

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

CIVIL APPLICATION NO. 512/17 OF 2020

**FATUMA ISSA ALLY (As a Legal Representative
of the Estate of the Late ALLY ISSA MUSA) APPLICANT**

VERSUS

1. MWINDADDY ALLY MAWILA.....1ST RESPONDENT

**2. MEM AUCTIONEERS AND GENERAL
BROKERS LTD.....2ND RESPONDENT**

3. LUKUMBULU INVESTMENT CO. LTD.....3RD RESPONDENT

**(Application for stay of execution of the Decree of the High Court of
Tanzania (Land Division) at Dar es Salaam)**

(Mgonya, J.)

dated the 15th day of March, 2019

in

Land Case No. 32 of 2014

.....

EX PARTE ORDER

LEVIRA, J.A.:

This is an ex parte application for stay of execution pending the hearing inter partes before the Court. It has been brought by way of notice of motion preferred under Rules 11 (3), 11 (4), 11(4)(A), 11 (5) (a) and (b), 11 (6), 11 (7) (a), (b), (c) and (d) together with Rule 48 (1) of the Tanzania Court of Appeal Rules 2009, Government Notice No. 368 of 2009 as amended by the Tanzania Court of Appeal (Amendment) Rules, 2017, Government Notice No. 362 of 2017, and the Tanzania Court of Appeal (Amendments) Rules, 2019, Government Notice No. 344 of 2019 (the Rules). The notice of motion is supported by an affidavit affirmed by Fatuma Issa Ally, the applicant.

Rules). The notice of motion is supported by an affidavit affirmed by Fatuma Issa Ally, the applicant.

At the hearing of this application, Mr. Mohamed Tibanyendera, learned advocate appeared for the applicant. He firstly adopted the notice of motion and supporting affidavit to form part of his oral submission. He briefly submitted in support of the application that the application complies with the requirements of Rule 11 (7) of the Rules whereby, the notice of appeal, Decree, Judgment of the High Court and the notice of intended execution have been attached in this application. He stated further that the intended execution contains prayers for the applicant to surrender Certificate of Title No. 94131 in respect of plots No. 706 and 707 Block "B" Msasani Village, Kinondoni Municipality Dar es Salaam together with the prayer of arrest and detention of the applicant in civil prison. Therefore, he argued that if this application will not be granted, the applicant stands to suffer irreparable loss including her freedom being curtailed if she will be imprisoned as a civil prisoner.

Mr. Tibanyendera, referred me to paragraph twenty-three (23) of the applicant's affidavit where she stated that, she is ready to furnish security for performance of the decree should this Court find it appropriate to grant the prayer sought in the notice of motion. He thus prayed for the application to be granted.

On my part, having gone through the notice of motion and the supporting affidavit and after hearing the submission of the applicant's counsel, I am of the considered view that the *exparte* application deserves consideration as it meets all the requirements of the law.

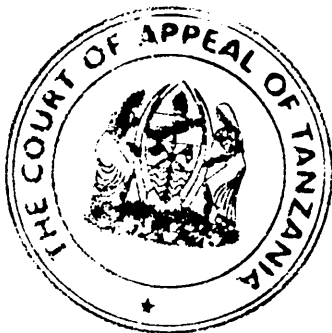
Since the application for stay of execution is still pending, I accordingly under Rule 11 (6) of the Rules, make an ex parte order for stay of execution of the Decree of the High Court of Tanzania, Land Division dated 15th March, 2015 in Land Case No. 32 of 2014 pending the hearing of the application interpartes before the Court on a date to be fixed by the Registrar. Costs be in the cause.

Order accordingly.

DATED at **ZANZIBAR** this 10th day of December, 2020.

M. C. LEVIRA
JUSTICE OF APPEAL

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




H. P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL