

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

CIVIL APPLICATION NO. 261 OF 2015

JUTO ALLY APPLICANT

VERSUS

LUCAS KOMBA AND ANOTHER RESPONDENT

**(Application for Extension of time to file Stay from the Decision of the High
Court of Tanzania at Dar es salaam)**

(MZIRAY, J.)

Dated the 30th day of June 2015

In

Land Case No. 98 of 2009

.....

RULING

04th & 10TH March, 2016

MUGASHA, J.A.:

This is an application by notice of motion brought under rule 10 of the Court of Appeal, Rules, 2009. The application is sought on two grounds of motion as follows:-

- (i) This Honourable Court be pleased to extend time within which to file an application for stay of execution of decree from the High Court of Tanzania (Land Division) at Dar- es- Salaam (Mziray. J) dated 30th June, 2015 in Land Case No. 98 of 2009.

- (ii) An Order that the costs of and incidental to this application abide the result of the intended Appeal.

The affidavit of **JUTO ALLY**, the applicant is in support of the application. The application is unopposed as the respondents have not filed any affidavit in reply.

The background to this application as gathered from the applicant's affidavit is briefly as follows: The applicant unsuccessfully sued the respondents in Land Case No. 98 of 2009, before the High Court (Land Division) which was determined in favour of the respondents. Dissatisfied, on 30th June, 2015, she filed a notice of appeal in the Court and on 2nd July, 2015, she wrote a letter to the Registrar seeking to be supplied with the proceedings, judgment and decree which was followed by several letters in reminder. However, she managed to be supplied with the decree of the decision on 10th November, 2015. The respondents successfully filed an application for execution which was objected to by the applicant but determined in favour of the respondents whereby on 8th December, 2015, the applicant was given fourteen(14) days to hand over the suit premises.

This is what made the applicant to seek extension of time to file stay of execution because she could not have filed the same without annexing the decree intended to be executed.

At the hearing of the appeal, the respondents who were served with notice of hearing on 18th February, 2016 did not enter appearance. As such, the applicant prayed and was allowed to be heard on the application in the absence of the respondent in terms of rule 63 (2) of the Court Rules. The applicant who appeared in person was brief and prayed to be granted the application to enable her to file an application for stay of execution. In addition, she avers to be a sick widow and financially constrained.

The issue for determination is whether the applicant has shown good cause warranting the grant of extension of time by the Court.

As earlier stated, this application is sought under rule 10 of the Court of Appeal Rules which categorically states:

"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or Tribunal, for the doing of any act authorized or required by these Rules, whether before or after expiration of that time and whether before or after the doing of the act, and any reference to that time as so extended".

The scope of judicial discretion under rule 10 was discussed in the case of **HENRY MUYAGA VS TANZANIA TELECOMMUNICATION COMPANY LTD, CIVIL APPLICATION NO. 8 OF 2011** (Unreported). The Court said:

"The discretion of the Court to extend time under rule 10 is unfettered, but it has also been held that, in considering an application under the rule, the Courts may take into consideration, such factors as, the length of the delay, the reason of delay, the chance of success of the intended appeal, and the degree of prejudice that the respondent may suffer if the application is granted"

In paragraphs 6, 7, 8 and 9 of the affidavit, the applicant has deposed that, following the pronouncement of judgment dated 30/6/2015, she filed notice of appeal on 2/7/2015 and on the same day wrote a letter to the Registrar seeking to be supplied with copies of the proceedings, the judgment and the decree in the respective Land Case. She did not sit back and on 22/7/2015 she wrote another letter in reminder and thereafter made several follow ups. Ultimately, she was supplied with the decree on 10/11/2015 in terms of the Exchequer Receipt No. 8194531 which was more than four months since when she filed notice of appeal to the Court. Subsequently she filed the application at hand on 16th December, 2015. In terms of the applicant's deposition in paragraph 10 of her affidavit, the delay to be supplied with the decree caused her to delay to file the application for stay of execution.

The decree is an essential document which must accompany the application for stay. In this regard, there is abundant decisions of the Court which are to the effect that, an application for stay of execution of a decree must be accompanied by a decree or order sought to be

stayed or else the application becomes incompetent and liable to be struck out. **(SEE NATIONAL HOUSING CORPORATION VS ETIENNES HOTEL, CIVIL APPLICATION NO 175 OF 2004, PERMANENT SECRETARY OF WORKS AND ANOTHER V TWIGA PAPER PRODUCTS LTD, CIVIL APPLICATION NO. 18 OF 2007.**(Both unreported).

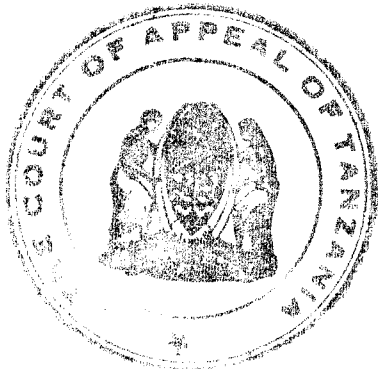
I have checked the decree which seems to have been extracted on 12/8/2015. However, if at all the decree was ready for collection on that date, the Registrar ought to have duly informed the applicant so as to enable her to collect the decree. This is so because the applicant wrote to the Registrar several letters seeking to be supplied with the documents. As such, the Registrar was obliged to inform the applicant about the readiness of the decree. Therefore, the applicant cannot be penalised or be forced to account for delay between 12/8/2015 to 16/12/2015, when she filed this application.

It is crystal clear that, the applicant could not file the application for stay within sixty (60) days from the date of filing notice because she was not yet supplied with the decree. Besides, he did not sit back idle

was not yet supplied with the decree. Besides, he did not sit back idle and made several follow ups until when she obtained the decree. In this regard, the applicant could either not file an application for stay of execution without the decree because that would be risking to have the application struck out for incompetency.

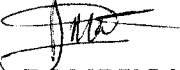
In view of the aforesaid, I satisfied that the delayed supply of the decree made the applicant to file the application for stay within specified time and that is good cause warranting the grant of the application. I hereby grant the applicant leave to file application for stay not later than 30 days from the date of this order.

DATED at **DAR ES SALAAM** this 9th day of February, 2016.



S.E.A. MUGASHA
JUSTICE OF APPEAL

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


P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL