

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 111 OF 2004**

**In the Matter of an Intended Appeal**

**BETWEEN**

**JAMAL AHMED.....  
APPLICANT**

**VERSUS**

**YESLAM SAID BIN KULAIB.....  
RESPONDENT**

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

**(Rugazia, J.)**

**dated the 20<sup>th</sup> day of August, 2004  
in**

**Civil Appeal No. 2 of 2003**

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**R U L I N G**

**MSOFFE, J.A.:**

This is an application for a stay of execution brought under Rule 9 (2) (b) of the Court Rules. It is evident from the notice of motion filed on 9/9/2004 that the applicant is seeking an order of this Court to stay execution of part of the decree given by the Dar-es-Salaam Regional Housing Tribunal on 11/9/2001 in its Application No. 124/98. Before determining the application on merit the Court had to deal with a preliminary objection notice of which was given earlier. The notice of preliminary objection made under Rule 100 and filed on 30/3/2005 has four grounds which read as follows:-

- a) The application is hopelessly time barred;
- b) The Honourable Court is not competent to entertain and determine an application for stay of the decree of the Dar-es-Salaam Regional Housing Tribunal;
- c) There is no decree or order or ruling or judgment of the High Court from which the intended appeal lies which is capable of being executed and no such decree or order or ruling or judgment is attached or annexed to the application; and
- d) The pursuit of this application is an abuse of the Court process.

Mr. M. Ngalo, learned advocate for the respondent, made a fairly brief oral submission in support of the above grounds. On the other hand Mr. N.O.S. Mselem, learned advocate for the applicant, responded with an equally fairly brief oral submission the basis of which was that the above grounds have no merit.

On my part, I propose to deal with the second ground only. I will do so not out of lack of respect and courtesy to learned counsel but because I am of a settled view that the ground will be enough to dispose of the application. At any rate, in the light of the position I have taken on the competency of the application as shall be demonstrated hereunder, a discussion of the other grounds would be merely academic and of no useful purpose.

In order to appreciate the gist of the second ground the following background information is essential. It is discerned from the affidavit in support of the application that on 2/6/1995 the applicant entered into a two years lease agreement with the respondent in respect of commercial premises at Plot No. 6, Kilwa Road, Dar-es-Salaam. The effective date of the lease was 1/1/1994 and it was to end on 31/12/1995. It appears that before the lease expired the respondent successfully sued for vacant possession of the premises in question. Thus Application No. 124/98 of the Dar-es-Salaam Regional Housing Tribunal ended up with an order for eviction of the applicant from the premises and payment of rent arrears. The applicant unsuccessfully appealed to both the Housing Appeals Tribunal and the High Court. Still dissatisfied, he has since filed a notice of appeal to this Court against the decision of the High Court. In the meantime, he has filed this application in which, as earlier stated, he is seeking a stay of execution of part of the decree of the Dar-es-Salaam Regional Housing Tribunal. The order

sought is for stay of the decree in so far as payment of arrears of rent is concerned. In other words, the order being applied for has nothing to do with vacant possession because the applicant has since been evicted from the suit premises.

Mr. Ngalo's submission on the above ground was essentially that this Court has no jurisdiction to grant the order being sought for in the application. In his view, the order could have been granted by either the Housing Appeals Tribunal or the Dar-es-Salaam Regional Housing Tribunal as an executing court. In response, Mr. Mselem was of the view that this Court has discretionary power to stay execution of decrees passed by any Court. He went on to urge that the application could not have been filed before the High Court because the decree is not capable of execution by that Court.

There is no serious dispute that an aggrieved party can access this Court under The Appellate Jurisdiction Act, 1979. Under S. 5 thereof appeals can lie to this Court against decrees, judgments, orders, decisions, or findings of the High Court. This, in effect, means that ordinarily a party can come to this Court "through the High Court". Hence, it will be evident that a notice of appeal envisaged under Rule 9 (2) (b) as a prerequisite for an application for a stay of execution will be one which is against a decision, order etc. passed by the High Court. So, since the decree of the Regional Housing Tribunal was not passed by the High Court

it will follow that there is no decree capable of being stayed by this Court. It is for this simple reason that the proposition by Mr. Mselem that this Court has the discretionary power to order stay of execution of a decree passed by any Court, or Tribunal for that matter, has no basis in law.

It is for the above single reason that I agree with Mr. Ngalo that this Court has no jurisdiction to determine this application. I may also add that the application is an abuse of Court process. It may also be worthwhile to emphasize here that I could have dealt with the other grounds of the objection only if the Court had jurisdiction to deal with the application. Since the Court is not clothed with the necessary jurisdiction determination of the other grounds would, as stated above, be useless and academic only.

Accordingly the application is struck out with costs.

DATED at DAR ES SALAAM this 13<sup>th</sup> day of April, 2005.

J.H. MSOFFE  
**JUSTICE OF APPEAL**

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

( S.M. RUMANYIKA )  
**DEPUTY REGISTRAR**