

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 119 OF 2003**

**1. THE HON. ATTORNEY GENERAL  
2. MINISTER FOR FOREIGN AFFAIRS ..... APPLICANTS  
3. BANK OF TANZANIA**

**VERSUS**

**VALERIAN BAMANYA t/a TANZANIA  
ASSOCIATED MERCHANDISE..... RESPONDENT**

**(Application for Stay of Execution from the decision  
of the High Court of Tanzania at Dar es Salaam)**

**(Kileo, J.)**

**dated the 25<sup>th</sup> day of March, 2003  
in  
Misc. Civil Application No. 103 of 2000**

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**R U L I N G**

**MUNUO, J.A.:**

The applicants brought a Notice of Motion under Rule 9 (2) (b) of the Court of Appeal Rules, 1979 seeking stay of execution in Misc. Civil Application No. 103 of 2003 in which Kileo, J. allowed an application for certiorari and mandamus on the 25<sup>th</sup> March 2003 in favour of the respondent, Valerian Bamanya t/a Tanzania Associates Merchandise. The High Court also ordered the applicant to pay the respondent compensation in the sum of US Dollars 21,293. or its equivalent in Tanzanian Currency on the day of payment plus interest thereon at the rate of 10% per annum from the date of the

restoration order of the court on the 8<sup>th</sup> November, 1989 until full settlement. The applicants were further ordered to pay a total sum of Shs. 30,000,000/= damages to the respondent.

As reflected at para 4 the affidavit in support of the application for stay of execution, the applicants were dissatisfied with the decision of the trial court for the reason that the respondent had been duly paid so they are appealing against the whole decision of the High Court. At paragraph 6 of the affidavit in support of the application and during the hearing, Mr. Chidowu, learned State Attorney for the applicants, contended that the applicants will suffer irreparable loss if execution proceeds before the appeal is determined because the respondent will not be able to refund the decretal sum if the appeal succeeds. He cited the case of **Tanzania Posts and Telecommunications Corporations versus B.S. Henrita** in which a single judge allowed an application for stay of execution on the ground that -

The circumstances of the present case were such that even though the loss and damage that the applicant was likely to sustain if stay of execution were not granted could be atoned by way of

damages, there were still lingering doubts whether a stay was not warranted on account of other factors, that the prospects of appeal and the balance of convenience.

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The Court granted stay under Rule 9 (2) (b) on condition that the applicant deposited the decretal amount in court. The applicants' counsel asserted that the applicants would suffer irreparable loss if execution proceeds because in the event of the appeal succeeding, the respondent would not be able to refund the money. Mr. Chidowu further cited the case of **Tanzania Railways Corporation versus Mrs. Augusta Upendo Rweyemamu**, Civil Application No. 106 of 2004, Court of Appeal of Tanzania (unreported) in which the Court granted stay of execution for the reason that there was a serious triable issue in the intended appeal. Similarly, there is a serious triable issue in the pending appeal, that is, the issue of awarding compensation in a prerogative cause which is unlawful so the Court should grant stay of execution pending the determination of the appeal, Mr. Chidowu asserted. The Court, the learned State Attorney pointed out, had taken the same approach in the case of **The General Manager Steel Structures and System Ltd. versus Jamila Mtunzi and Others** Civil Application No. 12 of 2004 Court of Appeal of Tanzania (unreported) in which the Court stayed execution pending appeal and observed:

“The amount involved is quite substantial. It would be dangerous to allow such a substantial amount to be paid to such people of unknown means of living with dubious residential contact. In the event the applicant succeeds in his appeal he can hardly recover his money whereas if the applicant’s appeal fails, there is nothing indicating that he will not be able to pay the respondents.”

It is the prayer of the learned State Attorney that execution be stayed pending appeal against the decision of the High Court because in the event of the appeal succeeding, the applicants will pay the decretal amount.

Ms. Rwechungura, learned advocate for the respondent, opposed the application on the ground that the two grounds of appeal in the Memorandum of Appeal are silent on the decretal sum of US Dollars 21,293. which means that aspect of the decision is not contested so execution should proceed in respect of the payment of the said sum which has been outstanding since 1989. She contended, furthermore, that only interest on the decretal amount is challenged in ground

two of the appeal so the application for stay of execution is not sustainable in law.

With regard to irreparable loss and the balance of convenience, counsel for the respondent urged that the respondent is pecunious in that he has property in a prime area of the City as evidenced by his certificate of occupancy annexed to the supplementary counter-affidavit so he would be able to refund the decretal amount if the appeal succeeds. On the balance of convenience, counsel for the respondent argued, stay of execution ought to be withheld to enable the respondent to enjoy the fruits of his decree.

The issue is whether there is ground for staying execution pending the determination of Civil Appeal No. 79 of 2005.

The two grounds of appeal reflect the applicants' dissatisfaction with the award of monetary damages and interest thereon in a prerogative action. The Notice of Appeal, however, shows that the applicants are challenging the whole decision in Miscellaneous Civil Application No. 103 of 2000 which means the applicants are challenging the award of Shs. 30 million as well as US Dollars 21,293. to the respondent.

The learned State Attorney submitted that the applicants will suffer irreparable loss if execution is not stayed pending the determination of appeal in that the respondent would not be able to refund the decretal amount if he loses the appeal. Counsel for the respondent, however, maintains that the respondent has a sound financial footing and property under the certificate of occupancy annexed to the respondent's supplementary affidavit so he will be able to refund the decretal amount if the appeal is determined against him. She maintained that the respondent should, therefore, not be deprived of the fruits of his decree considering that the restoration order of the US \$ 21,293. was upheld in Criminal Appeal No. 17 of 1990 after it was issued on the 8<sup>th</sup> November, 1989 by the District Court.

As rightly observed by the learned State Attorney, the said certificate of occupancy bears no valuation certificate to show that the property thereon, i.e. Plot No. 33/1 Block AA Mchikichini, Ilala, Dar-es-Salaam can stand as security for the decretal amount of over Shs. 50 million shillings. On the contrary, if stay of execution is granted, the applicants would have no difficulty discharging the decretal amount plus interest thereon if the appeal fails. On the balance of convenience, therefore, stay of execution is granted as prayed.

Costs to abide the result of the appeal.

DATED at DAR ES SALAAM this 27<sup>th</sup> day of  
September, 2005.

E.N. MUNUO  
**JUSTICE OF APPEAL**

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

( S.A.N. WAMBURA )  
**SENIOR DEPUTY REGISTRAR**