

<p><b>MSH CIVIL APPLICATION NO. 2 OF 2007- COURT OF APPEAL OF TANZANIA AT ARUSHA- MROSO, J.A.</b></p>	<p><b>WILSON NDETARAMO MINJA Vs. JOHN GODSON NGOWI- (Application for Stay of Execution from the Decision of the High Court of Tanzania at Moshi)- (PC) Civil Appeal No. 34 of 2001 -(Munuo, J.)</b></p>	<p>an application by a Notice of Motion under Rule 9 (2) (b) of the Court of Appeal Rules, 1979 for stay of execution.</p> <p>The main ground for applying for stay of execution is that the respondent intends to alienate the subject piece of land and that if that happens, he will suffer irreparable loss.</p> <p><b>When can a Stay of execution be granted-</b> Stay of execution of a court decree is grantable if, among other reasons, there is a real likelihood that if stay is not granted the applicant will suffer irreparable loss. Such a claim has to be demonstrated by facts, not by surmise or fictitious reasons.</p> <p><b>When can a Stay of execution be granted-</b> Stay of execution may also be granted if it is</p>
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		<p>plain that a pending appeal will succeed. If, for example, it is obvious that the decree to be stayed was given by a court which had no jurisdiction or that clearly the suit resulting in the impugned decree was time-barred or that on a balance of convenience it is preferable that stay be ordered rather than that the decree should be executed, then a court can grant stay of execution.</p>
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**IN THE COURT OF APPEAL OF TANZANIA  
AT ARUSHA**

**MSH CIVIL APPLICATION NO. 2 OF 2007**

**WILSON NDETARAMO MINJA ..... APPLICANT  
VERSUS**

**JOHN GODSON NGOWI ..... RESPONDENT**

**(Application for Stay of Execution from the Decision  
of the High Court of Tanzania at Moshi)**

**(Munuo, J.)**

**dated the 24<sup>th</sup> day of April, 2006**

**in**  
**(PC) Civil Appeal No. 34 of 2001**

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**R U L I N G**

**23 & 30 October, 2007**

**MROSO, J.A.:**

This is an application by a Notice of Motion under Rule 9 (2) (b) of the Court of Appeal Rules, 1979 for stay of execution.

The parties have a land dispute. The respondent has been claiming that a piece of land in Mwika, Moshi District belongs to him. The applicant laid a similar claim over that same piece of land. The respondent took the dispute to the Primary Court at Mwika. He was the successful party. The applicant appealed to the District Court of Moshi where he lost again and even when he appealed further to the High Court at Moshi he was yet again unsuccessful. He intends to resort to this Court for a final appeal where he hopes he will vindicate his claim over the *shamba*. In that connection he lodged a notice of appeal and subsequently lodged the present application.

The main ground for applying for stay of execution is that the respondent intends to alienate the subject piece of land and that if that

happens, he will suffer irreparable loss. Not only will he have lost the particular piece of land, but even if he were to get monetary compensation, he will not be able to buy another piece of land of equivalent quality and in the same locality.

At the hearing of the application the applicant was represented by Mr. A. J. Akaro, learned advocate, and the respondent fended for himself. Mr. Akaro elaborated on what the applicant stated in his affidavit in support of the Notice of Motion. He candidly informed the Court that there is no tangible evidence that the respondent intended to dispose of the disputed land by selling it or by alienating it in any other manner. It was just a strong suspicion that the respondent may be planning to alienate it. There is also a claim that although the respondent has been in physical possession of the plot for the last two to three years, his client was in physical possession of it in the past.

The respondent who had filed an affidavit in reply categorically denied that he ever contemplated alienating the plot. He said that the applicant had never been in possession of it and that he – the respondent – took possession of the plot soon after his grandfather's

maternal uncle died in 1999. That uncle was given possession of it by the grandfather of the respondent. He said that although all the courts below found in his favour, that the disputed piece of land was his rightful property, the applicant is frustrating his plans to develop it.

The respondent also wondered if the application is made *bona fide*. He said the High Court judgment which the applicant claims he wants to challenge in an appeal to this Court was delivered in April, 2002. A notice of appeal was lodged in May of the same year but since then, which is now over 5 years, no other steps have been taken to prosecute the appeal. Mr. Akaro said they had not to-date obtained a copy of the proceedings from the High Court, even though there had been frequent visits to the High Court to inquire about those copies. He said it was the applicant in person who was making the follow up. The applicant however said it was his advocate who was making the follow up.

It would appear that neither the applicant nor his advocate has made any real attempt to obtain copies of the proceedings of the High Court for appeal purposes or they would not have made the conflicting

statements. There is no substantial reason why stay of execution should be granted. What was put forward as the ground for the application, that the respondent was making plans to dispose of the subject piece of land, turned out to be an unfounded rumour, mere surmise.

Stay of execution of a court decree is grantable if, among other reasons, there is a real likelihood that if stay is not granted the applicant will suffer irreparable loss. Such a claim has to be demonstrated by facts, not by surmise or fictitious reasons. Stay of execution may also be granted if it is plain that a pending appeal will succeed. If, for example, it is obvious that the decree to be stayed was given by a court which had no jurisdiction or that clearly the suit resulting in the impugned decree was time-barred or that on a balance of convenience it is preferable that stay be ordered rather than that the decree should be executed, then a court can grant stay of execution. Otherwise a party who gets from a court a decree in his favour is entitled to enjoy the fruits of his success, even if the other party wishes to challenge such success in an appeal. If the decree holder is to be prevented by the court from enjoying the fruits of his

success, then there must be good reasons for the court to take such unusual step.

I could find no valid reason for ordering stay of execution in this application. It follows that I must dismiss it and the respondent is to get his costs. It is so ordered.

GIVEN AT ARUSHA this 30<sup>th</sup> day of October, 2007.

J. A. MROSO  
**JUSTICE OF APPEAL**

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

(I. P. KITUSI)  
**DEPUTY REGISTRAR**