

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 487/17 OF 2016

HAMIS MACHA SANCHO..... APPLICANT

VERSUS

JOYCE BACHUBILA..... RESPONDENTS

**(Application for Extension of time to file Stay of Execution from the
Judgment and Decree of the High Court of Tanzania
(Land Division) At Dar es Salaam)**

(Ndika, J.)

Dated the 4th day of December, 2015

In

Land Appeal Case No. 50 of 2015

.....

RULING

15th & 22nd June, 2017

MUGASHA, J.A.:

This is an application for extension of time to file stay of execution by notice of motion brought under rule 10 of the Court of Appeal, Rules, 2009. The grounds canvassed by the applicant (**HAMIS MACHA SANCHO**) in the notice of motion are as follows:-

1. That since the delivery of Judgment and before that, the applicant by reason of his old age was sick suffering from high blood pressure which incapacitated him to apply for the stay of execution.

2. That the applicant will suffer substantial and irreparable loss which will render him homeless if the application is not granted.

The applicant's affidavit is in support of the motion. The respondent (**JOYCE BACHUBILA**) did not file an affidavit in reply in opposition of the application. At the hearing of the application parties appeared in person.

To understand the background to this application, it is imperative to give a brief account of underlying facts as gathered from the notice of motion and the accompanying documents as follows: The applicant was the 2nd appellant in Land Appeal No. 50 B of 2015 in High Court (Land Division. On 4th December, 2015, the appeal was dismissed. On 8th December, 2015, the applicant filed notice of appeal seeking to challenge the decision of the High Court. Subsequently, he applied and obtained leave to appeal to the Court.

At the hearing of the application, the applicant adopted his deposition the affidavit which is to the effect that, due to illness from the date of delivery of the impugned decision, he delayed to apply for stay of execution and this is what makes him to seek extension of time to file the respective application.

On the other hand, at the hearing the respondent challenged the application. She contended that the applicant was not sick and he was to

delay her execution of the judgment and the decree. She urged the Court to dismiss the application. The Court prompted the respondent to explain on what made her not to file an affidavit in reply to oppose the application. She replied to have knowledge of the existence of the present application, made its follow up at the Registry and she was informed that the matter will be fixed for hearing. However, she was not aware of the modalities of filing the affidavit in reply.

In rejoinder, the applicant reiterated that, it is the illness which made him to delay to apply for stay of execution.

From the respective contentions of the parties the pertinent issue for determination is whether the applicant has shown good cause to warrant the Court to exercise its judicial discretion under rule 10 which states:-

"The court may, upon good cause shown, extend time limited by these rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by these Rules, whether before or after expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time so extended."

what amounts to good cause was said by the Court in the case of **TANGA CEMENT COMPANY LIMITED v JUMANNE D. MASSANGA AND AMOS A. MWALWANDA CIVIL APPLICATION NO. 6 OF 2001** where **NSEKELA JA** said:

"What amounts to sufficient cause has not been defined. From decided cases a number of factors have to be taken into account including whether or not the application has been brought promptly, the absence of any valid explanation for delay, lack of diligence on the part of the applicant"

The Court was confronted with a similar scenario, in the cases of **JOHN DAVID KASHEKYA VS THE ATTORNEY GENERAL**, Civil Application No. 1 of 2012 and **EMMANUEL R MAIRA VS THE DISTRICT EXECUTIVE DIRECTOR BUNDA DISTRICT COUNCIL**, Civil Application No. 66 of 2010 (all unreported). The Court said, the reason of sickness given by the applicant is sufficient reason for granting extension of time.

It is settled law that, illness constitutes valid explanation and sufficient cause for the delay to do any act authorized or required under the Rules. In this regard, in my considered view, the applicant has sufficiently accounted for the delay to apply for stay of execution, taking into account his efforts in

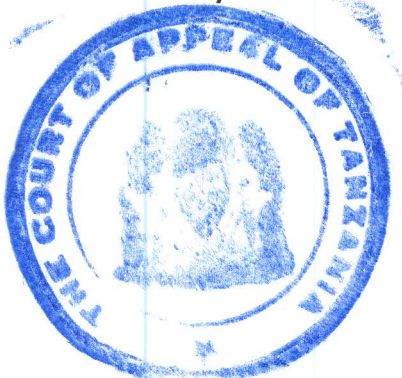
pursuing an appeal whereby he filed notice of appeal, sought and obtained requisite leave. Moreover, the respondent did not file an affidavit in reply to dispute that the applicant was not sick. The respondent's oral assertion at the hearing that the applicant was not sick is not sufficient to contradict what the applicant has deposed in his affidavit in respect of the illness.

In view of the aforesaid, for reason of illness, I am satisfied that the applicant has accounted for the delay and demonstrated good cause warranting enlargement of time to apply for the stay of execution. I hereby grant the application to file stay of execution not later than 30 days from the date of this Order. I make no order as to costs.

DATED at DAR ES SALAAM this 16th day of June, 2017.

S.E.A. MUGASHA
JUSTICE OF APPEAL

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




A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL