

IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 74 OF 2012

*(Originating from Ilala District Court at Samora Avenue in
Civil Case No. 79 of 2008)*

ABDALLAH SALUM MAGANGA APPLICANT

VERSUS

LUDIS RUTTA RHINO RESPONDENT

Date of last order – 5/10/2012

Date of Ruling – 20/11/2012

R U L I N G

Shangwa, J.

This is an application for stay of execution of the decree of the Ilala District Court dated 25th January, 2012. The decree of whose execution is intended to be stayed was issued in Civil Case No. 79 of 2008. It is for the payment to the Respondent of the Principal sum of Tshs.320,000/= plus interest at the rate of 12% from the date of judgment

to full payment of the decretal amount and general damages of Tshs.2,000,000/=,

The application was brought under a certificate of urgency as the Respondent had applied for execution of the decree by arresting the Applicant and detaining him as civil prisoner. It is supported by affidavit of the Applicant Abdallah Salum Maganga and it was filed under O.XXXIX, r. 5 (1) (2) (3) (a) (b) (c) and (4) of the Civil Procedure code Cap. 33 R.E. 2002.

Under those provisions, it is provided that execution of the decree shall not be stayed by reason of an appeal having been preferred from a decree but that the court may order for stay of execution of the decree in cases where the Applicant has sufficient cause upon which to grant such an order.

Under the same provisions, it is provided that no order for stay of execution shall be made unless the court is

satisfied that substantial loss may result to the Applicant if the order is not made.

In this particular case, the Applicant has stated in his affidavit at paragraphs 9 and 11 respectively that his appeal has overwhelming chances of success and that if the order of stay of execution is not granted, he will suffer irreparable loss. Submitting on his behalf, Mr. Mluge, Advocate said that his appeal has overwhelming chances of success as the trial court exceeded its powers and that if the order of stay of execution is not granted, the Applicant will suffer irreparable loss such as loss of his reputation for being detained in prison.

In his reply submissions, Mr. Victor Ntalula for the Respondent requested the court to dismiss the Application with costs. He submitted that a mere assertion that the Appeal has overwhelming chances of success is not a sufficient cause for granting stay of execution and that the

Applicant's detention in prison is a normal hazard of any judgment debtor and that therefore loss of his reputation for being imprisoned is an ordinary loss.

In my opinion, I agree with counsel for the Respondent that a mere assertion that the intended appeal has overwhelming chances of success is not a sufficient cause for stay of execution of the decree in this case. It is a mere assertion because the record of the trial court shows that the Applicant was given a loan of Tshs.320,000/= by the Respondent which he failed to settle despite several demands. The trial court did establish on evidence that he received the said amount as loan from the Respondent.

After it was so established, the trial Magistrate E. Mwakalinga, RM ordered him to pay the same to the Respondent plus interest and general damages of Tshs.2,000,000/= which he has not paid to date.

Also, I agree with counsel for the Respondent that loss of reputation for being imprisoned as a civil prisoner is an ordinary loss which the judgment debtor may be subjected to after losing the case and in cases where he has failed to satisfy the decree.

In other words, loss of reputation as a result of being imprisoned as a civil prisoner for failure to discharge the decretal amount is not a type of substantial loss that can give this court satisfaction not to grant the order of stay of execution.

For these reasons, I hereby dismiss this application with costs.




A. Shangwa

JUDGE

20/11/2012

Delivered in open court this 20th November, 2012 in the presence of the Applicant and Mr. Michael for Mr. Mluge for the Respondent.




A. Shangwa

JUDGE

20/11/2012