

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

(CORAM: MBAROUK, J.A., LUANDA, J.A., And MUSSA, J.A.)

CIVIL APPLICATION NO. 24 OF 2015

**POLICARPY MARO.....APPLICANT
VERSUS
ANNA PETER.....RESPONDENT**

**(Application for an order of stay of execution from the decision of the High
Court of Tanzania at Arusha)**

(Massengi, J.)

Dated 19th day of June, 2015

in

Misc. Land Appeal No. 4 of 2015

RULING OF THE COURT

25th & 26th February, 2016.

LUANDA, J.A.:

This is an application for an order of stay of execution. The application has been made under Rule 11 (2) (b) of the Court of Appeal Rules, 2009 (the Rules).

Briefly the historical background giving rise to this application is to this effect. The respondent successfully sued the applicant at Moivo Ward Tribunal for a recovery of a piece of land. Dissatisfied with that decision, the

applicant appealed first in the District Land and Housing Tribunal of Arusha where he lost. He then went to the High Court of Tanzania (Arusha Registry) again he was not successful. The applicant intends to appeal to this Court. He accordingly lodged a Notice of Appeal in time. While the applicant was in the process of appealing to this Court, he learned that the respondent has started taking step to execute the decree, hence this application.

In his affidavit in support of the Notice of Motion (paras 3-8) the applicant first expressed his dissatisfaction in the way the matter was handled in Ward Tribunal, District Land and Housing Tribunal and the High Court to have not considered the evidence. And so he said there are some points of law worth to be determined by the Court. Paragraphs 9-10 somehow are relevant to the application. For ease reference, we reproduce them hereunder:-

9. *That the Respondent has filed an Application for execution of decree before the District Land and Housing Tribunal of Arusha and if the same is executed I will suffer irreparable loss as the execution will involve demolition of dwelling house (3 rooms).*

10. That I have taken essential steps by filing Notice of Appeal and have applied for copies of the relevant documents for purposes of preparation of the record of Appeal as a matter of procedure and practice.

*The photocopies of the same are collectively annexed and **marked as annexure "M4"** to form part and parcel of the affidavit.*

When the application was called on for hearing, the applicant told the Court that he adopted his affidavit and written submission. When we asked the respondent, who appeared in person, unrepresented, she said she was in the process of engaging an advocate from Human Rights Centre. The respondent did not file an affidavit in reply as per the requirement of the Rules. All the same, the Court having read the application, supported by an affidavit and written submission, which basically raised points of law, was of the firm view that the applicant did not meet all the conditions for an application for stay.

To begin with, we wish to reiterate that the Court has discretionary powers to grant the order of stay where the conditions indicated under Rule 11 (2) (d) (i) – (iii) cumulatively are satisfied by the applicant namely:-

- (i) That substantial loss may result to the party applying for stay of execution unless the order is made.
- (ii) That the application has been made without unreasonable delay; and
- (iii) That security has been given by the applicant for the due performance of such decree.

As regard item (i) and (ii) the applicant has met with the requirement namely, he filed the Notice of Appeal on 2/7/2015 and the applicant was filed on 10/7/2015. There is no delay. Turning to substantial loss, paragraph 9 of the affidavit appears to have been satisfied. But the applicant did not give security for costs or give a firm undertaking for security for costs. Since the above condition is not met, the Court cannot grant the order prayed. (See **Jonas Bethwel Temba v. Paulo Kisamo and Another**, Civil Application No. 17 of 2014; **Joram Biswalo v. Hamis Richard**, Civil Application No. 11 of 2013). (Both unreported).

In fine, the application is dismissed with costs.

It is so ordered.

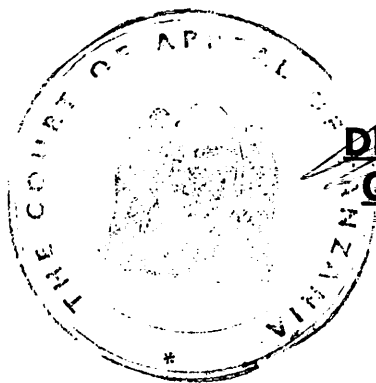
DATED at **ARUSHA** this 25th day of February, 2016.

M. S. MBAROUK
JUSTICE OF APPEAL

B. M. LUANDA
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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



E. Y. Mkwizu
E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL