

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 131 OF 2001
In the Matter of an Intended Appeal

BETWEEN

D.T. DOBIE (TANZANIA) LIMITED. . . . APPLICANT/JUDGEMENT DEBTOR

AND

PHANTOM MODERN TRANSPORT (1985)
LIMITED. RESPONDENT/DECREE HOLDER

(Application for Stay of Execution from the
judgement of the High Court of Tanzania at
Dar es Salaam)

(Chipeta, J.)

dated the 2nd day of November, 2001

in

Civil Case No. 132 of 2000

R U L I N G

MAKAME, J.A.:

In the High Court before Chipeta, J. on 2nd November 2001, the present applicant, D.T. DOBIE (Tanzania) LTD., was found liable to pay to the present respondent, PHANTOM MODERN TRANSPORT (1985) LTD., a sum of over US \$437,672, or its equivalent in Tanzania Shillings; plus costs and interest. A counter-claim by the applicant was dismissed. The applicant was dissatisfied and ten days later a Notice of Appeal was lodged on its behalf.

The present application before this court is for a Stay of Execution pending determination of an appeal against the High Court judgement and decree. Before it could be heard the respondent, advocated for by Mr. C. Ngalo and Mr. M. Ngalo, learned counsel, raised a preliminary objection which was argued by Mr. C. Ngalo. The applicant was represented by Mr. Mujulizi, learned advocate.

The objection against the application for Stay of Execution was based on the contention that Rule 45 (2) was offended, in that the Notice of Motion was not in conformity with the said sub rule which provides that a notice of motion shall be substantially in the Form A in the First Schedule to the Rules, and shall be signed by or on behalf of the applicant. Mr. Ngalo has pointed out that, in contravention of the prescribed format, the Notice of Motion is neither signed nor dated. He referred me to the Ruling of this Court in Civil Reference No. 17 of 1996 ALI ABDALA ALI V HAMED RASHID HAMED. In his opening learned counsel also referred to the affidavit in support of the present application but in argument he made no further mention of it. I therefore did not get the benefit of argument and I myself discerned nothing untoward in it.

In reply Mr. Mujulizi conceded that the Notice of Motion was not signed in accordance with the Rule 45 (2) Format. He submitted, however, that it had substantially complied with the sub-rule. It was signed, only not at the right place. It is indeed correct that it is signed, by Mr. Magai, but at the tail end, at a place and in a manner not even required by the Format at all. I am also aware that Mr. Mujulizi did not reply to Mr. Ngalo's observation that the Notice of Motion was not dated, even.

I have carefully considered the submissions by learned counsel and considered the authorities cited. At the end of the day one must look at, and consider, the particular non-compliances, and their effect in a given application. Here the Notice merely shows when it was lodged, but not when it was actually drawn. It is not signed where it should have been; and there is something more, something even Mr. Ngalo did not touch upon, but which I

cannot gloss over, and it is this : the enabling law applicable in praying for a Stay of Execution is mis-cited. There is no Section 9 (2) in the Tanzania Court of Appeal Rules, indeed no Sections at all. We only have Rules and sub-Rules.

While we do not clasp mere husks, but rather go for the kernel, breaching the Rules in a way that suggests a clear disregard of them cannot be brooked or condoned. There is no excuse for making the errors made in this application, errors which could easily have been avoided by having the sample Form A in front of one, while preparing the Notice of Motion. Mr. Mujulizi did not ask to be allowed to amend the Notice of Motion.

There is indeed a current inclination and trend towards simplifying the Rules, to make them less of an impediment, and more facilitative, which is laudable, but I do not think even that would envisage a carefree abandonment of the Rules.

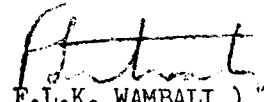
The preliminary objection is upheld and so the Notice of motion is struck out with costs.

DATED at DAR ES SALAAM this 7th day of December, 2001.

L.M. MAKAME
JUSTICE OF APPEAL

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




(F.L.K. WAMBALI)
DEPUTY REGISTRAR