

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
[LAND DIVISION]

MISCELLANEOUS APPLICATION NO. 201 OF 2025
(ARISING FROM CIVIL SUIT NO. 382 OF 2011)

- 1. HENRY KIBIRANGO**
- 2. JACKIE MAZINGA**
- 3. JOANNA KAYAGA ::: APPLICANTS**

VERSUS

- 1. LULE EMMA**
- 2. ENID KISAKYE :::RESPONDENTS**

BEFORE: HON.LADY JUSTICE NAKIGANDA IDA

RULING

Introduction

1.The Application is brought under Section 98 of the Civil Procedure Act Cap 282, Order 22 Rules 26 & 89 (1) and Order 43 rule 1to 3 of the Civil Procedure Rules S.I-71. The Application seeks the following orders:

- a) That stay of execution doth issue pending the hearing and final determination/ disposal of the Applicant’s Appeal against the Orders made by His Lordship Hon. Justice Philip Odoki on the 2nd day of October 2024 in High Court Civil Suit No. 382 of 2011.
- b) Costs of this Application be provided for.



Background

2. The grounds of this Application are laid down in the affidavit in support of motion deposed by Joanna Kayaga, the 3rd Applicant dated 30th January, 2025 which briefly are:
 - a) That the deponent is the 3rd Applicant in this matter and is the 3rd Defendant in HCCS No. 382 of 2011.
 - b) That upon filing HCCS No. 382 of 2011, the Plaintiffs/Respondents served the Applicants with the Plaint and they were able to file their respective Written Statements of Defence on the court record. Consequently, the case was heard and a Judgment was delivered by His Lordship Hon. Justice Phillip Odoki on the 2nd day of October, 2024 against the Defendants/ Applicants.
 - c) That the 3rd Applicant being dissatisfied with the Judgment and orders passed by Hon. Justice Phillip Odoki in this Honorable Court lodged a Notice of Appeal against the said Judgment .
 - d) That the Respondents have recently been seen by the Applicants neighbors inspecting the suit land on different occasions with potential buyers.
 - e) That there is a serious threat of execution of the orders of this Honorable Court by the Respondents and if execution is not stayed the Applicants' Appeal shall be rendered nugatory.
 - f) That the Applicants were informed by their Lawyers, M/s Ssebunya, Turyagyenda and Co. Advocates, that the Appeal has merit and stands a high chance of success given the different grounds of Appeal raised.
 - g) That the Applicants will suffer substantial loss by losing the suit land if this Application is not granted thus it is in the interest of justice that this Application is allowed.
3. The Respondents filed an affidavit in reply to the Application deposed by Lule Emma the 1st Respondent in which they opposed the application on the following grounds:
 - a) That the Application is incompetent and was filed in absence of necessity.



- b) That there is no evidence that the Respondents have been inspecting the suit land with suitable buyers and the eminent threat of execution alluded to by the Applicants is fanciful.
- c) That the current status quo of the suit land is that the Respondents are the registered owners of the suit land and the High Court on the 2nd of October 2024 decreed that indeed the Respondents are the lawful owners of land comprised in Block 25 Plot162.
- d) That the Court further granted a permanent injunction restraining the Applicants from threatening, intimidating or in any way interrupting with the Respondents' use and enjoyment of the suit land.
- e) That the Respondents were informed by their lawyers that the instant application is bad in law since there is no competent notice of appeal in this matter as the the same was filed out of time prescribed by the law.
- f) That the Application as presented by the Applicants under Order 22 Rule 26 presupposes that there is a pending suit between the Respondents and the Applicants in this court. There is no evidence of the pending suit attached which renders the Application incompetent.
- g) That the Application is incompetent since it discloses no sufficient evidence that the Applicants are likely to suffer any substantial loss thus the allegations of suffering irreparable loss are merely speculative and unfounded.
- h) That the Applicants have neither deposited nor showed the willingness to deposit security for due performance of the decree as required under the law and no evidence to show that the Respondents have commenced execution proceedings in this matter which renders the entire Application premature at this stage and as such a waste of court's time.
- i) That Applicant's Application does not disclose any valid grounds for grant of stay of execution and should be dismissed with costs.

Representation

4. The Application was heard on 14th October, 2025 at 2:30pm. Ms. Amusugut Grace Ruth of M/s Ssebunya, Turyagyenda & Co. Advocates appeared for the Applicants. Neither the Respondents nor their lawyers of M/s Kavuma, Kabenge & Co. Advocates were present in Court.



Submissions

5. The Court directed parties to file written submissions and gave timelines within which the submissions should be filed. However, only the Respondents complied with the Court's directions. The Applicants did not file submissions. It should be noted that during the hearing of the Application, the Applicants' lawyer was present in court and duly received the schedules for filing submissions as directed by Court. The submissions of the Respondents have been taken into consideration in determining this Application.

Preliminary Objection

6. Counsel for the Respondents in his submissions raised a preliminary objection as to whether the Application was competently filed before this court as the notice of Appeal against Civil Suit No. 382 of 2011 was filed out of time.
7. Counsel submitted that it is pertinent to note that there is no competent appeal pending before the Court of Appeal to warrant granting of an order of stay of execution because the Notice of Appeal which is the basis of this Application is incompetent for having been filed out of time. He relied on the case of **Hon. Theodore Ssekikubo & Others Vs Attorney General & Others, Constitutional Application No. 03 of 2014.**
8. Counsel stated that the Applicants' Notice of Appeal was filed on 23rd October, 2024 in the High Court against a Judgment delivered on 2nd October, 2024 which is contrary to Rule 83(1) of the Judicature (Court of Appeal Rules) Directions S.I. 13-10 which requires a notice of appeal to be filed within 14days from the date of the Judgment.
9. Counsel thus concluded by stating that an incompetent appeal cannot be the basis of granting an order of stay of execution and hence called on the court to guard its sanctity to avoid abuse of court and ensure there is end to litigation.



10. The Applicants did not file submissions in this matter to rebut the allegations set out by Counsel for the Respondents.

Determination by Court

11. Stay of execution is an act of ceasing or arresting the judicial directions by an order of court.

12. The requirements to be satisfied before a court can grant an order for stay of execution pending an appeal are provided for under **Order 22 Rule 26 and Order 43 Rule 4 (2)** of the **Civil Procedure Rules SI 71-1**.

13. **Order 22 rule 26** provides for when court may stay execution in case there is a pending suit and particularly states that,

Where a suit is pending in any court against the holder of a decree of the court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

14. **In Attorney General of Uganda Vs. The East African Law Society and Another EACJ Application 1 of 2013**, the East African Court of Justice held that *“a notice of appeal is sufficient expression of an intention to file an appeal, and that such action is sufficient to find the basis for grant of orders of stay in appropriate cases.”*

15. In the present case according to the Notice of motion filed by the Applicant the pending suit which is the basis of this Application is the purported Appeal instituted by a Notice of Appeal that was filed on 22nd October, 2024.

16. **Order 43 Rule 4(2)** provides for stay of execution pending appeal and it states that,

Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing from the decree, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.



17. The conditions for grant of an Application for stay of execution pending Appeal were set by the Supreme Court in the case of **Theodore Ssekikubo & others Vs. Attorney General & others (Supra)**, wherein it was held that,

“In an application for stay of execution pending appeal, the applicant must show that he lodged a notice of appeal, the appeal may have a likelihood of success and the application has been made without unreasonable delay and if the stay were not granted, substantial loss may result to the applicant.”

18. **Rule 76** of the Judicature Court of Appeal Rules provides for institution of an appeal in the court of appeal and the timeline within which a notice of appeal should be filed and stipulates that,

(1) Any person who desires to appeal to the court shall give notice in writing which shall be lodged in duplicate with the registrar of High Court.

(2) Every notice under sub rule 1 of this rule shall, subject to rule 83 and 95 of these Rules, be lodged within fourteen days after the date of the decision against which it is desired to appeal.

19. The above provision connotes that the Notice of Appeal against the decision of Court must be filed in the High Court within a period of 14 days from the date of the pronouncement of the Judgment.

20. In the case of **Yoramu Kasinde & another Vs Kihonde Samuel & another CACA No. 259 of 2028**, Hon. Justice Christopher Madrama Izama held that,

“There is no application for extension of time in this application, secondly it is conceded that the applicant’s notice of appeal is defective having been served out of time in the main application. That means the there is no competent notice of appeal or appeal pending before the court...”

21. On perusing the pleadings in this matter, I observed that as per a copy of the Judgment presented in evidence of the Applicant as annexure “A” to the affidavit in support of the Application, that the Judgment in Civil Suit No.382 of 2011 was delivered on 2nd October, 2024 and the Notice of Appeal against the same decision was filed on 22nd October, 2024.



22. This was 22 days from the date of the Judgment contrary to Rule 76 (2) the Judicature (Court of Appeal Rules) which particularly provides for 14days within which a notice of appeal is to be filed in the High Court.
23. According to the law, precedents and facts of this Application as cited above, I find the notice of appeal attached to this Application incompetent for having been filed out of the prescribed time and thus the Appeal is defective.
24. Therefore, having found the Appeal defective it is apparent that there is no pending suit to justify the grant of an order of stay of execution as provided in Order 22 rule 26 of the Civil Procedure Rules under which this Application was brought.
25. The preliminary objection is upheld and this Application is dismissed with costs to the Respondents.

I so order.



Nakiganda Ida

Ag. Judge

29th December, 2025

Ruling delivered via ECCMIS on 29th December, 2025.