

TANZANIA / JUDGMENT

20100510 TZCA Mwanza

COURT
TZCADECIDED
10 May 2010

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

IN THE COURT OF APPEAL OF TANZANIA ATMWANZA (CORAM: MSOFFE, J.A., MBAROUK, J.A. And BWANA, J.A.) CIVIL APPLICATION NO. 10 OF 2009

1. MCHELE MUMWI } ~ APPLICANTS
2. MAKALI AUCTION MART VERSUS TELESOPHORY ALPHONCE KANYWEKE
RESPONDENT (Application for Stay of Execution of the Decision of the High Court of Tanzania at Mwanza) (Rwakibarila, J.) dated the 21 st day of April, 2009 in Civil Appeal No. 32 of 2007 RULING OF THE COURT 7 & 11 May, 2010 MBAROUK, J.A.: This is an application for stay of execution in Civil Appeal No. 32 of 2007 of the High Court of Tanzania at Mwanza. The notice of motion in this application is made under Rule 9 (2) (b) of the Court of Appeal Rules, 1979 and supported by an affidavit of Mr. Benard Kabonde, learned advocate representing the applicants. At the hearing of the application, the respondent was absent though duly served through his advocate on 12-4-2010. For that reason, we invoked the provisions of Rule 63 (2) of the Court of Appeal Rules, 2009 and ordered the application to be heard in the absence of the respondent. Following that order, Mr. Kabonde prayed to adopt the contents of the affidavit in support of the notice of motion. The affidavit was deposed to by himself. Paragraph 6 of the affidavit states as follows:- "That if the decree is executed, the applicants will stand to suffer as their properties will be subjected for attachment and in the event the intended appeal succeeds there is no assurance that the respondent shall make compensation of the to be attached properties. " The decision of this Court in the case of Tanzania Cotton
 - ~ .. , •• - •• ,t ... - - " f)-' • . •• ,J• : MarketMng Soard v Cogecot Cotton Company Limited [1997] TLR 63 propounded the conditions for granting an application for stay of execution, which are as follows:- 2
 - (a) the applicant must show that he has an arguable appeal which is likely to succeed;
 - (b) the applicant must show that he will suffer irreparable loss if stay of execution is not granted; and
 - (c) the applicant must show that on the balance of convenience he will suffer greater hardship and loss than the decree holder if stay of execution is disallowed. The task before us is to examine whether there is sufficient cause for staying execution pending the determination

of the intended appeal. In the instant application, the balance of convenience favours the applicant having stated and believed that he might suffer greater hardship if the order for stay of execution is not granted. In the absence of an affidavit in reply or appearance by the respondent who could have probably said otherwise we are constrained to agree with Mr. Kabonde that it is quite possible that in the event the intended 3 appeal succeeds there is no assurance that the respondent will be able to make compensation for the attached properties. It is for this reason we think that the balance of convenience lies in favour of granting the application. We accordingly grant the application with no order as to costs. DATED at MWANZA this 10th day of May, 2010. J. H. MSOFFE JUSTICE OF APPEAL M.S.MBAROUK JUSTICE OF APPEAL S. J. BWANA JUSTICE OF APPEAL I certify that this is a true copy of the original. . .:,. 4

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/333350/source_file/a17f1f42ab485f50/20100510_TZCA_Mwanza.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/mchele-mumwi-v-telephory-alphonse-kanyweke-stayofexecution-tzca-2010>

Prepared on 28 October 2026 · Esheria