

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 31 OF 2016

TOTAL (T) LTDAPPLICANT

VERSUS

SAMWEL MGONJARESPONDENT

**(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.)**

(Songoro , J.)

Dated the 24th day of November, 2015

in

Commercial Case No. 157 of 2013

RULING

18th & 22nd April, 2016

MBAROUK, J.A.:

In this application, the applicant is moving the Court by way of notice of motion made under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (G.N. No. 368 of 2009) (the Rules). He is seeking for an order of extension of time to file a stay of

execution of the decision of the High Court of Tanzania Commercial Division (Songoro, J.) in Commercial Case No. 157 of 2013 dated 7th day of December, 2015. In support of the application there is an affidavit sworn by Dr. Onesmo Michael, counsel for the applicant.

When the application was called on for hearing, Mr. Tairo Makarious, learned advocate appeared for the applicant. The respondent though duly served, failed to enter appearance. I therefore, invoked Rule 63(2) of the Rules and proceeded with the hearing of the application in his absence.

At the hearing, Mr. Makarious, prayed to adopt his written submissions and the affidavit in support of the notice of motion. According to the adopted applicant's affidavit in support of the notice of motion at paragraphs 4,5,6,7 and 8 reasons for the delay were given and the same are as follows:-

4. *That on 30th day of November, 2015, the Applicant wrote a letter to the Registrar of the High court requesting for copies of Judgment, Decree, Proceedings, Exhibits and the Certificate of Delay for the purpose of preparing Record of Appeal and a stay of Execution against the said judgment and Decree.*
5. *That on the same day, that is 30th day of November, 2015, the Applicant filed a Notice of Appeal against the said judgment and Decree.*
6. *That even with constant follow up, the said copies of judgment and Decree were obtained on the 28th January, 2016 outside the prescribed mandatory time limit of 60*

days for filing a Stay of Execution.

7. That it is in this circumstance that the

*Applicant pray for an extension of time to file
a Stay of Execution because if the order is
not granted the Applicant will suffer
irreparable losses.*

*8. That the delay in filing a Stay of Execution
was neither caused by negligence or any
other factors on the side of the applicant or
his Advocate.*

In support of his argument, he cited the decision of this Court in the case of **Juma Omary and Six Others v. The Director, Mwanza Fishing Industry**, Civil Application No. 14 of 2014 (unreported).

In addition to that, the learned advocate for the applicant stated in his adopted written submissions that even after the

applicant wrote a letter to the Registrar of the High Court requesting for copies of judgment, proceeding Decree, exhibits and certificate of delay for the preparation of a record of appeal and a stay of execution, the said copies were obtained on the 28th January, 2016 after sixty five (65) days have passed. He added that, he obtained them after constant follow up beyond the sixty (60) days for filing a stay of execution.

In his written submissions, the learned advocate for the applicant submitted that, as the delay in this application was not caused by the applicant's negligence or fault on his part, he prayed for the application to be granted as prayed.

It is now trite law according to Rule 10 of the Rules that, an applicant seeking for extension of time has to show good cause before the Court user its discretion bestowed upon it to grant extension of time. I am very much satisfied that in this

application, the applicant has given reasonable cause which prevented him from pursuing the act of filing his application for extension of time. This is because, the delay was neither caused by negligence or any other factors on the side of the applicant or his advocate For that reason, I use my discretion confirmed upon me under Rule 10 and grant the prayer made by the applicant by ordering him to file his application for stay of execution within fourteen (14) days from the date of this ruling.

It is so ordered.

DATED at **DAR ES SALAAM** this 19th day of April, 2016.

M.S. MBAROUK
JUSTICE OF APPEAL

I certify this is a true copy of the original.



Z.A. Maruma
DEPUTY REGISTRAR
COURT OF APPEAL