

IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA
(CORAM: MUSSA, J.A., MWARIJA, J.A., And MWANGESI, J.A.)

CIVIL APPLICATION NO. 21 OF 2015

THE REGISTERED TRUSTEES OF BETHEL
WORLD WIDE CHURCH APPLICANT
VERSUS
ISRAEL LYANGA (Attorney of Valerian Herella) RESPONDENT

**(Application from the decision of the High Court of
Tanzania at Arusha)**

(Mwaimu, J.)

Dated 10th day of April, 2016

In

Land Case No. 19 of 2009

RULING OF THE COURT

1st & 9th March, 2018

MUSSA, J.A.

In the High Court of Tanzania, Arusha Registry, the respondent successfully sued the applicant for various breaches committed on the premises located on Plot No. 251 Block "E" Unga Limited, within Arusha Municipality.

Dissatisfied by the High Court judgment and decree (Mwaimu, J.) which were handed down on the 10th April 2015, the applicants mounted a Notice of Appeal on the 23rd April, 2015. A little later, on the 9th June 2015, she lodged the present application through which she seeks an order

of the Court staying the execution of the High Court decision pending the hearing and determination of the appeal.

The application is by way of a Notice of Motion which was taken out under the provisions of Rule 11(2) (b), (c), (d) and (e) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by the affidavits sworn by Mr. Pantaleo Joseph Shao and Ms. Esther Isaya Ntungu. The application was initially resisted by an affidavit in reply sworn by Mr. Duncan Joel Oola, who turns out to be the respondent's Advocate.

When the application was placed before us for hearing, the applicant was represented by Mr. Ezra Mwaluko, learned Advocate, whereas the respondents had the services of Mr. Duncan Oola, also learned Advocate.

From the very outset, Mr. Oola rose to inform the Court that he was not resisting the application and that both parties are agreed that the costs of the application should follow the event in the appeal. The concession was affirmed by Mr. Mwaluko and both counsel were agreed that the applicant should furnish security for the due performance of the decree in the form of the immovable property comprised in a piece of an unsurveyed

land and house comprising an area of 55 meters by length and 30 meters by width which is located at Murriet area, Sokon 1 ward, within Arusha City.

Having heard counsel from either side we entirely subscribe to the agreement reached by the parties. We only wish interject one or two observations with regard to the requirement of furnishing security under Rule 11(2) (d) of the Rules. To begin with and, as has previously been held, to meet this requirement, the law does not strictly demand that the said security must be furnished prior to the grant of the stay order. A firm undertaking by the applicant to provide security might prove sufficient to move the Court to grant a stay order, provided the Court sets a reasonable time limit within which the applicant should give such security (See the unreported Civil Application No. 11 of 2010 - **Mantrac Tanzania Limited Vs Raymond Costa**. The security, we should add, may be furnished in a variety of ways, the most common being paying money into court or by providing a bank guarantee. That, in our view, does not preclude furnishing security by way of surrendering immovable property which the mode is offered by the parties at hand.

We, accordingly, accede to the security offered by the applicant and, in the final result, it is ordered that the applicant should surrender to court the residential permit of the described premises within twenty one (21) days from the date of the delivery of this Ruling. It is so ordered.

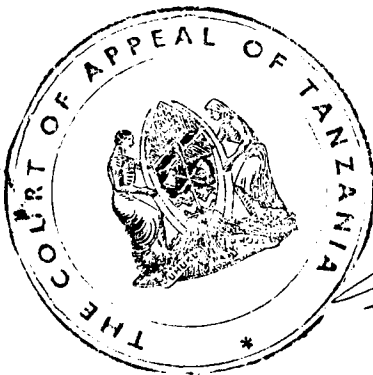
DATED at DAR ES SALAAM this 9th day of March, 2018.

K. M. MUSSA
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

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




E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL