IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

AR CIVIL APPLICATION NO. 7 OF 1998
In the Matter of an Intended Appeal

BETWEEN

CLARA KIMOKA. . . . . APPLICANT

AND

SURUMBU AXWESO. . . . . RESPONDENT

(Application for Stay of Execution from the decision of the High Court of Arusha at Arusha)

(Mroso, J.)

dated the 3rd day of June, 1998

in

Civil Appeal No. 36 of 1997

R U L I N G

KISANGA, J.A.:

This is an application for stay of execution pending appeal to this Court. The brief background to the application is as follows. The applicant was the wife of the respondent's brother, now deceased. Before his death the respondent's brother owned a large piece of land. Following his death the respondent took charge of the family affairs of the deceased including his land. In the meantime the respondent also secured an allocation of a portion of that land to himself. The allocation was made by the village authorities in 1978.

In 1992 the applicant commenced legal proceedings to recover the said portion of land from the respondent. The Primary Court at Endagikot dismissed the claim. The applicant's appeal to the District Court was again dismissed and her further

appeal to the High Court was equally unsuccessful. The applicant has filed notice of further appeal to this Court, and she is now seeking a stay of execution of the judgement pending the hearing and determination of the intended appeal. In this application the applicant is represented by Mr. C. Sabaya while the respondent appeared in person unrepresented and addressed me through an interpreter as he speaks very little Kiswahili. The interpreter was one Peter Pius, his grandson.

The affidavit in support of the application shows that the applicant, a widow, has been in occupation of the suit land for a long time and that she depends on it for the livelihood of herself and her eight children. It further shows that the respondent who now lives in a distant village has plenty of his own land there.

The respondent resisted the application on the ground that the matter is taking too long. Judgement was given in his favour in June 1998 and he see no reason why his execution of that judgement is being delayed so unduly. He says he is old and too tired now to be turned around any more in connection with this matter.

Upon a careful consideration of this matter, I think that the application should be allowed. The applicant is in possession of the suit land now and has all along been in possession of it. The interruption of her long occupation of the suitland would, in my view, be justified only after the case is finally determined in the respondent's favour. But in the event the appeal is allowed, it would not make much sense to temporarily interupt the applicant's long

.../3

possession now only to restore it to her after the success of her appeal. Furthermore the applicant has heavier family responsibilities. She, as a widow, and her eight children depend on the suit land for their sustenance. She has a heavier burden to shoulder than the respondent who is shown to have plenty of land elsewhere.

Looking at the case as a whole I am of the view that on a balance of convenience the application should be granted. It is accordingly ordered that execution be stayed pending the outcome of the intended appeal. Considering the close family relationship between the parties, I make no order for costs.

DATED at ARUSHA this 17th day of October, 2000.

R.H. KISANGA
JUSTICE OF APPEAL



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

(A.G. MWARIJA)
DEPUTY REGISTRAR