**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CIVIL APPLICATION NO. 0844 OF 2026**

*(Arising from Civil Suit No. 0621 of 2023 and High Court Misc. Appn No. 0380 of 2026)*

**M/S MUWEMA & CO. ADVOCATES ::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**DOWNTOWN INVESTMENTS LTD :::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE JOHN MIKE MUSISI, JA**

**(Single Justice)**

## RULING

This application is brought under Articles 28(1) and 126(2)(e) of the Constitution of the Republic of Uganda, 1995, and Rules 2(2), 6(2)(b), 42, 43 and 44 of the Judicature (Court of Appeal Rules) Directions, S.I. 13-10. The Applicant seeks orders that all forms of execution of the decree in Civil Suit No. 0621 of 2023 be stayed pending the hearing and final determination of its intended appeal, and that the costs of the application be provided for.

## Background

The Applicant, a firm of advocates, entered into a written lease with the Respondent on 15th December 2014 in respect of premises comprised in LRV 240 Folio 17, Plot 50, Windsor Crescent, Kololo. The stipulated term was five years. The rent was US$5,500 plus VAT, payable one year in advance, and was to be revised by 10% every twelve months after the first twenty-four months. Although the written term expired on 15th December 2019 without the formal renewal contemplated by the agreement, the parties continued their relationship, and the High Court treated the lease as continuing on its existing terms.

The provision central to the intended appeal is Clause 5. It accorded the Applicant the first option to purchase the leased premises at a floor price of US$2,000,000 net if the transaction was concluded within twelve months from commencement of the lease; thereafter, the sale price was to be determined by the market. The clause therefore did not fix either the final price or the remaining terms of a purchase concluded outside the initial period. Those matters still required determination or agreement.

On 2nd August 2021 the Applicant wrote to the Respondent proposing to purchase the property for US$1,050,000. According to the evidence recounted in the judgment, the proposal contemplated a commitment fee of 10% of that price, with the balance to be financed by a banking institution. The Respondent's then-Managing Director acknowledged the proposal but indicated that it fell short of the Respondent's expectations and that he would consult other stakeholders. No counter-offer or final acceptance followed before his death in December 2021. The Applicant nevertheless maintains that its letter constituted an exercise of the option and that, from that point, the relationship ceased to be one of landlord and tenant. The

Respondent maintains that the letter was no more than an unaccepted offer and that rent continued to accrue.

That disagreement precipitated High Court Civil Suit No. 0621 of 2023. The Respondent sought rent arrears, vacant possession, eviction, mesne profits, general damages, interest and costs. The Applicant defended the claim and counterclaimed for declarations that it had exercised its option to purchase and that the Respondent was obliged to conclude the transaction, together with injunctive and other relief.

In the judgment delivered on 20th February 2026, the High Court found that the Respondent's purported cancellation of the option by its letter of 31st March 2016 was misguided and of no legal effect because Clause 5 contemplated a purchase even after the initial period, albeit at a price to be determined by the market. The court also accepted that the Applicant's offer had been considered first. It nevertheless held that the first option did not oblige the Respondent to accept whatever price the Applicant proposed; that the transaction remained subject to negotiation and free consent; and that the offer of US$1,050,000 had neither been accepted absolutely and unconditionally nor matured into a sale. On that reasoning, the parties remained lessor and lessee and the Applicant's obligation to pay rent continued.

The High Court further found that the Applicant had paid the demanded rent up to 15th December 2021, without successfully challenging the then-applied rate, but had thereafter fallen into arrears. It treated the US$50,000 paid on 8th June 2023, after a demand, as part-payment of rent arrears and accepted the Respondent's computation of the outstanding rent at US$148,300. It rejected the Applicant's claim that payments made after 2nd August 2021 were necessarily payments towards a purchase price. The court also rejected the counterclaim relating to the alleged US$186,000 expenditure on renovations, holding, among other things, that the

expenditure had not been specifically proved by receipts, bank transfers or other source documents and that the relevant contractual approvals had not been demonstrated.

The decree consequently required the Applicant to pay US$148,300 in rent arrears, UGX50,000,000 in general damages, US$224,000 in mesne profits for the period from 30th May 2023, to 31st January, 2026, interest at the rates specified in the decree, and costs. It also granted vacant possession and the right to evict. The Applicant, dissatisfied, lodged a Notice of Appeal and requested a certified record of proceedings on 23rd February, 2026. On 3rd March, 2026 it moved the High Court by Miscellaneous Application No. 0380 of 2026 for a stay of execution. Before that application was determined, the Respondent, on 6th March, 2026, regained possession of the suit premises; the Applicant characterizes this as a summary and unlawful eviction carried out with the assistance of police and media personnel, a characterization the Respondent does not accept. The legality of that repossession is not resolved by this ruling.

The High Court eventually dismissed the Applicant's stay application on 25th June, 2026. In a considered ruling, the trial judge held that the Applicant had lodged its notice of appeal without unreasonable delay and had disclosed an arguable appeal, but declined to grant a stay on the footing that the reliefs touching vacant possession and eviction had already been overtaken by events and could not be undone by a prospective order, and that the Applicant had not discharged the burden of showing that the residual monetary component of the decree, for which the Respondent had asserted an unchallenged capacity to make restitution, would occasion substantial and irreversible loss.

The Applicant had, in fact, already moved this Court by the present application on 23rd June, 2026, two days ahead of the High Court's ruling below, invoking Rule 42 of the Rules of this Court on the footing that it had first sought relief in the High Court and anticipated its refusal. By the time the application came up for hearing, the High Court had duly ruled and refused a stay, so that whatever might be said of the sequence of filing, the precondition in Rule 42(1) stood satisfied by the date of hearing. By supplementary affidavit, the Applicant placed before this Court further material said to postdate the ruling below: a pending application by the Respondent for the attachment and sale of properties belonging to individual partners of the Applicant, and a garnishee order nisi said to have frozen the Applicant's operating accounts with DFCU Bank, KCB Bank and ECO Bank.

The Respondent's account of events, since placed on record, differs from the Applicant's in several material respects. The Respondent maintains that it is the registered proprietor of the suit property, that the Applicant occupied it as a tenant from December 2014, and that the Applicant persistently defaulted on its rent obligations from as early as 2015, such that arrears had accumulated to US$148,300 by June 2023, prompting the institution of Civil Suit No. 0621 of 2023. The Respondent denies that its re-entry on 6th March 2026 was unlawful, describing it instead as a peaceful and lawful exercise of a landlord's right of re-entry under the Landlord and Tenant Act, 2022, undertaken in the presence of officers of the Uganda Police Force and Local Council authorities, following which the Applicant's representatives were permitted to remove their belongings and the Applicant relocated its practice to alternative premises, where it continues to operate. Pursuant to the leave granted at the hearing of 6th July 2026, the Respondent duly filed its Affidavit in Reply, sworn by Paresh Kumar Ratilal Mehta, a director of the Respondent, together with written submissions in reply, and the Applicant, in turn,

filed an Affidavit in Rejoinder, sworn by Kagoro Friday Roberts, and written submissions in rejoinder. I have considered all of this material in arriving at this ruling.

**The Grounds of the Application**

The grounds urged in support of the application, as deposed to in the affidavit of Kagoro Friday Roberts, the Applicant's Managing Partner, may be summarized as follows:

1. That the Applicant operated its offices at the suit property under a lease-to-purchase agreement running from 2014 to 2026;
2. That the Applicant exercised its option to purchase the suit property in 2021, giving rise to the dispute culminating in Civil Suit No. 0621 of 2023;
3. That the High Court, on 20th February 2026, entered judgment against the Applicant for rent arrears of US$148,300, mesne profits of US$224,000, vacant possession and eviction;
4. That the Applicant, being dissatisfied, promptly lodged a Notice of Appeal and requested the record of proceedings;
5. That on 6th March 2026 the Respondent, together with police and media personnel, repossessed the suit premises in a manner the Applicant contends was summary and unlawful;
6. That the Applicant and its staff and clients have suffered, and continue to suffer, harm that cannot readily be measured in damages;

7. That the Respondent has, notwithstanding the pendency of the Applicant's stay application, pursued taxation of costs, garnishee proceedings and an application for attachment of the personal property of the Applicant's partners;

8. That the High Court's decision discloses apparent errors of law and fact, including the manner in which the eviction was ordered and effected, the treatment of evidence of part payment of the rent claimed, and the award of mesne profits said not to have been specifically pleaded;

9. That the Respondent, having already realized the principal benefit of the decree by taking vacant possession, is not entitled to any security for its due performance; and

10. That the application has been filed without undue delay and the balance of convenience favours the grant of a stay.

**Representation**

At the hearing on 6th July 2026, the Applicant was represented by Mr. Fred Mwema together with Mr. Charles Nsubuga, while the Respondent was represented by Ms. Patricia Mugisa.

At the outset, counsel for the Applicant informed the Court that written submissions had been filed on the Applicant's behalf and that no affidavit in reply or written submissions had, as at that date, been received from the Respondent. Ms. Patricia Mugisa confirmed that no such affidavit in reply or written submissions had been filed, explaining that the Respondent had been served with the hearing notice only on the Friday evening preceding the hearing and had not had sufficient time to respond. She sought leave to file the Respondent's affidavit in reply and written submissions by the end of that week, with a corresponding indulgence to the

Applicant to file a rejoinder within three days thereafter. The Court granted these directions; the parties' written submissions were adopted as their legal arguments, and it indicated that its ruling on the substance of the application would follow on 30th July, 2026.

Counsel for the Applicant then drew the Court's attention to the continuing execution measures said to be in train notwithstanding the pendency of this application, namely a garnishee order nisi listed for hearing on 13th July, 2026 and a pending application for attachment of the personal property of the Applicant's partners listed for hearing the following month, and sought an interim protective order pending determination of the substantive application. Ms. Patricia Mugisa, addressing the Court orally in the absence of any filed affidavit or written response, opposed the request on the grounds that no formal application for leave to seek interim relief was before the Court, that the matter in contention was purely monetary and therefore reversible, that the Applicant had by its own account already vacated the suit premises such that nothing further remained to be protected on that front, and that any further delay was prejudicial to the Respondent, rent having gone unpaid since 2022. Having heard both sides, the Court granted an interim protective order restraining further execution up to the date fixed for delivery of this ruling, while observing that the question likely to be central to the intended appeal whether a tenancy subsists after a lessee has exercised an option to purchase was one properly reserved for the appeal itself and not to be pre-judged at this interlocutory stage.

**The Applicant's Submissions**

Counsel for the Applicant submitted that the application is properly before this Court under Rule 42(1) of the Rules of this Court, the Applicant having sought a stay in the High Court in the first instance, relying on ***Asante Aviation Limited & Ors v***

***Stanbic Bank & Anor, Civil Application No. 0286 of 2020, and Lawrence Musiitwa Kyazze v Eunice Busingye, Supreme Court Civil Application No. 18 of 1990.***

On the merits, counsel invoked the four conditions ***in Hon. Theodore Ssekikubo & Others v Attorney General & Another, Constitutional Application No. 6 of 2013,*** and submitted that each was satisfied. Expanding orally on the intended appeal, Mr. Mwema relied on Clause 5 and submitted that, once the Applicant exercised the option, the tenancy terminated and the parties assumed the roles of intending vendor and intending purchaser. Counsel maintained that the Respondent's continued demand for rent, and the judgment founded upon a continuing tenancy, therefore raise a substantial question of law of some general importance, options of this kind not being a common feature of leasing practice in this jurisdiction.

The Applicant's case must, however, be understood in the setting of the transaction it actually proposed. The offer of 2nd August, 2021 was for US$1,050,000, rather than the US$2,000,000 floor applicable during the initial contractual period, and was made at a time when Clause 5 required the price to be determined by the market. The proposed 10% commitment fee would have amounted to US$105,000, with the balance dependent upon bank financing. The Applicant has not pointed, for purposes of this application, to evidence that the proposed commitment fee was paid, that a market valuation was jointly adopted, that a purchase price was agreed, or that the Respondent accepted the offer. It instead relies on the legal consequence which it says followed from the notice exercising the option and on its contention that US$130,000 subsequently paid should have been treated as payment towards the purchase rather than rent.

On irreparable damage, counsel relied on the definition adopted in ***Beeline Travel Care (U) Limited and Another v Finance Trust Bank Limited, Civil Application No. 67 of 2023, [2023] UGCA 197***, drawing on ***Black's Law Dictionary, 9th Edition***, that irreparable damage is damage "that cannot be easily ascertained because there is no fixed pecuniary standard measurement." It was submitted that the Applicant, a legal practice of some thirty staff, was compelled to suspend its operations for close to two months following the eviction; that the pending application for attachment and sale of the individual partners' properties, if executed, would occasion a permanent deprivation incapable of restitution in specie; and that the garnishee order nisi over the Applicant's operating accounts was paralyzing the conduct of its practice. Counsel relied further on ***Busoga Forestry Co. Limited v Batabane Anatole, Civil Application No. 534 of 2026, [2026] UGCA 79,*** for the proposition that where sums owing are substantial, recovery from a judgment creditor after the fact cannot be assumed.

On security, counsel submitted that the Respondent was not entitled to security for due performance, having already realized the most valuable component of the decree by taking vacant possession. He relied on ***Moses Kalungi v Georgia Kivunja, HCMA No. 22 of 2021, Apollo Mushabe v Mutumba Ismael, Miscellaneous Application No. 225 of 2025, and Margaret Kato v Nalwoga, Supreme Court Civil Miscellaneous Application No. 11 of 2011***, for the now well settled reluctance of courts to impose security for due performance as opposed to security for costs, particularly where the decree holder has already realized a substantial part of the decree.

On the balance of convenience, counsel relied on the passage from ***Beeline case (supra)*** to the effect that the balance lies with the party who stands to suffer more if the other is not restrained, and submitted that the Applicant, already dispossessed

and facing continuing execution, stood to suffer disproportionately. On delay, counsel submitted that the application was filed promptly upon it becoming apparent that the High Court would not determine the earlier application with dispatch, and could not be said to be tainted by any want of diligence.

**The Respondent's Case**

Pursuant to the leave granted at the hearing of 6th July 2026, the Respondent filed an affidavit in reply sworn by Paresh Kumar Ratilal Mehta, a director of the Respondent, together with written submissions in reply settled jointly by Gem Advocates and R. Adam Advocates. The deponent avers that the Applicant's founding affidavits are, save where expressly admitted, false and misleading, and that the application is misconceived and an abuse of the process of court, brought solely to delay the Respondent from enjoying the fruits of a lawful judgment. He avers that the Applicant never disputed non-payment of rent at trial but instead raised what he describes as an inventive contention that it had become an intending purchaser; that the trial court, after a full hearing, rejected that contention and confirmed the relationship to be one of landlord and tenant; that the re-entry of 6th March, 2026 was a lawful and supervised exercise of the Respondent's right of re-entry under the Landlord and Tenant Act, 2022, conducted in the presence of police and Local Council officials, with the Applicant's representatives permitted to remove their property and the remainder inventoried and later collected; and that the Applicant has since relocated and continues to practise from alternative premises without demonstrated disruption.

On the law, counsel for the Respondent framed two issues. On the first, whether the application is properly before this Court, it was submitted, relying on ***Lawrence Musiitwa Kyazze v Eunice Busingye, Supreme Court Civil Application No. 18 of***

***1990, and P.K. Sengendo v Busulwa & Anor, Civil Application No. 207 of 2014***, cited with approval in ***Milton Obote Foundation & 2 Ors v Hon. James Michael Akena, Civil Application No. 069 of 2023***, that an application of this kind must first be filed in the High Court and determined there before recourse may be had to this Court, save in narrow circumstances not said to arise here; that jurisdiction is to be assessed as at the date of filing; and that, the present application having been filed on 23rd June 2026, two days before the High Court ruling of 25th June 2026, it was incompetent at inception. Counsel added that the Applicant's allegations of bias against the trial judge were unsupported, no application for recusal ever having been made below.

On the second issue, counsel submitted that the Applicant has failed to satisfy any of what were framed as five cumulative requirements: an arguable appeal, substantial and irreparable loss, that the appeal would otherwise be rendered nugatory, security for due performance, and a balance of convenience favouring a stay. On arguability, it was submitted, relying on ***Ambiance Distillers v Uganda Revenue Authority, Miscellaneous Application No. 1192 of 2025,*** that the Applicant had not attached any Memorandum of Appeal and that, prima facie, an unaccepted offer to purchase does not amount to an enforceable contract, such that nothing before the Court disclosed a bona fide arguable ground. On loss, counsel relied on ***Sanyu Patrick v Ernest Kabyanga & Anor, Civil Application No. 0160 of 2024, Orute Aloysius & 4 Ors v Alupo Esther, Civil Application No. 960 of 2023, and Roko Construction Limited v Pramukh Steel Limited, Civil Application No. 0275 of 2025***, for the proposition that a purely monetary decree does not ordinarily occasion irreparable loss, since the successful party's admitted capacity to refund answers any concern of that kind; it was further submitted that the Applicant's own pleaded case at trial, that sums paid after it expressed interest in purchasing the suit

property were part-payment of the purchase price, sits uneasily with its present contention that repayment of those very sums would cause it irreparable harm. On security, counsel relied on ***Roko Construction (supra) and Haruna Sentongo v I&M Bank Ltd, Civil Application No. 173 of 2023, [2023] UGCA 753***, for the proposition that failure to offer security for due performance is, without more, sufficient to disentitle an Applicant to a stay, and criticized the Applicant's proposal to furnish security limited to the taxed costs of UGX 22,044,200 as manifestly inadequate against a decree of this magnitude, urging that any stay be conditioned instead on deposit of the entire decretal sum. On the balance of convenience, counsel relied on City Council of ***Kampala v Donozio Musisi Sekyaya, Civil Application No. 3 of 2000***, and submitted that the Respondent, having been kept out of rent since 2015, stood to suffer disproportionately from any further delay, and that equity did not favour an Applicant who had occupied valuable commercial premises for years without paying for the privilege under either legal relationship it asserted.

**The Applicant's Rejoinder**

In an affidavit in rejoinder sworn by Kagoro Friday Roberts and in written submissions in rejoinder, the Applicant joined issue with the Respondent on substantially all material points. It maintains that it did not default on its rent obligations but rather exercised a genuine option to purchase which terminated the tenancy; that, that being so, it was under no obligation to vacate the suit premises save through due process; that the Respondent's re-entry did not comply with the ninety-day notice mandated by the Constitution (Land Evictions) (Practice) Directions, 2021, and cannot be regularized merely by characterizing it after the fact as a lawful exercise of a landlord's rights; and that several of its properties removed during the re-entry were damaged or remain unaccounted for.

On jurisdiction, the Applicant does not accept that ***Lawrence Musiitwa Kyazze (supra)*** lays down an inflexible rule. It points to the passage in that very authority recognizing that this Court may intervene to preserve the status quo where the High Court has been unable to deal with an application in good time to the prejudice of the parties, and relies on ***Byaruhanga Innocent & Ors v Musimenta Flora & Anor, Civil Application No. 278 of 2019***, for the proposition that this Court and the High Court enjoy concurrent jurisdiction in applications of this nature, exercisable where exceptional circumstances make it unfair to insist that the Applicant await the High Court's determination; it draws an analogy with the self-executing character of the judgment there in issue, submitting that the present decree, which took effect immediately on delivery through the Applicant's eviction, presented a comparable urgency. On arguability, the Applicant submits that the absence of a Memorandum of Appeal is explained by the High Court's continuing failure to avail the certified record of proceedings, and places reliance on a passage from the ruling of the trial judge herself, to the effect that, without making any definitive finding on matters reserved for this Court, the application below had disclosed that the appeal would turn on questions concerning the treatment of evidence of part payment of the rent arrears and the award of damages, and that it sufficed, at that stage, that the complaints were substantial and merited judicial consideration on appeal.

On loss, the Applicant disputes that this application concerns only a simple money decree. It submits that the unlawful eviction closed the firm's operations for nearly two months, disrupting ongoing litigation and causing the loss of client files, which it says is not compensable in damages, relying on Makerere University v Namusisi, Miscellaneous Application No. 658 of 2013, 2013 UGHCLD 74. It further submits that Orute Aloysius (supra) is distinguishable, as the loss there was confined to quantifiable agricultural land, whereas the threatened attachment and sale of

specific, identified properties belonging to its individual partners, together with the garnishment of its operating accounts, would cause a loss transcending mere restitution. On nugatory effect, the Applicant submits that its intended appeal is not confined to the decretal sum but extends to its claimed proprietary interest in the suit property, such that satisfaction of the money decree at this stage would collapse the dispute into an academic exercise, relying on Formula Feeds Ltd & 3 Ors v KCB Bank Ltd, Miscellaneous Application No. 1647 of 2022, for the proposition that an appeal is rendered nugatory where success leaves the appellant with a hollow victory because execution has already taken its course. On security, the Applicant maintains that the Respondent, having already realized the most valuable part of the decree, is not entitled to any further security for due performance.

**Consideration of the Application**

***Whether the Application is Properly Before this Court***

Rule 42(1) of the Judicature (Court of Appeal Rules) Directions requires that, where an application may be brought either in this Court or in the High Court, it be made first in the High Court. The Applicant did so, and the High Court, having heard the matter on its merits, declined to grant a stay. The Respondent objects that the present application, lodged on 23rd June 2026, some two days before the High Court's ruling of 25th June 2026, was incompetent at inception, jurisdiction falling to be assessed as at the date of filing, and relies on ***Lawrence Musiitwa Kyazze v Eunice Busingye (supra) and P.K. Sengendo v Busulwa & Anor (supra)*** for that proposition.

I am not persuaded that the objection should succeed. The very authority on which the Respondent principally relies acknowledges that this Court may intervene to preserve the status quo where the High Court has declined jurisdiction, erred

palpably on the face of the record, or been unable to deal with an application in good time to the prejudice of the parties.

The Applicant moved the High Court for a stay of execution on 3rd March 2026. By the time it filed the present application in this Court on 23rd June 2026, nearly four months had elapsed without a decision from the High Court, during which period the Respondent had already recovered possession of the suit premises and had embarked upon further execution measures. In those circumstances, the Applicant was justified in approaching this Court before the High Court had delivered its ruling. This is precisely one of the exceptional situations contemplated in ***Lawrence Musiitwa Kyazze v Eunice Busingye, Supreme Court Civil Application No. 18 of 1990,*** namely, where the High Court has been unable to dispose of an application for stay in sufficient time and the resulting delay threatens prejudice to the Applicant. The requirement that relief ordinarily be sought first in the High Court is intended to regulate the orderly exercise of concurrent jurisdiction; it is not to be applied so rigidly as to leave an Applicant without effective protection while execution proceeds. The High Court having subsequently dismissed the application on 25th June 2026, before the present application was heard, the objection based upon the two-day overlap between the filing of this application and the delivery of the High Court's ruling is, in any event, devoid of practical substance. Whatever the position at the moment of filing, the High Court had, by the date this application came up for hearing, in fact pronounced itself and refused the relief sought, so that the substance of Rule 42(1) was satisfied before this Court came to act, and no prejudice to the Respondent has been shown to flow from the two-day overlap. I decline to dismiss the application on this ground, without needing to resolve, and expressly declining to resolve, the Applicant's separate suggestion that the delay below was attributable, partiality on the trial judge, an allegation for which

no application for recusal was made and which is not a matter this application is the proper vehicle to determine.

***The Applicable Test***

The conditions governing the grant of a stay of execution pending appeal are settled in ***Hon. Theodore Ssekikubo & Others v Attorney General & Another (supra),*** cited with approval in ***Gashumba Maniraguha v Sam Nkudiye, Supreme Court Civil Application No. 24 of 2015***, and applied by this Court in both ***Beeline Travel Care (U) Limited and Another v Finance Trust Bank Limited (supra) and Omuhereza Basaliza William & Others v National Forestry Authority, Civil Miscellaneous Application No. 146 of 2020, [2025] UGCA 353***. An Applicant must establish a prima facie case or likelihood of success on appeal; that irreparable damage will result, or that the appeal will be rendered nugatory, if a stay is refused; if these are not made out, where the balance of convenience lies; and that the application was instituted without undue delay.

***Prima Facie Case***

The Applicant has lodged a notice of appeal and set out with some particularity the grounds it intends to press, which I understand to include, in substance:

*(i)* That the finding that the Respondent sold, or was entitled to withhold sale of, the leased premises to the Applicant fell outside the pleaded and framed issues;

*(ii)* That the award of US$148,300 in rent arrears disregarded evidence of an antecedent payment of US$130,000;

*(iii)* That US$224,000 was awarded as mesne profits though not specifically pleaded;

*(iv)* That the trial court failed to enter judgment for the Applicant on its counterclaim, notwithstanding a finding that it had exercised its option to purchase;

*(v)* That section 36 of the Land Act, Cap. 236, was misapplied to a dispute of this character; and

*(vi)* That the order for immediate eviction disregarded the timelines prescribed by the Constitution (Land Evictions) (Practice) Directions, 2021.

At the hearing, I indicated, and I remain of the view, that the legal effect of Clause 5 is a matter this Court ought not finally to resolve at this interlocutory stage. The intended appeal will require the appellate panel to determine whether the clause created a true option capable of unilateral exercise, a contractual right of first refusal, or some other preferential right; whether an exercise at a time when price was to be determined by the market converted the relationship before price and the other terms of sale were settled; and what legal consequence followed from the Respondent's acknowledgment but non-acceptance of the offer. Those are questions fit for full argument on the record, not for conclusive determination on affidavits in an application for stay.

That conclusion should not be mistaken for a preliminary endorsement of the Applicant's case. On the material presently before the Court, the asserted exercise of the option left important matters unresolved. The Applicant proposed US$1,050,000; Clause 5, by then, contemplated a price determined by the market; the Respondent stated that the proposal fell below its expectations; and no accepted counter-offer, agreed valuation, or concluded purchase agreement has been shown. Nor has the Applicant demonstrated payment of the 10% commitment fee which it itself proposed, or payment of any otherwise agreed purchase price. The payments

upon which it relies are contested in character: The Applicant treats them as purchase money, while the Respondent and the High Court treated them as rent, including the US$50,000 paid after the demand of 30th May, 2023. These matters may ultimately weigh against the appeal, but they do not deprive it of arguability.

The Respondent objects that no Memorandum of Appeal has been attached, and that, prima facie, an unaccepted offer to purchase cannot found an enforceable contract. I accept, as the Applicant explains, that the absence of a filed Memorandum of Appeal is a consequence of the High Court's continuing failure to avail a certified record of proceedings, and does not by itself indicate an absence of arguable grounds, particularly where, as here, the substance of those grounds has been set out with reasonable particularity in the founding affidavit. I note, further, that the trial judge herself, in refusing the stay below, recorded that the application disclosed an appeal to be argued on questions concerning the treatment of evidence of payment and the award of damages, and that it sufficed, at that stage, that the complaints were substantial and merited judicial consideration on appeal. It suffices, applying the approach taken in ***Sewaalinte v Kayizzi, Civil Miscellaneous Application No. 237 of 2023,*** and the persuasive reasoning of the Kenyan Court of Appeal in ***Stanley Kang'ethe Kinyanjui v Tonny Ketter & 5 Ors [2013] eKLR,*** that an arguable appeal need not be one which must necessarily succeed, but one which ought to be argued fully before the Court.

I therefore find that the proper construction and legal effect of Clause 5, the characterization of the payments made after 2nd August 2021, and the pleading and proof of mesne profits disclose grounds that are neither frivolous nor vexatious. The first condition is established. The unresolved purchase price, absence of demonstrated acceptance and absence of proof of the proposed commitment fee are,

however, relevant when the Court considers the terms upon which its discretion should be exercised.

***Irreparable Damage or Nugatory Effect***

This condition requires separate treatment for the two components of the decree. Regarding vacant possession and eviction, the evidence establishes that the Respondent regained possession of the suit premises on or about 7th March 2026, a fact Ms. Mugisa submitted and Mr. Mwema did not seriously dispute, and the Applicant itself acknowledges. Whatever view is ultimately taken of the lawfulness of that repossession, a matter this application is not the appropriate vehicle to resolve, the fact of possession having passed cannot be undone by an order of this Court operating, as a stay necessarily does, prospectively. To the extent the application seeks to preserve the Applicant's occupation of the suit premises, that relief has been overtaken by events, and no order of this Court can restore a state of affairs that has already ceased to exist.

As to the monetary component of the decree properly so called rent arrears and mesne profits, I find considerable force in the Respondent's objection. Black's Law Dictionary, 9th Edition, as applied in ***Beeline (supra)*** and relied on by the Respondent in ***Sanyu Patrick v Ernest Kabyanga & Anor (supra)***, defines irreparable damage as damage that cannot be easily ascertained because there is no fixed pecuniary standard of measurement, and it is well settled, as the authorities the Respondent cites confirm, that a money decree does not ordinarily occasion irreparable harm, since a solvent judgment creditor can be made to disgorge what it has recovered should the appeal succeed. The Respondent's evidence of its capacity to refund has not been seriously controverted. More tellingly, the Respondent points out that the Applicant itself pleaded at trial that the very sums now said to be

irrecoverable were part-payment of a purchase price it claims to be owed; it sits uneasily with that pleaded case for the Applicant now to characterize repayment of those same sums as irreparable loss. I accept that criticism, and find that the Applicant has not established irreparable harm in respect of the rent arrears and mesne profits as such.

The Applicant separately contends that execution of the monetary decree would render the appeal nugatory, in the sense that satisfaction of the decree would extinguish the dispute and leave any eventual success an academic exercise. He relies on ***Formula Feeds Ltd & 3 Ors v KCB Bank Ltd (supra)***. I am not persuaded. The principal question in the intended appeal, whether the tenancy continued after the Applicant purported to exercise the option to purchase, will remain capable of effective determination even if the monetary decree is satisfied in the meantime. Indeed, the Respondent acknowledges in its affidavit in reply that, should the appeal succeed, the Court may make appropriate consequential and restitutionary orders, including an order treating any sums paid in execution as a credit towards whatever purchase price may ultimately be found payable. Accordingly, payment of the decretal sum would not extinguish the controversy, deprive the appellate court of the ability to grant effective relief, or reduce a successful appeal to a merely academic victory. I am therefore not persuaded that execution of the monetary decree would render the intended appeal nugatory.

The position is different, however, in respect of the pending application for attachment and sale of properties belonging to the Applicant's individual partners, together with the garnishee order nisi over the Applicant's operating accounts. These are not the same fund the Applicant once characterized as part-payment of a purchase price; they are the personal, identified assets of individuals who are not themselves judgment debtors in Civil Suit No. 0621 of 2023, pledged to satisfy a corporate

liability. The attachment and forced sale of specifically identified immovable property stands on a different footing from an ordinary money decree, as this Court recognized in ***Beeline (supra),*** where a suit property sold to a third party before an appeal could be heard was found not to be readily undone. A purchaser who acquires property at execution sale cannot invariably be dislodged merely because the underlying judgment is later reversed. I accept that the threatened sale of specific, identified properties belonging to the Applicant's partners carries a similar character of finality, distinguishable from ***Orute Aloysius & 4 Ors v Alupo Esther (supra),*** where the loss in question was confined to quantifiable agricultural land. Further, the freezing of the Applicant's operating accounts across three banks threatens the continued conduct of a professional practice in a manner a subsequent refund, even if forthcoming, would not fully remedy. I am not satisfied that the Respondent's assurance of financial capacity, however genuine, adequately answers this particular species of harm, which is qualitative and not merely quantitative. To that limited extent, I find the second condition established.

***Balance of Convenience***

Given my finding of irreparable harm in respect of the attachment and garnishee measures, it is unnecessary to determine the general balance of convenience between the parties. I observe only, for completeness, that a decree for money, unlike land already parted with or a garnisheed account already disbursed, remains capable of satisfaction out of the Applicant's assets, or out of the security fixed below, whenever the appeal is finally disposed of. Against this must be weighed the Respondent's evidence, which I accept for present purposes, that rent fell into arrears over a substantial period and that it has been kept out of the monetary fruits of its judgment. The Applicant has already lost possession, but that does not satisfy or secure the

distinct monetary component of the decree. This is real prejudice and calls for security that is both meaningful and proportionate.

***Delay***

It is not disputed that the Applicant lodged its notice of appeal within days of judgment, moved the High Court for a stay within days thereafter, and moved this Court promptly upon it becoming apparent that the High Court would not determine that application without further delay. The Respondent's complaint on this score is, in substance, the jurisdictional objection already addressed above, rather than a distinct allegation of dilatory conduct in the traditional sense. I find that the application was instituted without undue delay.

***Security for Due Performance***

The Respondent submits that the Applicant has offered no meaningful security, its proposal being confined to the taxed costs of UGX22,044,200, and urges that any stay be conditioned upon the deposit of the entire decretal sum. That sum is said to approach US$400,000 when the awards of rent arrears, mesne profits, general damages, interest and costs are aggregated. The Applicant, on the other hand, maintains that no security should be required because the Respondent has already recovered possession of the premises.

Neither position commends itself to me. Recovery of possession satisfied the possessory component of the decree, but it did not discharge or secure the awards of rent arrears, mesne profits, general damages, interest and costs. To stay execution of the entire monetary decree without requiring meaningful security would place upon the Respondent the whole risk of further delay in realizing the fruits of a judgment obtained after a full trial. Conversely, requiring security equivalent to the entire

monetary decree may impose a disproportionate burden upon the Applicant and risk stifling the intended appeal.

The requirement of security is not an inflexible or jurisdictional precondition to the grant of a stay under Rule 6(2)(b). In ***Margaret Kato and Another v Nuulu Nalwoga, Supreme Court Civil Miscellaneous Application No. 11 of 2011***, the Supreme Court explained that the Rules do not make the deposit of security for due performance a mandatory condition for the grant of a stay. Whether security should be required, and the nature and extent of such security, remain matters of judicial discretion, to be determined according to the circumstances of each case and upon such terms as the Court considers just. The Court may therefore dispense with security, require security for the whole decree, or limit it to an appropriate part of the decree, provided that the terms imposed fairly balance the Applicant's right of appeal against the Respondent's right to the fruits of its judgment.

In the present case, the award of US$148,300 in rent arrears stands on a somewhat distinct footing. The High Court found that the Applicant remained a tenant after its offer of 2nd August 2021 was not accepted and that rent consequently continued to accrue. It further found that the Applicant had paid the rent demanded up to 15th December 2021, that a subsequent payment of US$50,000 was made in partial settlement of the accrued rent, and that US$148,300 remained outstanding. Although the Applicant challenges those findings and contends that payments made after the purported exercise of the option ought to have been treated as payments towards the purchase price, the decree remains valid and enforceable unless and until it is reversed on appeal.

The Applicant also alleges that the High Court failed to take into account payments amounting to US$130,000. The payment instruments placed on record, however,

describe the payments as rent or instalments of rent; they do not identify them as payment of the proposed commitment fee or as part-payment of an agreed purchase price. The High Court found that rent had been paid up to 15th December, 2021 and that payments made during the subsequent period had been taken into account when determining the outstanding arrears. The Applicant's complaint therefore appears to concern the proper characterization and allocation of those payments rather than their complete omission from the accounts. Whether they ought ultimately to be treated as rent or as purchase money is a matter to be determined in the intended appeal.

There is a further consideration arising from the Applicant's own case. Its offer of US$1,050,000 contemplated payment of a commitment fee equivalent to 10% of the proposed purchase price, namely US$105,000, with the balance to be financed by a banking institution. The materials placed before this Court do not demonstrate that the proposed commitment fee was ever paid. Nor do they disclose an agreed market valuation, an accepted purchase price, or payment of any other settled purchase consideration. If the Applicant regarded itself as an intending purchaser rather than a continuing tenant, one would reasonably have expected it to tender at least the commitment fee it had itself proposed.

I am mindful, however, that this Court must not, at this interlocutory stage, finally determine whether the sum of US$148,300 was properly payable as rent or whether the payments relied upon by the Applicant ought to have been characterized as purchase money. The purpose of security is not to compel advance satisfaction of the decree, but to preserve a meaningful measure of protection for the Respondent pending determination of the intended appeal.

Consistently with the principle in ***Margaret Kato and Another v Nuulu Nalwoga* (supra),** I consider it just and proportionate to require the Applicant to furnish security in the sum of US$100,000. That amount constitutes a substantial part of the US$148,300 decreed as rent arrears and affords the Respondent meaningful protection against further delay. It also approximates the US$105,000 commitment fee which the Applicant itself proposed when offering to purchase the property for US$1,050,000. At the same time, it avoids requiring security for the whole monetary decree, substantial components of which remain contested on appeal. Whether furnished by a deposit in Court or by an unconditional bank guarantee, the security will preserve the parties' respective positions without amounting to advance satisfaction of the decree or prejudging the merits of the intended appeal

**Decision of the Court**

For the reasons given, I find that the Applicant has established that the intended appeal is arguable and not frivolous, raises substantial questions deserving determination on appeal, and that the application was brought without undue delay and is properly before this Court, notwithstanding the sequence in which it was filed.

I find that the Applicant has not established irreparable harm or a risk of the appeal being rendered nugatory in respect of the rent arrears and mesne profits properly so called, those sums being recoverable from a Respondent whose capacity to refund has not been seriously controverted, but that it has established irreparable harm of a distinct and qualitative character in respect of the threatened attachment and sale of specific, identified properties belonging to its individual partners and the continued garnishment of its operating accounts.

I find, equally, that no order of this Court can disturb the vacant possession and eviction already effected, that relief in that respect having been overtaken by events.

This ruling has been reached after considering the Applicant's founding and supplementary affidavits and written submissions, the Respondent's affidavit in reply and written submissions in reply, and the Applicant's affidavit in rejoinder and written submissions in rejoinder, together with what transpired at the hearing of 6th July, 2026.

**Orders**

In the result, I make the following orders:

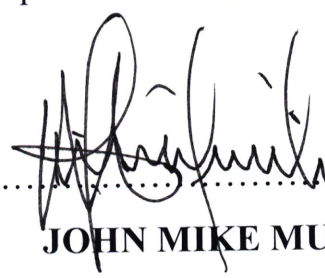
1. The application is allowed on the conditions as stated below.
2. The interim protective order granted on 6th July, 2026 is discharged and is replaced by the orders below.
3. Execution of the monetary component of the decree in Civil Suit No. 0621 of 2023 comprising rent arrears, mesne profits, general damages, interest and costs together with all attachment, garnishee and taxation proceedings arising therefrom, is stayed pending the hearing and final determination of the Applicant's intended appeal.
4. For the avoidance of doubt, this order does not disturb, and shall not be construed as reversing, the orders for vacant possession and eviction already implemented; any grievance touching the lawfulness of that repossession lies elsewhere and not in this application.
5. The Applicant shall, within one month from the date of this order, provide security in the sum of United States Dollars One Hundred Thousand (US$100,000), being a substantial part of the amount decreed as rent arrears, either by depositing that sum in Court or by lodging with the Registrar an unconditional bank guarantee issued by a reputable commercial bank. Any sum deposited in Court shall be placed on an interest-bearing account, and any bank guarantee furnished shall remain valid, pending the final determination of the intended appeal or until further orders of this Court.

6. In default of compliance with order 5 above within the stipulated period, the stay granted under order 3 above shall automatically lapse without further reference to this Court.

7. The costs of this application shall abide the outcome of the appeal.

**I so order.**

**Dated** and delivered at Kampala this ....12th..... day of August 2026.



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**JOHN MIKE MUSISI**

**JUSTICE OF THE COURT OF APPEAL**