IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: RUTAKANGWA, J.A., KAIJAGE, J.A., And MUSSA, J.A.)

CIVIL APPLICATION NO. 7 OF 2012

ADOLF JOHN MAGESA ..... APPLICANT

VERSUS

ELIZABETH MOHAMED ..... RESPONDENT

(Application for stay of Execution of Decree from the Decision of the High Court of Tanzania at Mwanza)

(Mruma, J.)

dated the 17th day of April, 2012

in

Probate Appeal No. 14 of 2011

RULING OF THE COURT

22nd & 26th November, 2013

RUTAKANGWA, J.A.:

This is an application for a stay of execution of the decree of the High Court of Tanzania sitting at Mwanza in Probate and as Administration Cause Appeal No. 14 of 2011 (the decree). The Judgment on appeal was delivered on 17th April, 2012, in favour of the respondent. Aggrieved by the decision, the applicant lodged a notice of appeal to this Court on 19th April, 2012. To forestall any early attempts to execute the decree before the intended appeal was determined, this application was instituted on 14th June 2012.

The application is by notice of motion supported by the applicant's own affidavit. The respondent opposed the application by filing a reply affidavit. Before the appeal was scheduled for hearing, both sides

lodged their respective written submissions in accordance with the requirements of the Tanzania Court of Appeal Rules, 2009 (the Rules). When the matter came up for hearing before us, both parties appeared in person and informed us of this fact. They urged us to determine the application on the basis of their submissions.

Under normal circumstances, we would have reserved our ruling on the merit or otherwise of the application. But the circumstances of the case were out of the ordinary. We had our reservations on the validity of the accompanying copy of the decree sought to be stayed in this application.

It is trite law that every application of this nature must be instituted by notice of motion. Furthermore, it is settled law that such an application ought to be lodged within sixty (60) days and must be accompanied or supported by a valid copy of the decree sought to be stayed. See, for instance, **Permanent Secretary, Ministry of Works and Transport & Another v. Twiga Paper Products,** Civil Application No. 18 of 2009 (unreported). For a decree to be valid either for appeal, revision, stay orders, etc. purposes, it must be signed by the judge who issued it or his successor in office and must bear the date of the day on which it was issued. With respect to the copy of decree accompanying the notice of motion, we have noted, the date when it was issued is conspicuously missing. Fortunately, the applicant conceded this glaring omission. It goes without saying, therefore, that there is no valid copy of the decree before us whose execution we can lawfully stay. The absence of a valid copy of the decree sought to be stayed renders this application, therefore, incompetent.

All said, we strike out this incompetent application. We make no order on costs.

It is so ordered.

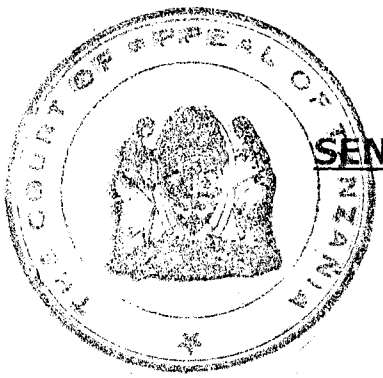
DATED at MWANZA the 26th day of November, 2013.

E.M.K. RUTAKANGWA
JUSTICE OF APPEAL

S.S. KAIJAGE
JUSTICE OF APPEAL

K.M. MUSSA
JUSTICE OF APPEAL

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



P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL