Kibombo.

The 1<sup>st</sup> to 12<sup>th</sup> respondents also cross-appealed against the applicant and 13<sup>th</sup> & 14<sup>th</sup> Respondents contending as follows;

1. The Ruling and Orders delivered and quashed and set aside on grounds as herein below;
  - (a) The Learned Deputy Registrar erred in law when he failed to vacate or revoke the representative order issued under Miscellaneous Cause No. 12 of 2011 to allow the appellants to represent themselves in court.
  - (b) The Learned Deputy Registrar erred in law and fact by directing that any further payments by the defendants/Judgment creditors shall be paid into court on account of the Registrar High Court.
2. The Learned Deputy Registrar erred in law and fact in sustaining Wamimbi Advocates and Solicitors as Counsel for the Cross Appellants whereas there is a notice of change of Advocates to Asire & Co. Advocates.

*Counsel Wamimbi Emmanuel* represented the appellant/1<sup>st</sup> respondent and *Counsel Magino Henry* appeared for the 1<sup>st</sup> -12<sup>th</sup> respondents/Cross appellants while *Counsel John Fisher Kanyemibwa* appeared for the 13<sup>th</sup> respondent and *Counsel Kato Fred* appeared for the 14<sup>th</sup> respondent.

It can be deduced from the joint submissions in respect of the two appeals by all the parties that there are some serious points of law which are raised and would have the effect of disposing off the entire appeals.

The parties contend that there is a stay of execution pending the determination of the consolidated appeals in the Court of Appeal. Secondly, that the appellants in the second appeal filed their appeal out of time.

The appellant contends that The Learned Deputy Registrar erred in law and fact when making orders as to execution whereas there is an order of stay of execution and the matter is on appeal.

The appellant's counsel submitted that there is no contestation that an order of stay of execution of Civil Suit No. 0079 of 2011 vide Miscellaneous Applications No. 1163 & 1162 of 2020 was granted by court pending disposal of the Consolidated Appeals No. 99 & 145 of 2017 before the Court of Appeal. The respondents contend that they withdrew instructions from the present lawyer and they are surprised to learn that there is a stay of execution.

### ***Analysis***

In granting a judgment debtor the relief of stay of execution, the court must strive to maintain the balance between the need to have a successful party enjoy the fruits of his victory and at the same time to ensure that the unsuccessful party who has appealed would not be incapacitated as not to pursue their legitimate constitutionally guaranteed right to appeal against the judgment.

A court has an unimpeded discretion to grant or refuse a stay of execution of judgment. The exercise of such discretion must be exercised not only judicially,

but judiciously. If the request for stay and the subject matter of appeal have the same substratum so that the grant would dispose of the other, stay of execution should be granted. Therefore, a judicial decision takes effect upon its delivery. The only means of suspending its execution is by an application for an order to suspend its execution. It can be seen from the record of court that there is order of stay of execution; *“By consent of both parties the interim Order of stay of execution does issue until the date that will be fixed for hearing of the main suit(Appeal).”*

In ***Republic v Court of Appeal, Exparte Sidi [1987-88] 2 GLR 170 at 177***, Taylor, JSC said:

*“An Order of stay of execution simply means the suspension of any process or procedure that would post date the judgment. If an applicant asks for such a stay pending the hearing and determination of his appeal, then what he is in effect asking is that all processes that can be taken after judgment for the purpose, no doubt of satisfying the judgment should be stayed until the appeal is finally heard and a decision on it given.”*

The sum effect of stay of execution is that everything pertaining to the judgment put on halt until the appeal is determined or until the order of stay is set aside. It would be a futile exercise to give orders which would be liable to be overturned on appeal. An executing court or the deputy registrar should not make orders of an execution which have been stayed just in case the appeal succeeds or fails, this would highly speculative.

The successful litigant may indeed be desperate to execute the judgment and realize the fruits of his victory, but this should be halted once there is an order of stay in the interest of justice. I have not seen any basis why the learned deputy registrar entertained the applications since the entire process of execution was stayed pending the determination of the Consolidated Appeals 99 & 145 of 2017.

This ground of appeal succeeds and disposes off the entire appeal. The decision of the Learned Deputy Registrar is set aside. The applications filed in court have no legal basis since there is an order of stay of execution.

The cross appellants had also filed a cross-appeal arising out of the same ruling of the Learned Deputy registrar. The same is directly affected by the above decision and cannot stand in light of the setting aside of the decision.

Secondly, it was argued that the said appeal was filed out of time since the decision of the Deputy Registrar was delivered on 2<sup>nd</sup> September 2021 and the cross appeal was filed on 1<sup>st</sup> October 2021.

Section 79(1) (b) of the Civil Procedure Act provides that an Appeal from the orders of a registrar must be lodged within 7 days from the date of the order. In the present case, the cross appeal was lodged 20days later; it was therefore filed out of time.

The cross-appellants' counsel has not set out any good and substantial reason for failure to appeal within the prescribed time of 7 days and neither has he filed any application for leave to appeal out of time. The effect of limitation law is that legal proceedings cannot be properly or validly instituted after the expiration of the period prescribed in law.

This cross-appeal was there filed out of time and the same is struck out for that reason.

I make no order as to costs

I so order.

***SSEKAANA MUSA***  
***JUDGE***  
***27<sup>th</sup> March 2023***