

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KISANGA, J.A., MFALILA, J.A., And LUBUVA, J.A.)

CIVIL REFERENCE NO. 7 OF 1994

BETWEEN

1. YALEDI SWAI }
2. JOHN SWAI } APPLICANTS

AND

1. LILIAN MARO }
2. OLIMPIA MAINA } RESPONDENTS

(Reference from the Ruling of the
Single Judge of the Court of Appeal
of Tanzania at Dar es Salaam)

(Mnzavas, J.A.)

dated the 4th day of October, 1994

in

Civil Application No. 18 of 1994

R U L I N G

KISANGA, J.A.:

This reference arises from the ruling of a single Judge
of this Court (Mnzavas, J.A.) refusing to grant a stay of
execution of decree pending appeal.

Very briefly the facts were that in the Probate and
Administration Cause No. 67 of 1992, the High Court granted
letters of administration to the respondents Lilian Maro
and Olimpia Maina in respect of the estate of the late
William Moses Swai. After some time the present applicants
applied to the High Court for the following orders:-

- (1) Extension of time to apply for;
- (2) Revocation of the grant to the respondents Lilian and Olimpia.

There were two other applications which the learned Judge found to be dependent upon and incidental to the outcome of the two applications set out above.

The learned judge considered the application for the extension of time but refused it on the ground that no cause or sufficient cause was shown to warrant an order for the extension of time. Aggrieved by that decision the applicants gave notice of their intention to appeal to this Court. They also applied to this Court for a stay of execution which the single Judge of the Court (Mrzavas, J.A.) refused because it was not shown that the applicants would suffer irreparable loss or injury if a stay was not granted, or that the pending appeal had a probability of succeeding.

In this reference the applicants were represented by Mr. Mselemu, learned advocate, and the respondents were advocated for by Dr. Lamwai, learned advocate. Mr. Mselemu vigorously contended that the applicants will suffer irreparable loss if no restraint is made because the motor vehicles and houses comprising the estate in question will be disposed of.

However, we are in complete agreement with Dr. Lamwai that the application is totally misconceived. As stated earlier the applicants had filed in the High Court a composite application containing two main applications and two incidental ones. One of the main applications was for the extension of time to apply for revocation of the grant previously made to the respondents. The learned Judge considered only the application for the extension of time and disposed of the whole matter solely on that basis. The reading of his ruling makes it plain that he did not consider the application for revocation of the grant. At the conclusion of his ruling he said:

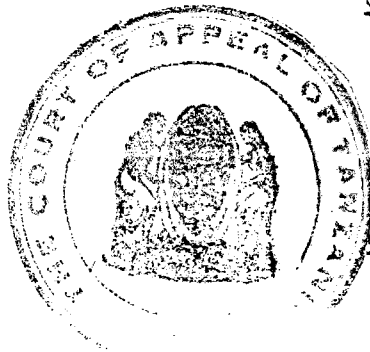
"On the whole the application for
extension of time ... has
no merit and it must fail."

This clearly means that the application for revocation of the grant, which was necessarily dependent upon the application for the extension of time succeeding, could not have been considered.

The question which now arises is this:- Is there anything in the ruling of the learned judge, refusing to extend time, which was capable of execution? The answer is no, in which case there is nothing on which this Court can order a stay of execution. Like the learned single Judge, therefore, we would refuse the application, but for different reasons as set out above. Accordingly the reference is refused ^{with} costs.

DATED AT DAR ES SALAAM THIS 3RD DAY OF JULY, 1995.


R.H. KISANGA
JUSTICE OF APPEAL



L.M. MFALILA
JUSTICE OF APPEAL

D.Z. LUBUVA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


(M.S. SHANGALI)
DEPUTY REGISTRAR