

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CIVIL APPLICATION NO. 2 OF 2011

(CORAM: OTHMAN, C.J., MSOFFE, J.A., And JUMA, J.A.)

**JOHN ACKLEY MATOYI APPLICANT
VERSUS**

**KHALID BAKARI KILEWO RESPONDENT
(Application from the decision of the Court of Appeal of Tanzania
(Land Division) at Moshi)**

(Mussa, J.)

**dated the 13th day of May, 2011
in
Misc. Land Appeal No. 13 of 2010
.....**

RULING OF THE COURT

22 & 25th March, 2013

MSOFFE, J.A.:

This is a brief matter. It is an application for stay of execution taken at the instance of JOHN ACKLEY MATOYI, the applicant. The application is seeking stay of execution of the decree of the High Court (Land Division) at Moshi dated 13/5/2011 by Mussa, J. (as he then was) in Misc. Land Appeal No. 13 of 2010. The application is by way of a notice of motion and is supported by the affidavit of the applicant.

Briefly, from the record before us it is discerned that the parties are involved in a dispute involving a farm boundary where at first the Uchira Village Land Council tried to mediate them in their differences over the land. In the

process, the Council bestowed upon itself an adjudicatory role by demarcating a new boundary separating the parties. This attempt did not work in that the dispute between the parties persisted. In view of this state of affairs, the respondent herein referred the matter to the Kirua Vunjo Ward Tribunal which adjudged him the winner. Dissatisfied, the applicant appealed to the Moshi District Land and Housing Tribunal which allowed the appeal. On further appeal by the respondent to the High Court the applicant lost hence the intention to appeal to this Court against that decision.

Rule 11(2) (d) (i) of the Tanzania Court of Appeal Rules, 2009 reads:-

(d) no order for stay of execution shall be made under this rule unless the Court is satisfied-

*(i) that **substantial loss may result** to the party applying for stay of execution unless the order is made.*

(Emphasis supplied.)

Under paragraph 11 of the applicant's affidavit in support of the notice of motion he has averred thus:-

11. I have great apprehension that the respondent herein has definitely entered upon the suit land with the view of alienating the same by way of sale, without my consent and/or knowledge which means that the respondent's action is aimed at breach of the peace.

At the hearing of the application the applicant reiterated the contents of the above paragraph and urged that they are true. On the other hand, the respondent in both his affidavit in reply and oral submission before us denied that he is in the process of selling the disputed piece of land.

In our considered opinion, the contention made above by the applicant may or may not necessarily be true. However, in our sense of justice in view of the rival claims over the disputed piece of land and the applicant's apprehension that the respondent intends to sell the land, our sense of justice dictates that it is safe to grant the application. We say so because assuming the applicant's apprehension is true, and the respondent eventually sells the land, the applicant is most likely going to suffer substantial loss which might not be easy to recover if he wins in the intended appeal. If, for instance, he wins it will not be easy to recover the land from a third party. In the process of recovery he will most likely suffer substantial loss. It is for this single reason that the interests of justice demand that the *status quo* be maintained for the time being pending the

outcome of the intended appeal or any other order that may eventually be made in the matter.

For the foregoing reason, this application has merit. We hereby grant it with costs.

DATED at ARUSHA this 22nd day of March, 2013.

M.C. OTHMAN
CHIEF JUSTICE

J.H. MSOFFE
JUSTICE OF APPEAL

I.H. JUMA
JUSTICE OF APPEAL

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


Z.A. Maruma
DEPUTY REGISTRAR
COURT OF APPEAL