

TANZANIA / JUDGMENT

RULING KINISON SINGOI VS JOHNSON SINGOI FINAL

COURT
TANZLIIDECIDED
10 December 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB – REGISTRY AT MBEYA MISCELLANEOUS LAND APPLICATION NO. 25324 OF 2024 CASE
REFERENCE NO. 202410091000025324 (Originating in execution No.21675 of 2024, original order
in Bill of Costs No. 16044 of 20324 of the high court of Tanzania at Mbeya) KINISON
SINGOI APPLICANT VERSUS JOHNSON
SINGOI1ST RESPONDENT PLANENT AUCTION MART CO.
LTD 2ND RESPONDENT

RULING

12th November & 10th December 2024 NONGWA, J. The applicant is seeking stay order in Execution No. 21675 of 2024 pending before the Deputy Registrar. It is made under Order XXI rule 24 (1)(2) and section 68(e) of the Civil Procedure Code [Cap 33 R: E 2019] and supported by the applicant's affidavit. Briefly through bill of Cost No. 16044 of 2024, the deputy registrar granted the respondent costs at tune amount of TZS 1,910,000/=. Aggrieved the applicant has filed Land Reference No. 21617 of 2024 pending before this court. Meanwhile the respondent has applied for execution by attachment and sale of the applicant's farm. It is averred that the applicant and his family depend on the said farm and thus will 1 suffer irreparable loss should execution in the mode sough be carried out. It is further stated reference pending before the court will be nugatory. The application is contested by the respondent who filed counter affidavit. The 2nd respondent did not file counter affidavit to support or oppose the application. When the matter came on for hearing, the applicant was represented by Mr. Maulid Mganyizi Ibrahim, learned advocate whereas Mss. Neema Siwingwa and Isabela Sojo, both learned advocates appeared representing the respondent. The matter proceeded ex-parte against the 2nd respondent. The application was argued orally. Mr. Maulid adopted the affidavit of the applicant and stated the applicant and his family depends on the said farm as the only source for the family income in his daily life. That should the farm be sold, the applicant will suffer substantial loss. He referred the court to the case of Elia Mwamafumba and 11 others vs Registered board of Trutee of Baptist Church of Tanzania, Miscellaneous Land Application No. 35 of 2023 (TanzLII). Counsel for the applicant contended that it will be difficult for the applicant to recover the farm from the buyer if sale is done. Further that if stay order is granted, the respondent will not be affected even when 2

reference is decided in his favour. He prayed the application is granted with costs. Responding Ms. Neema adopted the counter affidavit of the respondent and submitted that the application had no basis as it was the applicant who did show the farm to be sold. He submitted the applicant has not shown willingness to deposit any security for that matter to make the court believe that he is not just wasting time of the court and the decree holder as required by Order XXI rule 24 (3) of CPC. Further that the applicant has not shown if he has overwhelming chances to succeed in the said reference. Further submission was that in Elia Mwamafumba case (supra) three conditions for the stay order was discussed but the applicant counsel has just submitted on one condition only. Taking the argument further Ms. Isabella made reference to the case of Mbeya Cement Company Limited Vs Sara Ole Daniel and another, Civil Application No. 649/06 of 2021) [2022] TZCA 603 (3 October 2022; TanzLII) and Tanzania Motors Services Limited vs TANTRACK Agencies, Civil Application No. 86 of 2004 (Unreported) on mandatory conditions for the order of stay of execution to be granted. They prayed that the application be dismissed with costs. During rejoinder Counsel for the applicant submitted they did not touch on deposit of security as they had nothing to offer. He maintained 3 the farm is used for agriculture and the applicant's dependants will suffer if the same is sold. He contended the respondent's counsel did not state how the case of Tantrack was applicable and therefore beseeched the court to disregard their submission. I have considered rival submissions, the only issue for my determination is whether the application is meritorious. The ground upon which stay of execution can be made are provided under order XXXIX rule 5(3) of the CPC which provides; 'No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the High Court or the court making it is satisfied that-

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.' The above three conditions must be fulfilled cumulatively. The applicant's submission was only in respect of condition one on irreparable loss. Mr. Maulid during rejoinder admitted they did not touch on deposit of security as the applicant had nothing to offer. 4 Principally security is provided so as to protect the respondent from facing difficulties or impossibility of realizing the decree in case the intended appeal fails. In Africhick Hatchers Limited vs CRDB Bank Plc, Civil Application No. 98 of 2016 (unreported) the Court stated the importance of security in the following terms; 'Of course; most important is the fact that the respondent should not find it difficult or impossible to realize the decree in case the intended appeal fails. This is the cornerstone of the requirement for security. In such circumstances, the Court is principally obliged to figure out whether or not any one particular mode of security vouchers risks on the part of the respondent.' I understand that the applicant has constitutional right to challenge the decision of the taxing officer and indeed have his reference pending in this court, however the court has to keep its eye open by taking measure to protect respondent's right of

enjoying fruits of the decree and how will recover costs in case the applicant intended reference fails. It is on those circumstances the law set conditions for the stay of execution to be granted. Reading order XXXIX rule 5(3) of the CPC the condition has to be met cumulatively. In Ongujo Wakibara Nyamarwa vs Beatrice Greyson Mmbaga, Civil Application No. 200 of 2021 [2022] TZCA 732 (TANZLII) the court stated; 5 'It is trite law that, in order for the Court to grant the application for stay of execution all the three conditions must be cumulatively fulfilled.' In the present application the affidavit is silence on offering security for due performance of execution sought to be stayed, failure to state the willingness on part of the applicant to furnish security, the condition for granting stay of execution cannot be said has been met cumulatively. Consequently, this application fails and it is hereby dismissed with costs. V.M. NONGWA JUDGE 10/12/2024 Dated and Delivered at Mbeya this 10/12/2024 in presence of Ms. Isabella Sojo for the Respondent and the Applicant in representation of Mr. Lucas Singoi. V.M. NONGWA JUDGE 6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/323524/source_file/bdd31a67252f8825/RULING_KINISON_SINGOI_VS_JOHNSON_SINGOI-FINAL.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/kinison-singoi-stayofexecution-tanzlii-2024>

Prepared on 13 October 2026 · Esheria