

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 154 OF 2015

NATIONAL MICROFINANCE BANK APPLICANT

VERSUS

AUGUSTINO WESAKA GIDIMARA t/a

Builders, Paints and General Supplies RESPONDENTS

(Application for Extension of time to file Application for Stay of Execution

from the decision of the High Court of

Tanzania at Dar es salaam

(Bongole J.)

Dated 31st day of October, 2014

In

Civil Case No. 8 of 2008

RULING

15th December, 2015 & 21st January, 2016

ORIYO, J.A.:

Before me is an application by the National Microfinance Bank, (the bank), moving the Court to grant an extension of time to file an application for Stay of Execution of the decree in Dar es salaam High Court Civil Case No. 8 of 2008, delivered on 12 December, 2014. The application is supported by the reasons advanced in an affidavit sworn by one Lilian Komwihangiro, a company secretary to the applicant bank which include the following:-

*"7. That on 19th June, 2015 through Maleta and
Ndumbaro advocates we were notified by the*

High Court Deputy Registrar (Dar es salaam Zone) that copies of the proceedings, judgment and decree were ready for collection upon payment of fees.

8. *That on 29th June, 2015 filed Appeal before this court and it is appeal No. 74 of 2015 which is still pending in this honourable court. Copy of the Memorandum of appeal and Exchequer Receipt are annexed hereto NMB4.*
9. That the application for stay of execution of decree in Civil Case No. 8 of 2008 could not be filed within the prescribed time as any application for stay of decree has to be accompanied with a copy of decree and the decree was not supplied by the Registrar of the High Court within the prescribed time to enable the applicant file stay of execution of decree.

10. That the respondent has initiated execution proceedings and wants to execute the decree and has made unauthenticated claim of Tshs 615,000,000/= though the said total was not decreed by the high court and that further the respondent one Augustino Wesaka Gidamara is not a partner to Builders Paints and General Supplies which is one of the very ground of appeal in Appeal No. 74 of 2015 pending in this court.

11. That the applicant stands to suffer more than the respondent as the respondent will not be in a position to refund the applicant the said Tanzanian shillings 615,000,000/=should the pending appeal No. 74 of 2015 succeed.”

In response thereto, the respondent lodged an affidavit by Mr. Chacha Werema Chambiri, learned counsel, opposing the application.

At the hearing the applicant bank was represented by Mr. Daimu Kambo, learned counsel and the respondent had the services of Mr.

Chacha Werema Chambiri, learned counsel. With leave of the Court, the applicant was allowed to adopt the reasons advanced in its written submissions lodged in Court on 18/9/2015 and duly served on the respondent. The latter did not find it necessary to file a reply. Therefore, the application will be judged on the basis of the material before me.

It is now well settled in terms of Rule 10 of the Court Rules, that a decision whether or not to extend time is essentially discretionary **upon good cause shown**. The matters which the Court ought to take into account include the following:- the length of delay, the reason for the delay, the degree of prejudice to the respondent; and in some cases chances of appeal succeeding if the application is granted; see **The Attorney General vs Twiga Paper Products Limited**, Civil Application No. 108 of 2008 (unreported).

Having perused the affidavit evidence of Lilian Komwihangiro before me I find there is sufficient material to explain away the delay to apply for stay of execution. The applicant categorically explains why it was not legally possible to apply for a stay of execution of the decree within the prescribed time without annexing a copy of such decree. According to the

record, the decree was actually availed to the applicant on 19th June 2015, as per the Certificate of Delay issued by the High Court, ("NMB3").

Apparently, the respondent, in his affidavit in reply merely made some general denials of whatever was stated by the applicant including the Certificate of Delay issued by the trial High Court.

In the circumstances, I am satisfied that this is a fit case to invoke the Court's discretion. Accordingly the applicant is hereby granted an extension of thirty (30) days leave within which to apply for an order of stay of execution.

DATED at DAR ES SALAAM this 14th day of January, 2016.

K. M. TRIYO
JUSTICE OF APPEAL

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


E.Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL