

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT LIRA**  
**MISC. APPLICATION NO. 126 OF 2024**  
**(Arising from Civil Suit No. 10 of 2024)**

**1. ENG. ODONGO OKUNE**  
**2. OJWANG OPOTA**  
**3. WILLIE OMODO OMODO**  
**4. OTIM TOM**  
**5. OKELLO HAMZA**  
**6. VINCENT I. OLING** ===== **APPLICANTS**

**-VERSUS-**

**1. OBIA DENIS ACILA**  
**2. OKII BENJAMIN** ===== **RESPONDENTS**

**BEFORE: HON. MR. JUSTICE PHILLIP ODOKI**

**RULING**

**Introduction:**

[1] The Applicants brought this application, by Chamber Summons, under Section 33 the Judicature Act Cap. 16; Section 98 of the Civil Procedure Act, Cap 282; and Order 41 rules 1 & 9 of the Civil Procedure Rules S.1. 71-1. The Applicants are seeking for an order of this court to stay execution of the judgement and orders in High Court Civil Suit No. 10 of 2024 pending hearing and final determination of Civil Appeal No. 922 of 2024 before the Court of Appeal. The Applicants are also seeking for an order that the costs of this application be provided for.

**Background:**

[2] The Respondents instituted High Court Civil Suit No. 10 of 2024 against the Applicants challenging the election of the 1<sup>st</sup> Respondent (Eng. Odongo Okune) as the traditional or

cultural leader/Paramount Chief of Lango on the ground that the election was illegal, null and void. The 1<sup>st</sup> – 3<sup>rd</sup> Applicants, in turn, also instituted a counterclaim against the Respondents, together with 5 others, challenging the election of the Dickson Ogwang Okul as the Paramount Chief of Lango on the ground that the election was not done in accordance with the procedure of electing the Paramount Chief of Lango. On the 31<sup>st</sup> of October 2024 this Court delivered judgment and made several orders. On the same day, a decree of this court was issued reflecting the orders in the judgment. For purposes of brevity, the orders are reproduced hereunder.

- “1. a declaration that the election of the 1<sup>st</sup> Defendant (Eng. Odongo Okune) as the Paramount Chief of Lango is null and void;*
- 2. an order stopping the 4<sup>th</sup> – 6<sup>th</sup> Defendants (Otim Tom, Okello Hamza and Vincent Oling) from acting and or holding out as members of the Electoral Commission of the institution of the Paramount Chief of Lango;*
- 3. an order quashing all actions of the 4<sup>th</sup> – 6<sup>th</sup> Defendants (Otim Tom, Okello Hamza and Vincent Oling) jointly and severally as the Electoral Commission of the institution of the Paramount Chief of Lango;*
- 4. an order declaring that the Defendants jointly and severally abused due process of the law in organizing and conducting the election of Paramount Chief of Lango;*
- 5. a declaration that the 3<sup>rd</sup> Defendant held out as the interim speaker of the institution of the Paramount Chief of Lango a position which does not exist;*
- 6. a permanent injunction to restrain the defendants jointly and severally and their agents from performing any ritual for installing the 1<sup>st</sup> Defendant (Eng. Odongo Okune) as the duly elected Paramount Chief of Lango;*
- 7. a permanent injunction to forbid the 1<sup>st</sup> Defendant (Eng. Odongo Okune) from performing the function of Paramount Chief of Lango;*

8. *an order directing the Minister of Gender, Labour and Social Development to degazette the 1<sup>st</sup> Defendant as the Paramount Chief of Lango;*
9. *a declaration that election of the 3<sup>rd</sup> Counter – defendant (Dickson Ogwal Okul) as the Paramount Chief of Lango is null and void;*
10. *a permanent injunction to restrain the Counter - Defendants jointly and severally and their agents from performing any ritual for installing the 3<sup>rd</sup> Counter - Defendant (Dickson Ogwal Okul) as the duly elected Paramount Chief of Lango;*
11. *a permanent injunction to forbid the 3<sup>rd</sup> Counter – Defendant (Dickson Ogwal Okul) from performing the function of Paramount Chief of Lango;*
12. *a declaration that His Highness Yosum Odur Ebii is still the Paramount Chief of Lango.*
13. *an order directing the Minister of Gender, Labour and Social Development to re - gazette His Highness Yosum Odur Ebii as the Paramount Chief of Lango.*
14. *Each party to bear their own costs in the matter.”*

**The Applicants’ case:**

[3] The gist of the Applicants’ case, as set out in the Chamber Summons, supported by the affidavits of the 3<sup>rd</sup> Applicant, is that the Applicants are aggrieved by the decision of this Court in High Court Civil Suit No. 10 of 2024. On the 1<sup>st</sup> November 2024, they filed a notice of Appeal, at the High Court in Lira, against the whole decision and orders resulting therefrom; wrote a letter to this Court requesting for the record of proceedings in High Court Civil Suit No. 10 of 2024; and filed Civil Appeal No. 922 of 2024 before the Court of Appeal. According to the Applicants, the Respondents, are in the process of degazetting the 1<sup>st</sup> Applicant and re - gazetting Yosam Odur Ebii as the Paramount Chief of Lango; are threatening to interfere with the Applicants’ coronation of the 1<sup>st</sup> Applicant as the Paramount Chief of Lango; are set to elect a new Speaker any time soon to replace the 3<sup>rd</sup> Applicant; are attempting to force

themselves into office of the Applicants without formal process of execution; and are in the process of appointing a new Electoral Commission to the chagrin of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Applicants. The Applicants contend that, Civil Appeal No. 922 of 2024 raise serious questions of law; the Applicants stand to suffer irreparable loss once this application is not granted because the appeal will be rendered nugatory; this application has been made without any inordinate delay; and they have deposited security for costs of Ug. Shs. 200,000/=. The Applicants further contend that the judgment, in High Court Civil Suit No. 10 of 2024, stopped the 1<sup>st</sup> and 3<sup>rd</sup> Applicants from conducting their roles as Paramount Chief and Speaker respectively thus leaving a vacuum in the leadership at Lango Cultural Centre.

**The Respondents' case:**

[4] The Respondents' case, on the other hand, as can be discerned from the affidavits in reply sworn by the 2<sup>nd</sup> Respondents, is that the Applicants have failed to meet the mandatory requirements for the grant of stay of execution, which is, depositing security for due performance. The Respondents contend that the orders which were issued by this Court are self-executing, take immediate effect upon service and are not subject to any conventional form of enforcement by execution. According to the Respondent, there is no justifiable basis for stay of execution as there is nothing to be stayed. The Respondents further contend that, there is absolutely no chance of success in Civil Appeal No. 922 of 2024; the appeal can be determined without the need of stay of execution since the declaratory orders are self-executing; the Applicants have not demonstrated how the appeal will be rendered nugatory or how they will suffer irreparable loss. The Respondents denied interfering with the Applicants' process of installing and coronating the 1<sup>st</sup> Applicant as alleged. They contend that the coronation and installation of the 1<sup>st</sup> Applicant was stopped by security agencies upon the decree of this Court. The Respondents also denied the allegation that they are in the process of electing a new

Speaker given that there has always been a Speaker under the leadership of His Highness Yosam Odur Ebii. According to the Respondents there is no need to elect a new Speaker.

**Legal representation and submissions:**

[5] At the hearing of this application, the Applicants were represented by a team of 9 lawyers. That is, Dr. Adams Makmot Kibwanga, Mr. Patrick Okwir, Mr. Quirinus Oyugi Onono, Mr. Gabriel Obua, Mr. Simon Peter Odoo, Mr. Ponsiano Okello, M/s Rita Mari, Dr. Rebecca Amolo and Joseph Masiko. The Respondents were represented by a team of 3 lawyers. That is Mr. Emanuel Egaru Omiat, Mr. Hamis Obua and Mr. Innocent Okuny.

[6] The Court gave directives to counsel to file written submissions, which directives were duly complied with. I have given the submission the due consideration in the determination of this application.

**Analysis and determination of the Court:**

[7] Counsel for the Respondent argued that there is nothing to be stayed since the orders in High Court Civil Suit No. 10 of 2024 are declaratory in nature, self-executing and took effect upon pronouncement without the need of any action from the parties or court officers to bring them into effect. In support of their submission, counsel for the Respondents relied on the decision of the Court of Appeal in **Kyambogo University versus Prof. Isaiah Omolo Ndiege Court of Appeal Civil Application No. 341 of 2013.** They also relied on the definition a self-executing order as stated in **Mulla the Code on Civil Procedure.**

[8] Counsel for the Applicants, on the other hand, submitted that there are no orders that take away a person's right, give it to another and it is self-executing. According to counsel for the

Applicants, all Court orders in Uganda must be executed and enforced by a formal application to the Court. Counsel for the Applicants did not cite any law in support their assertion.

[9] It is the procedure of the Courts that after judgment is delivered and a decree has been extracted under Section 25 of the Civil Procedure Act and Order 21 of the Civil Procedure Rules, the Court may, on application of the decree holder, order the execution of the decree in any of the modes set out in section 38 of the Civil Procedure Act. The legal word ‘execution’ in its widest sense signifies the enforcement of or the giving effect to the judgment or orders of the Court. See: **Osman Kassim Ramathan versus Centenary Bottling Company Ltd SCCA No.35 of 2019.**

[10] An order of stay of execution pending appeal delays the enforcement/implementation of or the giving effect to the judgment or orders of Court pending the outcome of the appeal. The law recognizes that not every decree or order is capable of being executed. See: the case of **Kyambogo University versus Prof. Isaiah Omolo Ndiege** cited above. An order of stay of execution can only delay the enforcement of a positive obligation that are set out in a decree as a result of a judgment. See: the Kenyan case of **Co - operative Bank of Kenya Limited versus Banking Insurance & Finance Union (Kenya) Court of Appeal of Kenya Civil Application No. 133 of 2015.** However, a negative order by its nature is not capable of execution though the breach of the order can be considered contempt of court, subject to contempt of court proceedings. An order which is not capable of execution cannot be stayed. In addition, there are decrees which are self-executing. That is to say, when the orders in the decree are directed to a certain person or body to perform or refrain from performing any act, then the person so directed must perform the act or must refrain from performing the act in satisfaction of the decree. See: the Kenyan case of **Florence Cherugut versus Cheptum Murei Annah Land Case No. 140 of 2017.**

[11] An order of injunction is a negative order that restrains a party from performing a particular act. Such an order on the face of it is not capable of being stayed because it does not require execution process to put the judgment creditor into enjoyment of the fruits of the order. The orders of injunction in High Court Civil Suit No. 10 of 2024 are therefore self-executing. They are to be complied with without the need of the decree holder to apply to the Court for execution. The operation of the injunction commenced immediately they were issued or notified. See: *Infinity Telecom Uganda Ltd versus Eco Bank Uganda Ltd and another, HCMA No. 2129 of 2016* and *Finasi/Roko Construction SPV Ltd and another versus Roko Construction Ltd, Court of Appeal Civil Application No. 220 of 2019.*

[12] Similarly, the orders directing the Minister of Gender Labour and Social Development to degazette the 1<sup>st</sup> Applicant as the Paramount Chief of Lango and to re - gazette Yosam Odur Ebii as the Paramount Chief of Lango are self-executing. The Minister, upon being notified of the decree, is duty bound to implement the decree without the need for the decree holder to apply to the Court for execution.

[13] As for a declaratory judgment, it is defined in Black's Law Dictionary, 9<sup>th</sup> Edition at page 918, as:

*“A binding adjudication that establishes the rights and other legal relationship of the parties without providing ordering for enforcement.”*

[14] A declaratory judgment is also defined in Osborn's Concise Law Dictionary 11<sup>th</sup> Edition to mean:

*“A judgment which conclusively declares the legal relationship of the parties without the appendage of any coercive decree. Such a declaration may be made whether or not*

*a consequential relief is or could be claimed. So, a declaratory judgment may be made along with other relief, e.g. damages or injunction.”*

[15] As to whether or not a declaratory judgment is amenable to be stayed pending appeal depends on the circumstance of each case. In the Jamaican Supreme Court case of **Norman Washington Manley Bowen versus Shahine Robinson and Neville Williams [2010] JMCA27**, the applicant sought a stay of execution of the judgment of the Court by which the 2007 for the constituency of Saint Ann North East was declared null and void, and the seat declared vacant. The judgment was required to be served on the speaker of the house or Representatives and the clerk to the Houses of Parliament. Marrison J.A., in refusing to grant the application for stay of execution of the judgment stated that:

*“[10] It will immediately be seen that the judgment is in the substance declaratory, rather than executory, by which I mean that although it does make a pronouncement with regard to the 1<sup>st</sup> defendant’s status as a member of the House of representative, it does not purport to order the 1<sup>st</sup> defendant to act in a particular way, such as to pay damages or to refrain from interfering with the claimants rights, either of which would be enforceable if disobeyed.”*

[16] Furthermore, in the Nigerian Supreme Court case of **Chief RA Okoya & others versus Santilli and others, SC 200/7989**, one of the issues for consideration by the Court was whether a defendant who has filed an appeal purely against declaratory orders made against him is entitled to apply for a stay of execution of those orders pending the hearing and determination of the appeal. Agbaje J., who wrote the lead judgment, after reviewing several scholarly works on the subject, concluded the following as being a ‘consensus’ among academic writers:



*“First: [An] executory judgment declares the respective rights of the parties and then proceeds to order the defendant to act in a particular way, eg. To pay damages or refrain from interfering with the plaintiff’s rights, such order being enforceable by execution if disobeyed.*

*Second: A declaratory Judgment may be the ground of subsequent proceedings in which the rights having been violated receives enforcement but in the mean – time there is no enforcement nor any claim to it.”*

[17] Agbaje J., went on to state that:

*“It appears to me that the starting point.... is the consensus that a declaratory judgment may be the ground of subsequent proceedings in which the right...violated receives enforcement but in the mean - time there is no enforcement nor any claim to it. So, until subsequent proceedings have been taken on a declaratory judgment following its violation or threatened violation there cannot on the clear authorities, I have referred to above, be a stay of execution of the declaratory judgment because prior to the subsequent proceedings, it merely proclaims the existence of a legal relationship and does not contain any order which may be enforced against the defendant”*

[18] In **Attorney General versus Dr. Busingye Kabumba and another Constitutional Application No. 0016 of 2022** a similar argument, which has been made in this Court by counsel for the Respondents, was made by counsel for the Respondent. The background to the case was that the Constitutional Court in Constitutional Petition No.0015 of 2022 delivered a judgment in which it made a declaration that the appointment of sixteen (16) judges of the High Court subject to an acting term of two (2) years is inconsistent with Articles 2, L28, 138,L42 and L44 of the Constitution and is to that extent unconstitutional. In addition, the Court issued

an order directing the Judicial Service Commission (JSC) to take necessary steps to regularize the appointment of the affected sixteen (16) judges into substantive appointments within six (6) months. The Attorney General applied for stay of execution of the of the orders of the Constitutional Court pending the hearing and final disposal of the Appeal in the Supreme Court. Counsel for the Respondent in that case argued that declarations cannot be stayed, but rather may be set aside, suspended or lifted. In addition, counsel for the Respondent argued that the order directing the JSC to take steps to regularize the appointment of the affected judges within six months amounted to a consequential order. The Constitutional Court made reference to the Jamaican Supreme Court case of *Norman Washington Manley Bowen* and the Nigerian Supreme Court case of *Chief RA Okoya* cited above and held that:

*“In the matter before us, the declarations in the impugned judgment were not stand-alone declarations of rights. They were accompanied by consequential orders which the Judicial Service Commission and the Attorney General had to comply with in a space of six months. In that context, the declarations and consequential orders are so intertwined that in a deserving case, a stay of only the consequential orders in isolation of the declarations would defeat the main purpose of a stay of execution pending appeal namely, the protection of the appellant’s right of appeal.”*

[19] The Constitutional Court further stated that:

*“Further, we do not accept the Respondent’s submission that the only recourse available to a party aggrieved by a declaratory Judgment is an action to set it aside. In our view, declaratory judgments are final and conclusive of the rights of the parties only where there is no appeal. But where the right of appeal has been exercised by any of the parties, like in the instant matter, there is always implied that the declaration of the court of first instant are not final and conclusive unless and until the appellate court*

*makes a final pronouncement on them. To that extent, stay of execution in an appropriate case, postpones the binding and conclusive effect of the declaration in order to safeguard the right of appeal being exercised by a party.”*

[20] In the instant case, the declaratory orders in High Court Civil Suit No. 10 of 2024 are not stand – alone declaration of rights. They are accompanied by orders of injunctions and consequential orders directing the Minister of Gender Labour and Social Development to degazette the 1<sup>st</sup> Applicant as the Paramount Chief of Lango and to re - gazette His Highness Yosum Odur Ebii as the Paramount Chief of Lango. This Court can therefore grant an order of stay of execution of the declarations if the conditions set out in the law are met by the Applicants.

[21] I shall now turn to the conditions that must be met by any applicant seeking a stay of execution. I note that there is no specific legislation providing for stay of execution of decisions of the High Court pending Appeal to the Court of Appeal. However, in *Lawrence Musiitwa Kyazze versus Eunice Businghye, Supreme Court Civil Application No 18 of 1990*, the Supreme Court took cognizance of the lacuna in the law and guided that an applicant seeking a stay of execution of the decision of the High Court pending appeal should be prepared to meet the conditions set out in Order 39 (which is now Order 43) rule 4(3) of the Civil Procedure Rules.

[22] Order 43 rule 4(3) of the Civil Procedure Rules provides that no order for stay of execution shall be made unless the court making it is satisfied that, substantial loss may result to the party applying for stay of execution unless the order is granted; the application has been made without unreasonable delay; and security has been given by the Applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

[23] In the *Kyambogo University* case cited above, the Court of Appeal expanded the conditions to include, that the applicant has lodged a notice of appeal; that there is serious or eminent threat of execution of the decree or order; that if the application is not granted, the appeal would be rendered nugatory; the appeal is not frivolous and has a likelihood of success; and that refusal to grant the stay would inflict more hardship than it would avoid. I shall now proceed to determine whether the Applicants have met all those conditions.

Notice of appeal:

[24] Rule 76 (1) of the *Judicature (Court of Appeal Rules) Directions, Statutory Instrument 13-10 of 2000* provides, inter alia, that any person who desires to appeal to the Court of Appeal shall give notice in writing, which shall be lodged in duplicate with the Registrar of the High Court. In the instant case, the 3<sup>rd</sup> Applicant deponed that on the 1<sup>st</sup> of November 2024 the Applicants filed a Notice of Appeal at the High Court in Lira. The Notice of Appeal was attached to his affidavit and marked as annexure “C”. The Respondents did not dispute that averment. It is presumed that they accept those facts. I therefore find that the Applicants fulfilled this condition.

Unreasonable delay:

[25] In the affidavit in support of the application, the 3<sup>rd</sup> Applicant deponed that this application has been made without inordinate delay. The decision in High Court Civil Suit No. 10 of 2024 which is the subject of this application was delivered on the 31<sup>st</sup> October 2024. This Application was filed in this Court on the 6<sup>th</sup> November 2024, only 5 days after the judgment was delivered. I therefore do not find any unreasonable delay in the filing this application. The Applicants have satisfied this requirement too.

The appeal not being frivolous and having a likelihood of success;

[26] It is incumbent upon the Applicant to avail evidence or material to the Court in order for it to establish whether or not there is a prima facie case on appeal. At this stage what the Court is required to examine is whether there is arguable ground of appeal which merit consideration by the Court of Appeal. It is not for the Court to descend into determining the merits of the appeal. In **Jomo Kinyatta University of Agriculture & Technology versus Martin Higiro Court of Appeal of Kenya Civil Appeal (Application) No. E268 OF 2024** the Court observed that:

*“Regarding the sufficiency of the pleaded grounds of appeal to warrant a grant of the stay orders sought, this Court in the case of Yellow Horse Inns Ltd vs. A. A Kawir Transporters & 4 others [2014] eKLR, observed that an applicant need not show a multiplicity of arguable points as one arguable point would suffice. Neither is the applicant required to show that the arguable point would succeed, as this Court held in Kenya Commercial Bank Limited vs. Nicholas Ombija [2009] eKLR”.*

[27] Similarly, in the case of **Stanley Kang'ethe Kinyanjui versu Tonny Ketter and 5 Ors (2013) e KIR** cited with approval in **Beeline Travel Care (u) Ltd & anor v Finance Trust Bank CACA No. 67 of 2023** the Court of Appeal of Kenya stated that;

*“An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the Court; one which is not frivolous. In considering an application brought under Rule SG) (b) the Court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal.”*

[28] Furthermore, in *Albert George Gitta and 2 others versus Lilian Nangoma Court of Appeal Civil Application No. 693 of 2022* the court cited with approval the case of *Krone Uganda limited versus Kerilee Investment Limited Court of Appeal Civil Application No.63 of 2020* in which the court held that:

*“The underlying principle is that court is not required to inquire into the merits of the case from which this application arose, since this is not an appeal, however it is required to determine whether prima facie, there exist grounds of appeal that merit serious consideration. It is a balancing act.”*

[29] In the instant case, the Applicants stated, in the Chamber Summons and in the affidavit in support of the application, that their grounds of appeal are that this court, misapplied the customary law, norms and practices of Lango people in relation to election of the paramount Chief of Lango and reached a wrong decision that the 1<sup>st</sup> Applicant’s election was null and void; introduced its own facts and granted orders not prayed for in pleadings of the parties and declared Yowsam Odur Ebii who had already abdicated as the Won Nyaci of Lango; condemned the Minister of Gender, Labour and Social Services and the Government of Uganda when it declared that the publishing of the name of the 1<sup>st</sup> Applicant in the gazette was done erroneously and erroneously directed the Minister to de -gazette him; ordered that the outgoing Paramount Chief, Yosam Odur Ebii be re - gazetted after he was de-gazetted upon voluntary abdication; found that the Respondents who are not corporation sole could sustain a cause of action against the Applicants under the Traditional or Cultural Leaders Act; erroneously held that Lango Cultural Foundation Constitution binds the Applicants and is effective in law, breach of which rendered the election of the Applicants null and void; and negated the law under the Traditional or Cultural Leaders Act and reached a wrong conclusion in the matter.

[30] In my view, those grounds of appeal raise serious questions of law meriting consideration by the Court of Appeal as to whether, this court in High Court Civil Suit No. 10 of 2024 indeed, misapplied the customary law, norms and practices of Lango; introduced its own evidence; condemned the Minister of Gender, Labour and Social Services and the Government of Uganda; was wrong in ordering the re – gazettement of Yosam Odur Eyii as the Paramount Chief of Lango; was wrong in finding that the Respondents are corporation sole; was wrong to find that the Constitution of Lango Cultural Foundation Constitution binds the Applicants; and negated the law under the Traditional or Cultural Leaders Act. As to whether those arguable point would succeed on appeal is not a matter for this Court to determine.

[31] I have not found merit in the argument of counsel for the Respondents that the Applicants were required to have filed a memorandum of appeal or a draft memorandum of appeal to show that the said appeal has likelihood of success. The Applicants, having stated the said grounds of appeal in the in the Chamber Summons and in the affidavit in support of the application, placed before the court the relevant material upon which this Court can make an assessment as to whether the appeal has a likelihood of success. See: the case of **Osman Kassim versus Century Bottling Company Ltd SCCCA 34 of 2019**. I therefore find that this condition has also been met by the Applicants.

**Security for due performance of the decree or order.**

[32] Under this condition, a party who has appealed against a money decree of the lower court and is seeking a stay of execution of the decree must satisfy this condition on security. The rationale being that a successful litigant should not be denied the opportunity to enjoy the fruit of his judgement in the case of appeal. The courts have however been reluctant to order security for due performance of the decree because of the need to balance between the respondent's right to be protected from the risk that the appellant may not be able to satisfy the decree as

against the appellant's right to access the courts. Courts have instead been keen to order security for costs. See: **Tropical Commodities Supplies Ltd and others v. International Credit Bank Ltd (in liquidation) [2004] 2 EA 331** and **DFCU Bank Ltd v. Dr. Ann Persis Nakate Lussejere, C. A Civil Appeal No. 29 of 2003.**

[33] Be that as it may, the decree in High Court Civil Suit No. 10 of 2024 which is the subject of this application, does not make provision for payment of any sum of money by the Applicants. The requirement of security for due performance of the decree or order is therefore not applicable. In addition, the Applicants have also adduced evidence to prove that they have deposited security for costs of Ug. Shs. 200,000/=. For that reason, I find that the Applicants have satisfied this requirement too.

#### Serious or imminent threat of execution

[34] Imminent threat means a condition that is reasonably certain to place the applicant's interests in direct peril and is immediate and impending and not merely remote, uncertain, or contingent. An order of stay will issue only if there is actual or presently threatened execution. There must be a direct and immediate danger of execution of the decree. There should be unequivocal evidence showing that unconditional steps as to convey a gravity of purpose and imminent prospect of execution of the decree, have been taken by the respondent. See: **Formula Feeds Limited and 3 others versus KCB Bank Limited High Court Miscellaneous Application No. 1647 Of 2022.**

[35] In the instant case, the 3<sup>rd</sup> Applicant deponed that the Respondents, are in the process of degazetting the 1<sup>st</sup> Applicant as the Paramount Chief of Lango and re - gazetting Yosam Odur Eбии as the Paramount Chief of Lango; are threatening to interfere with the Applicants' coronation of the 1<sup>st</sup> Applicant as the Paramount Chief of Lango; are misleading security



agencies; are physically confronting the Applicants; are set to elect a new Speaker any time soon to replace the 3<sup>rd</sup> Applicant; are attempting to force themselves into office of the Applicants without formal process of execution; and are in the process of appointing a new Electoral Commission to the chagrin of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Applicants.

[36] In his affidavit in reply, the 2<sup>nd</sup> Respondent denied interfering with the Applicant's process of installing and coronating the 1<sup>st</sup> Applicant as alleged. He deponed that the coronation and installation of the 1<sup>st</sup> Applicant was stopped by security agencies upon the decree of this Court. He also denied the allegation that they are in the process of electing a new Speaker given that there has always been a Speaker under the leadership of His Highness Yosam Odur Ebii.

[37] In my view, the Applicants did not adduce any evidence to show when and how the Respondents mislead security agencies or physically confronted them or attempted to force themselves into office. The Applicants did not adduce any evidence to prove the steps already taken by the Respondents to indicate that they were indeed in the process of electing a new Speaker. The Applicants did not also adduce any unequivocal evidence to prove that the Respondents were attempting to force themselves into office or are in the process of appointing new members of the Electoral Commission.

[38] The evidence which was adduced by the Applicants of the letter written by the lawyers of Yosam Odur Ebii and another letter written by James Robert Ajal to the Minister of Gender, Labour and Social Development to implement the orders of this Court by degazetting the 1<sup>st</sup> Defendant and re-gazetting Yosam Odur Ebii as the Paramount Chief of Lango were not written by the Respondents. Be that as it may, in *Uganda Revenue Authority versus East African Property Holdings Ltd, Court of Appeal Civil Application No. 220 of 2019* the

respondent had written two letters of demand of the decretal sum. Based on the two letters, the applicant argued that there was a threat of execution. Butera J.A., held that the two letters are not at all a threat of execution of a Court Order.

[39] The Applicants have not adduced any evidence to show that execution of the decree in Civil Suit No. 10 of 2024 has been commenced in any of the modes of execution under section 38 of the Civil Procedure Act. As was indeed pointed out by Kakuru J.A., in the **Kyambogo University** case cited above, there is no evidence whatsoever that any warrant of execution has been applied for or issued to prove threat of execution. In the case of **Infinity Telecom Uganda Ltd versus Eco Bank Uganda Ltd and another, HCMA No. 2129 of 2016** Madrama J., as he then was, cited with approval the case of **Exclusive Estate Limited vs. Kenya Posts and Telecommunications Corporation and Another [2005] 1 EA 53 (CA)** in which the Court of Appeal of Kenya held that the stay of execution envisaged under rule 5 (2) (b) of the Court of Appeal Rules of Kenya is execution of a decree capable of execution in any of the methods stipulated under the equivalent of our section 38 of the Civil Procedure Act. See also the case of **Ejalu Martin versus Itobu Margret HCMA No. 0160 of 2022; Obwaton John Steven versus Wakholi James and others HCMA No. 0180 of 2022; and Baguma Paul T/A Panache Associates versus Eng. Karuma Kagyina HCMA no. 460 of 2020.** I therefore find that the Applicants failed to satisfy this condition.

The appeal would be rendered nugatory;

[40] According to Kakuru J.A., in the **Kyambogo University** case cited above, this is the most important ground that Courts must consider in applications of this nature. Under this condition, the Applicant must prove that if the application is not granted, their appeal will be rendered nugatory. In **Lubega Moses versus Nasimbwa Sylvia, Court of Appeal Civil Application No.**

**0122 of 2024 Christopher Gasherabake J.A.**, cited with approval the case of **Twongyeirwe Peter v Muhumuza Peter, Miscellaneous Application No. 0681 of 2021** where it was stated that;

*“... nugatory means of no force or effect: useless; invalid.” In this context, the term “nugatory” has to be given its full mean. It does not only mean worthless, futile, or invalid, it also means trifling. Whether or not an appeal will be rendered nugatory if stay is not granted depends on whether or not what is sought to be styeed if allowed to happen will be reversible, or if it is not irreversible, whether damages will reasonably compensate the aggrieved party. Or it is in the public interest to grant a stay...”*

[41] In the instant case, the Applicants merely stated that once this application is not granted the appeal will be rendered nugatory. The Applicants did not demonstrate how the execution of the decision of this Court will render the appeal nugatory. In my view, all the orders of this Court in High Court Civil Suit No. 10 of 2024, if implemented, are reversible if the appeal is successful. That is, if the 1<sup>st</sup> Applicant is degazetted as the Paramount Chief of Lango, in compliance with the orders of this Court and if the appeal turns out successful, he can be re - gazetted. Similarly, if the Yosam Odur Ebii is re – gazetted as the Paramount Chief of Lango, in compliance with the orders of this Court and the appeal turns out successful, he can be de - gazetted. If the appeal turns out successful, the 4<sup>th</sup> – 6<sup>th</sup> Applicants can be restored as members of the Electoral Commission and the 3<sup>rd</sup> Applicant can be restored as the Speaker. I therefore find that the Applicants failed to satisfy this condition.

#### Substantial loss.

[42] Substantial loss does not represent any particular amount or size. It cannot be quantified by any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss,

great or small, that is of real worth or value, as distinguished from a loss without value or a loss that is merely nominal. See: the case of **Tropical Commodities Supplies Ltd** cited above.

[43] In the case of **James Wangalwa 7Another versus Agnes Naliaka Cheseto [2012] eKLR** the Court stated that:

*“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”*

[44] Furthermore, in **Tanzania Cotton Marketing Board versus Cogecot Cotton Co. SA (1995-1998) 1 E.A 312** Lubuva J., cited with approval the Indian case of **Bansidhav Vs Pribku Dayal AIR 41 1954** where it was stated that;

*“it is not enough to merely repeat words of the code and state that substantial loss will result; the kind of loss must be specified, details must be given and the conscience of the court must be satisfied that such loss will really ensue. The words substantial loss cannot mean the ordinary loss to which every judgment debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case and since the law expressly prohibits stay of*

*execution as an ordinary rule, it is clear the words 'substantial loss' must mean something in addition to all different from that."*

[45] In the instant case, the Applicants merely stated that they stand to suffer irreparable loss once this application is not granted because the appeal will be rendered nugatory. The Applicants did not demonstrate in the application and in the affidavits factors which show that the execution will create a state of affairs that will irreparably affect or negate their very essential core as the successful party in the appeal.

[46] Counsel for the Applicants argued that if the 1<sup>st</sup> Applicant is de -gazetted it will be both substantial loss and irreparable damage to the 1<sup>st</sup> and 3<sup>rd</sup> Applicants. According to Counsel for the Applicants, the Institution of Traditional or Cultural Institution Act Cap 242 provides for privileges and benefits of a traditional or cultural leader which the 1<sup>st</sup> Applicant is now entitled to as the Paramount Chief of Lango and if this application is not granted the 1<sup>st</sup> Applicant will miss the benefit and even if he is successful in the appeal he will not be able to recover the benefit. In addition, counsel submitted that the 1<sup>st</sup> Applicant is an established Engineer who ran major national and international projects, a former Chairperson of the Engineers Registration Board, former Executive Director of Uganda Road Fund, a former Awitong of his clan and a Senior Consultant with Government and his de – gazettelement which is public notice shall greatly inconvenience him and will damage his reputation which cannot be atoned for by any amount of compensation. In addition, counsel for the Applicants submitted that the Court orders disrupted the operation of the council of Owitong who are not party to High Court Civil Suit No. 10 of 2024 and that there are rituals and activities that involve approval or appointment of the 1<sup>st</sup> Applicant which cannot at the moment be conducted. Furthermore, counsel for the Applicants submitted that the Minister of Gender Labour and Social Development is having difficulty relating with the judgment sought to be stayed.

[47] With the greatest respect to counsel for the Applicants, their argument that if this application is not granted, then the 1<sup>st</sup> Applicant will miss benefits provided for in the Institution of Traditional or Cultural Institution Act Cap 242 and that if the applicant is de – gazetted, his reputation will be damaged is not premised on any evidence adduced in Court.

[48] Be that as it may, the purpose of an order of stay of execution is to preserve the status quo and to protect the applicants’ right of appeal from being rendered nugatory. Clearly from the submission of Counsel for the Applicants the status quo is that the 1<sup>st</sup> Applicant is not receiving any benefit at the moment. This Court cannot grant a stay of execution to change the status quo to enable the 1<sup>st</sup> Applicant to start receiving benefits he was not receiving at the time judgment in Court in High Court Civil Suit No. 10 of 2024 was delivered.

[49] As for the argument that the Court orders disrupted the operation of the council of Owitong who are not party to High Court Civil Suit No. 10 of 2024, the same is clearly unfounded. A reading of the judgment clearly shows that there is the Constitution of Lango Cultural Foundation of 2017 regulating the activities of the institution. On the alleged rituals and activities that involve approval or appointment of the 1<sup>st</sup> Applicant which cannot at the moment be conducted, the same can wait for the outcome of the appeal.

[50] Regarding the argument that the Minister of Gender Labour and Social Development is having difficulty relating with the judgment, in my view, the judgment is very clear on what the Minister has to do. In fact, by deliberately/intentionally refusing to comply with the orders of this Court, the Minister may be cited personally for contempt. My finding is that the Applicants have failed to prove this essential condition for the grant of a stay of execution.

**Refusal to grant the stay would inflict more hardship than it would avoid.**

[51] Where the grant of an order of stay of execution would inflict greater hardship than it would avoid, the Court will desist from granting the order. In the instant case, I am alive to the fact that the judgment in in High Court Civil Suit No. 10 of 2024 declared the election of both the 1<sup>st</sup> Applicant (Eng. Odongo Okune) and Dickson Ogwal Okul as the Paramount Chief of Lango as being null and void. The status quo before the judgment in High Court Civil Suit No. 10 of 2024 was that both the 1<sup>st</sup> Applicant (Eng. Odongo Okune) and Dickson Ogwal Okul were claiming to be the duly elected Paramount Chief of Lango. If this Court were to grant this application and stay the execution of decision in High Court Civil Suit No. 10 of 2024, it would lead to an absurd situation were both Eng. Odongo Okune and Dickson Ogwal Okul would continue to hold out as the Paramount Chief of Lango creating further confusion in the cultural institution to the detriment not only to the parties in this application but to the entire people of Lango thereby further infringing on their right to culture. In my view, it is in the best interest of justice that no orders for stay of execution is issued pending the hearing and final determination of the appeal.

[52] In conclusion, the Applicants have not satisfied the essential requirements for the grant of an order of stay of execution pending appeal. Consequently, the application fails and is hereby dismissed with costs to the Respondents.

I so order.

Dated and delivered by email this 29<sup>th</sup> day of November 2024



Phillip Odoki

**JUDGE.**