

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 230 OF 2016**

**JUMA POSANYI MADATI.....APPLICANT**

**VERSUS**

**HAMBASIA N'KELLA MAEDA.....RESPONDENT**

**(Application for extension of time from the High Court of Tanzania**

**at Dar es Salaam)**

**(Mgaya, J.)**

**dated the 4<sup>th</sup> day of May, 2016**

**in**

**Land Case No. 18 of 2013**

**RULING**

28<sup>th</sup> November & 6<sup>th</sup> December, 2016

**MUSSA, J.A.:**

In the High Court of Tanzania (Land Division) the applicant instituted Land Case No. 18 of 2013 against the respondent over ownership of Plot No. 2153 Block H which is situated at Mbezi area, Kinondoni Municipality within Dar es Salaam City. At the height of the suit, the respondent emerged successful in a judgment and decree which were handed down on the 4<sup>th</sup> May, 2016 (Mgaya, J.).

Dissatisfied, on the 18<sup>th</sup> May, 2016 the applicant contemporaneously lodged a Notice of Appeal and a request to be supplied with certified copies of the impugned proceedings, judgment and decree for appeal purposes. Going by the exchequer receipt, the documents were availed to the applicant on the 22<sup>nd</sup> July, 2016 whereupon, a little later, on the 30<sup>th</sup> July, 2016 the applicant instituted the proceedings at hand through which he seeks enlargement of time within which to lodge an application for stay of execution of the decision desired to be impugned.

The application is by Notice of Motion which has been taken out under the provisions of Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is supported by an affidavit, duly sworn by the applicant. In addition, the applicant filed written submissions to fortify his quest. It is, perhaps, noteworthy that, on the adversary side, the respondent adopted a passive gesture and did not, at all, counter any of the documents.

When the application was called on for hearing before me, the applicant entered appearance through Mr. Daimu Halfani, learned Advocate. As it were, the respondent did not show up despite his Advocate, namely, R.L. David being duly served with the Notice of Hearing on the 17<sup>th</sup> November, 2016. In the circumstances, I was left with no other viable option

than to proceed with the hearing in his absence under the provisions of Rule 63(2) of the Rules.

In his brief address, Mr. Halfan fully adopted the Notice of Motion, the supporting affidavit and the written submissions without more. In the written submissions, the learned counsel for the applicant had stated that upon numerous decisions, it is now settled that, to be valid, an application for stay of execution must be accompanied with the order or decree which is desired to be stayed. Unfortunately, he charged, the documents were supplied to the applicant after the expiration of the prescribed period for making an application for stay of execution. On that score, Mr. Halfani urged, the applicant had shown good cause to deserve enlargement of time within which to lodge the application for stay of execution.

Addressing the uncontested application, I feel it is instructive, as a matter of general principle, to reiterate that whether to grant or refuse an application like the one at hand is entirely in the discretion of the Court. But that discretion is judicial and, accordingly, it must be exercised judicially and abide by the rules of reason and justice. In the case of **Mbogo Vs Shah** [1968] E.A. 93, the defunct Court of Appeal for Eastern Africa held thus:

*"All relevant factors must be taken into account in deciding how to exercise the discretion to extend time. These factors include the length of the delay, the reason for the delay, whether there is an arguable case on the appeal and the degree of prejudice to the defendant if time is extended."*

When all is said with respect to the guiding principles, I should express at once that the delay in lodging the desired application for stay of execution was, indeed, occasioned by the fact that the certified copies of the impugned Order and Decree were belatedly availed to the applicant. This Court has consistently held and, it is now settled that an application for stay of execution has to be instituted within sixty days from the date when the Notice of Appeal was lodged [see, for instance, Civil Application No. 61 of 2010 – **CRDB Bank Vs Morogoro Farm and Transport Services Ltd**; Civil Application No. 4 of 2011 – **Irene Mkenga Vs Costa Alia**, and Civil Application No. 139 of 2012 – **Hydrox Industrial Services Ltd Vs CRDB Ltd and Two others** (All unreported)].

As already hinted, the Notice of Appeal in the matter at hand was lodged on the 18<sup>th</sup> May, 2016 and thus, the application for stay ought to

have been filed, latest, by 18<sup>th</sup> July, 2016. Unfortunately and as, again, already intimated, the decision desired to be impugned was availed to the applicant on the 22<sup>nd</sup> July, 2016 at a time when the limitation period had elapsed. I have also apprised that the present application was instituted on the 3<sup>rd</sup> August 2016, that is, barely two weeks after receipt of the decision.

To say the least, going by the chronology of events, I am satisfied that the applicant has demonstrated good cause to entitle himself the grant for enlargement of time. Time is, accordingly extended and the applicant should lodge the desired application for stay of execution within twenty one (21) days from the date of the delivery of this Ruling. Costs incidental to this application should abide by the result of the Appeal. It is so ordered.

**DATED at DAR ES SALAAM this 1<sup>st</sup> day of December, 2016.**

K.M. MUSSA  
**JUSTICE OF APPEAL**

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



  
E.F. FUSSI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**