



THE REPUBLIC OF UGANDA

**THE SUPREME COURT OF UGANDA  
AT KAMPALA**

*(Coram: Monica K. Mugenyi, JSC, sitting as a Single Judge)*

**CRIMINAL APPLICATION NO. 3 OF 2025**

**(Arising from Criminal Application No. 2 of 2025 & Criminal Appeal No. 138 of 2024)**

**KAMOGA MUHAMADI ..... APPLICANT**

**VERSUS**

**UGANDA ..... RESPONDENT**

## RULING

### A. Introduction

1. This Application is brought under Rules 2(2), 42(1) & (2), 43 (1) & (2) and 47 of the Judicature (Supreme Court Rules) Directions S.I 13-11 ('the Supreme Court Rules'). The Applicants seek an interim order of stay of execution of the judgment and orders of the Court of Appeal in Criminal Appeal No. 646 of 2023, which directed the commencement of the applicant's prosecution in Criminal Case No.s 835 & 836 of 2023 before the Entebbe Chief Magistrates Court, till the hearing and determination of the substantive application Criminal Application No. 2 of 2025.
2. The background to this Application is that the Applicant was arraigned in the Entebbe Chief Magistrates Court in Criminal Case No.s 835 & 836 of 2023. He thereupon successfully sought a stay of those criminal proceedings by invoking the supervisory powers of the High Court vide High Court Criminal Revision Application No. 36 of 2023. The decision of the High Court in that matter was subsequently overturned by the Court of Appeal vide its ruling in Criminal Appeal No. 646 of 2023 on the premise that the High Court had misconstrued section 209 of the Magistrates Courts Act, Cap. 19 (MCA) and improperly exercised its supervisory powers under section 17(2) of the Judicature Act, Cap. 16.
3. The applicant being dissatisfied with the lower court's decision has since lodged Criminal Appeal No. 138 of 2024 in this Court, which appeal is pending determination. The applicant additionally filed Criminal Application No. 2 of 2025, an application for stay of execution that is similarly pending determination. The application before me presently seeks an interim order for stay of execution pending the determination of the substantive application.
4. At the hearing of the application *inter partes*, the applicant was represented by Mr. Brian Kusingura Tindyebwa while the respondent was represented by Ms. Happiness Ainebyoona, a Chief State Attorney.

### B. Parties' Legal Arguments

5. The application is rooted in the conditions for the grant of interim orders of stay of execution as laid down in E. B. Nyakana & Sons Limited v Beatrice Kobusingye & Others [2017] UGSC 66. It is argued that the applicant duly lodged a Notice of Appeal and substantive application for stay of execution that is pending determination before the Court. reference is also made to the case of Ahmed Mohammed Kisuule v Green land Bank (in liquidation) [2011] UGSC 5 for the proposition

that an application for interim orders of stay of execution ought to additionally demonstrate that there is eminent danger of the appeal being rendered nugatory if a stay of execution is not granted.

6. In this case, it is argued that whereas the criminal trial sought to be stayed arises from the alleged forgery by the applicant of transfer forms used in disputed land transactions, one of the complainants therein did in Civil Suit No. 526 of 2021 acknowledge having signed the impugned transfer forms himself. So that, the commencement of the criminal proceedings sought to be stayed would, in addition to negating the pending Criminal Appeal, greatly prejudice the applicant's rights to be heard in those pending civil proceedings. Citing **Basajjabalaba & Another v Attorney General [2018] UGSC 56**, it is further argued that the self-executing orders of the Court of Appeal in Criminal Appeal No. 646 of 2023 pose a serious threat of execution that would render redundant the hearing of the substantive application for stay of execution.
7. Conversely, the respondent contends that the present application amounts to an attempt by the applicant to stop a criminal trial, which is an abuse of court process that the Court ought to avert for the ends of justice as stipulated under rule 2(2) of the Supreme Court Rules. This is opined to be unconstitutional given the express provisions of article 120(6) of the Constitution, and contrary to the principle laid down in **Sarah Kulata Basangwa vs Uganda [2018] UGSC 55** that a civil suit is not a bar to criminal proceedings against any of the parties thereto. Though contesting the application for its reliance on civil procedure principles that are inapplicable to criminal proceedings, State Counsel nonetheless cites this Court's decision in **Akankwasa Damian vs Uganda [2012] UGSC 4** where this Court did entertain but disallowed a similar application for interim orders to halt an applicant's criminal trial. It is argued that the application falls short on the pre-requisites for the stay of a criminal trial therefore the Court is urged to invoke its powers under rule 2(2) to avert an abuse of the court process.
8. By way of rejoinder, it is essentially argued that the respondent's opposition to the application is a tactical attempt to have the applicant's prosecution commence on 9<sup>th</sup> July 2025 as scheduled, thus rendering his pending appeal nugatory.

### **C. Court's Determination**

9. The grant of interim orders is governed by Rule 2(2) of the Supreme Court Rules. That procedural rule recognizes the Court's inherent power to '**make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court ... and shall**

be exercised to prevent abuse of the process of any court caused by delay.’ The conditions that ought to inform for the grant of interim orders of stay of execution were delineated by this Court in **Hwan Sung Industries Ltd v Tajdin Hussein & 2 Others [2008] UGSC 29** as follows:

For an application for an interim order of stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before the hearing of the pending substantive application. It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.

10. In the latter cases of **Muhammed Mohamed Hamid v Roko Construction Ltd [2017] UGSC 47** and **Zubeda Mohammed & Another v Laila Kaka & Another [2017] UGSC 7**, the Court established the following prerequisites for the grant of an interim stay of execution:

- (a) The filing of a Notice of Appeal in accordance with Rule 72 of the Rules of this Court;
- (b) The filing of a substantive Application for stay of execution;
- (c) The evidence of an imminent threat of execution;
- (d) That the Application should have been brought without delay.

11. Additionally, in **Theodore Ssekikubo & 2 Others v Attorney General & 3 Others [2014] UGSC 11**, the Court did allude to the role of interim orders in preserving the status quo so as to allow for the determination of the issues in contention between the parties by the full court.

12. However, in my view, the foregoing authorities should be construed with due regard to the caution in **Wilson Mukiibi v James Semusambwa [2003] UGSC 52** that interim orders ought to be allowed only in compelling circumstances to prevent a deflation of justice. This is reiterated in **Uganda Revenue Authority v Nsubuga Guster & Another [2019] UGSC 15** and **Theodore Ssekikubo & 2 Others v Attorney General & 4 Others** (supra) where, emphasising the need to preserve parties right of appeal, it was nonetheless observed that Rule 2(2) gives this Court very wide discretion to make such orders as may be necessary to achieve the ends of justice.

13. The circumstances of the present Application are that there is indeed a pending substantive application – *Criminal Application No. 2 of 2025* that was brought without undue delay, as well as a pending Appeal – *Criminal Appeal No. 138 of 2024*. The foregoing notwithstanding, it seems to me that mischief of rule 2(2) of the Supreme Court Rules in applications of this nature should not be lost. That procedural rule seeks to entrench the ends of justice and avert the abuse of court process. For present purposes, therefore, the question would be whether the commencement of the applicant’s prosecution advances or inhibits the ends of justice.

14. The crux of the matter in this application is that while Civil Suit No. 526 of 2021 (a land dispute) was pending before the High Court, criminal charges were taken out against the applicant for the alleged forgery of land transfer forms. The applicant then obtained a permanent stay of the criminal proceedings brought against him by successfully moving the High Court to exercise its supervisory powers under section 17(2) of the Judicature Act. When the decision of the High Court was reversed by the Court of Appeal, the applicant lodged an appeal in this Court challenging the latter court's decision.
15. First and foremost, section 17(2) of the Judicature Act was formulated to *inter alia* entrench efficiency in the management of judicial processes in magistrates' courts so as:
- (a) to prevent abuse of process of the court by curtailing delays, in trials and delivery of judgement including the power to limit and discontinue delayed prosecutions;
  - (b) to make orders for expeditious trials, (and)
  - (c) to ensure that substantive justice shall be administered without undue regard to technicalities.
16. The emphasis in that statutory provision is on the expeditious disposal of cases and the engendering of substantive justice. The permanent stay of criminal proceedings, as transpired in this case, cannot by any shade of imagination fall within the ambit of that statutory provision nor could it have been contemplated as one of the modes of entrenching the envisaged judicial efficiency. Such a stay of prosecution clearly runs at cross purposes with the provisions of section 17(2) and, to that extent, foments rather than averts the abuse of court process.
17. To compound matters, the stay of the criminal proceedings by the High Court was wrongfully grounded in section 209 (presently section 208) of the MCA. For ease of reference, that statutory provision is reproduced below.

No magistrate's court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having original or appellate jurisdiction in Uganda to grant the relief claimed.

18. Section 208 falls under part XX of the MCA, which is restricted to the ***civil jurisdiction of magistrates courts*** as opposed to their criminal jurisdiction. It is therefore inconceivable that a criminal trial would be stayed on the basis of this statutory provision.

19. The question as to whether or not to prosecute a matter is the exclusive remit of the Directorate of Public Prosecutions or the applicable prosecutorial body, and not the courts. The courts, on the other hand, have an over-riding duty to promote justice and prevent injustice. To be clear, however, the High Court may in exceptional circumstances 'stay' an indictment or stop a prosecution in a magistrates' court if it forms the opinion that to allow the prosecution to continue would amount to an abuse of court process. Thus, in Connelly v DPP [1964] AC 1254 and DPP v Humphrys [1977] AC 1, the House of Lords most persuasively proposed the following parameters as a guide to the exceptional circumstances under which such a stay may ensue to avert the abuse of court process:

- (1) The right to a fair trial – is it possible for the defendant to have a fair trial?
- (2) The integrity of the justice system – is a stay of proceedings necessary to protect the integrity of the criminal justice system?

20. In a nutshell, courts should not use their inherent power to stay proceedings merely to discipline the prosecution or because the court has formed the view that the prosecution was unwise. The exceptional nature of the remedy of a stay of proceedings means that, absent bad faith, the power should not be used to punish prosecutors where a fair trial remains possible. See DPP v Gowing [2013] EWHC 4614.

21. It has not been established before me that the applicant would not undergo a fair trial in Criminal Case No.s 835 & 836 of 2023 or that the integrity of the criminal justice system would be otherwise compromised by his prosecution. I take the view that the impending prosecution of that case would not necessarily amount to a threat to the applicant's right to a fair trial, but rather the commencement of a legal process by the constitutionally mandated office. Indeed, not only do criminal proceedings generally take precedence over civil proceedings; the applicant's pending civil suit would not be jeopardised by his prosecution insofar as the latter proceedings offers him the opportunity to rebut the allegations of forgery with the evidence that the impugned land transfer forms had in fact been signed by one Peter Bibangamba, the complainant.

22. With respect therefore, I am unable to discern any travesty of justice that an interim order of stay would seek to deflect. It seems to me that the ends of justice are better served in this case by the expeditious prosecution of Criminal Case No.s 835 & 836 of 2023, the determination of which would support rather than negate the pending civil suit.

D. Conclusion

23. In the result, I would dismiss this application with no order as to costs.

It is so ordered.

Dated and delivered this 8<sup>th</sup> day of July, 2025.



Monica K. Mugenyi

Justice of the Supreme Court