

IN THE HIGH COURT OF TANZANIA

AT DAF ES SALAAM

CIVIL APPEAL NO. 34 OF 1994

EMER MAREALLE APPELLANT

versus

EMUMA MOHAMED RESPONDENT

RULING

MAINA, J.

Mr. Muganda has applied to withdraw the appeal which was filed against an order for execution of the decree pending appeal in the main suit. Dr. Lamwai did not resist the application, but he urged the court to grant maintenance for the Respondent at the rate of shs.100,000/= per month pending final determination of the appeal.

The decree for divorce was granted by the District Court on 21 October 1992. Since then, the appeal against the decree of divorce and other orders made by the district court, has not been filed, though notice of intention to appeal was filed immediately. The delay seems to have been due to the failure by the district court to supply to counsel copies of proceedings, judgment and decree. This delay was caused by several factors, but the main one is the fact that there were several applications filed in that Court and in this Court in respect of the execution of the decree. This appeal against the order for execution of the decree is one of those causes which made it necessary for the original file not to be at the district court for preparation of the necessary papers for appeal purposes.

The present appeal would have caused longer delay in processing the main appeal against the decree of divorce. An order has already been made for the stay of execution pending appeal. That order can continue to be in force

until the main appeal is heard. The order for maintenance in favour of the Respondent is among the matters which may be considered when the appeal against the decree of divorce is filed and determined.

It was Dr. Lamwai's view that the Appellant's is responsible for the delay. With respect, I do not agree. The appellant filed the notice of intention to appeal immediately after the decree of divorce was issued in 1992. He has not been able to file to appeal because the copies of proceedings, judgment and decree have not been supplied to him. He filed the present appeal against the interlocutory order to save his house from being sold in execution of the decree. It is not the procedure to appeal against an interlocutory order. The previous applications to this Court were made for similar reasons to avoid execution of the decree, and not to delay the appeal.

As for maintenance to the Respondent, I do not think that the Court can make such an order when it has already granted stay of execution of the decree pending appeal. To order maintenance now is to contradict the very order of stay of execution pending appeal.

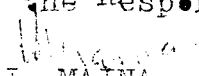
In the result, the application for withdrawal of the appeal is granted. The Appellant shall pay the Respondent's costs, to be taxed by the Registrar.

The oral application by Dr. Lamwai for payment of maintenance to the Respondent pending appeal in the main suit is dismissed.

It is hoped that the District Registrar will ensure that the Appellant is supplied with the necessary copies of proceedings, judgment and decree so that the appeal in the main suit is filed without any further delay.


W. J. MAINA
JUDGE

Delivered in Chambers this 19th day of August 1994
in the presence of Mr. Muganda, counsel for the Appellant,
and in the absence of Dr. Lamwai and the Respondent.


W. J. MAINA
JUDGE 19/8/94