

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: MWARIJA, J.A., KITUSI, J.A., And MAKUNGU, J.A.)

CIVIL APPLICATION NO. 54/17 OF 2020

ASILE ALLY SAID APPLICANT

VERSUS

IRENE REDENTHA EMMANUEL SOKARESPONDENT

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

(Wambura, J.)

Dated the 25th day of May, 2018

in

Land Case No. 363 of 2015

.....

RULING OF THE COURT

19th & 26th August 2022

MAKUNGU, J.A.:

At the hearing of this application for stay of execution, Ms. Elizabeth John Mlemeta and Ms. Stella Simkoko, both learned advocates represented the applicant and the respondent, respectively.

Before we invited Ms. Mlemeta to address us on the grounds of the application, we requested Ms. Simkoko to give her stand on the application. She did not essentially oppose the application and prayed that the same be granted with an order that parties bear their own costs. However, she urged

the Court to order the applicant to provide sufficient security for the due performance of the decree as required by law.

Ms. Mlemeta welcomed the concession as well as the prayer that each party should bear own costs.

This Ruling is only in respect of the security for the due performance of the decree, a requirement under rule 11(5) of the Tanzania Court of Appeal Rules, 2009 as amended ("the Rules"). Here a brief background of the matter becomes necessary.

Before the High Court of Tanzania, Land Division, the respondent filed Land Case No. 363 of 2015 against the applicant (as 1st defendant) and Benezet Rweyemamu (as 2nd defendant) who is not a party to this application praying for, *inter alia*, a declaration that the sale of the house on Plot No. 147 Block H, in Temeke Municipality within the City of Dar es Salaam (the suit premises) is null and void and order the applicant to give vacant possession thereof.

The respondent won the suit whereby the High Court, Wambura, J (as she then was) in a decision dated 25th May, 2018 declared the sale of the suit premises to be null and void and the applicant to give vacant possession thereof.

The applicant is aggrieved and having filed a notice of appeal followed by a memorandum of appeal, she has preferred this application by a notice of motion under rule 11(3),(4),(5),(6) and (7) of the Rules seeking an order of stay of execution.

While Ms. Simkoko urged the Court to order the applicant to provide sufficient security for due performance of the decree, the applicant in paragraph 10 of her supporting affidavit undertakes to give security as will be ordered by the Court. We have considered this condition and found that the law under rule 11(5) (6) of the Rules is not specific on the type or amount of security to be furnished. Therefore, it is the Court which is left with discretion to determine security to be provided which is dependent on the circumstance of each case.

After having considered the circumstances of this case where the impugned decree is not monetary, we have in the end found it appropriate to order the applicant to furnish security for the due performance of the decree suiting the particular circumstances of the case.

As security for the due performance of the decree we order that the applicant shall execute a bond committing herself to maintain the status quo of the suit premises which is subject of the decree within fourteen (14) days

from the date of delivery of this ruling. As agreed by the parties, they shall bear their own costs.

It is so ordered.

DATED at DAR ES SALAAM this 26th day of August, 2022.


A.G. MWARIJA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

O. O. MAKUNGU
JUSTICE OF APPEAL

The Ruling delivered this 26th day of August, 2022 in the presence of Ms. Elizabeth John Mlemeta, learned counsel for applicant also holding brief of Ms. Stella Simkoko, learned counsel for Respondent is hereby certified as a true copy of the original.




G.H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL