

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

CIVIL APPLICATION NO. 95 OF 2016

TANZANIA ELECTRIC SUPPLY CO. LTD.....APPLICANT

VERSUS

DORIS YESAYA NKYA.....RESPONDENT

(Application for Extension of Time within which to file an application for a stay of execution from the decision of the High Court of Tanzania at Dar es Salaam.)

(Nchimbi, J.)

dated the 24th day of July, 2015

in

Civil Appeal No. 282 of 2008

RULING

28th June, & 12th July, 2016

JUMA, J.A.:

The applicant, Tanzania Electricity Supply Co. Ltd has brought this motion to seek an order of the Court for extension of time to enable the applicant to apply for an order of stay of the execution of the Judgment and Decree of the Land Division of the High Court at Dar es Salaam in Land Case No. 282 of 2008 which Nchimbi, J. delivered on 24th July, 2015. To move the Court, the applicant cited Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The applicant has preferred the following three grounds to support the motion for extension of time:

- 1. The appeal was not filed within the prescribed period of time following delay in being supplied with the Judgment, decree and proceedings by the trial court.*
- 2. The applicant has already instituted a notice of appeal against the trial court's decision in the Court of Appeal.*
- 3. That the respondent has instituted an application for execution of the decree in the High Court Land Division at Dar es Salaam.*

The background to this Motion is set out in the affidavit of Laurian Kyarukuka, an advocate and a Principal Officer of the applicant. The background shows that the respondent, Doris Yesaya Nkya instituted a suit, Land Case No. 282 of 2008 to claim from the applicant a sum of Tshs. 425,990,000/= as compensation following a fire which burned down her house. The judgment of the trial court that was delivered on 24th July, 2015 went in the respondent's favour. Aggrieved by the judgment, the applicant lodged its Notice of Appeal and a letter to the Registrar of the High Court to request for a copy of the trial court's judgment, decree thereof and the record of proceedings.

At the hearing of the application, Mr. Laurian Kyarukuka, learned advocate appeared for the applicant. Mr. Sosten Mbedule, learned advocate appeared for the respondent.

In substance, Mr. Kyarukuka absolves the applicant from any blame over the delay to apply for a stay of execution. The learned advocate submitted the applicant company was still waiting for a copy of the decree which it had requested from the Registrar of the High Court Land Division. He referred me to the supporting affidavit and written submission wherein the applicant recalls what prompted the applicant to seek the instant extension of time. He stated that before the requested record of proceedings were supplied; the respondent had already initiated proceedings to execute the decree. It was those execution proceedings which prompted the applicant to bring this motion for extension of time for purposes of applying for a stay of execution.

In so far as the learned advocate for the applicant is concerned, the delay to file an application for stay of execution earlier was occasioned by the failure of the Registrar to supply the applicant with at very least a copy of the decree which is essential to an application for stay of execution. He cited the decision of the Court in **Blue Star Service Station vs. Jackson Musseti** [1997] TLR 328 which emphasized that a decree is an essential document in an application for stay of execution.

In the affidavit which Mr. Sosten Mbedule took out in reply on behalf of the respondent Doris Yesaya Nkya, and in the subsequent reply submissions, the respondent expressed her opposition to the application. It was contended that over nine months had passed after the Judgment of the trial Land Division of the High Court before the applicant decided to apply for extension of time. Mr. Mbedule regarded this inactivity for nine months to be anything but an inordinate delay, which the applicant has not accounted for. He placed reliance in the decision of the Court in **Ally Moshi Lubanguka vs. Zulfa Heri and Others**, Civil Application No. 56 of 2013 (unreported) which underscored the duty the applicants seeking extensions of time have, to account for each day of delay.

From submissions of the two learned advocates, in an application like the instant one, for an extension of time brought under Rule 10, the applicant is expected to show good cause for the Court to exercise its judicial discretion and extend time. The relevant Rule 10 states:

***10.** - 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 the*

expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to that time as so extended.

With due respect, Mr. Mbedule is correct in submitting that the question whether the applicant has accounted for each day of delay is one of the factors this Court invariably considers in determination of good cause. Mr. Kyarukuka has on other hand submitted that the delay to receive a copy of the decree as an essential document to accompany an application for stay which prevented the applicant from filing its application for stay of execution within the prescribed period. This line of submission is supported by paragraph 5 of the supporting affidavit:

*5. That despite the request for copies of Judgment and Decree and several physical follow-up and reminder letter dated 21st March, 2016 to our dismay the trial court has never availed the same thus hindering the Applicant from lodging its Application timely. **Attached herein and marked as annexure***

LT2 is the copy of the reminder letter to trial court requesting for the copy of Judgment and Decree.

It seems to me that a copy of the decree in Land Case No. 282 of 2008 is an essential document without which no application for stay of execution can be sustained. The case of **Blue Star Service Station vs. Jackson Musseti** (supra) which Mr. Kyarukuka cited is one of the many decisions of the Court requiring Notice of Motion seeking a stay of execution to be accompanied with a copy of the decree sought to be stayed. In **Anael Kyaka vs. Emanuel Kitoi**, Civil Application No. 19 of 2008 (unreported) the Court *suo motu* put to task the applicant whose Notice of Motion in an application for stay of execution was not accompanied a copy of the notice of appeal, a copy of the decree sought to be stayed. The Court stated:

"...It is established law that for an application of this nature to be competently before the Court, the notice of motion must be accompanied by copies of the notice of appeal and decree. Failure to do so renders the application incompetent. See, for example:-

*(i)-NATIONAL HOUSING CORPORATION,
vs. ETIENNES HOTEL Civil Application No. 175
of 2004 (unreported),*

*(ii)-PERMANENT SECRETARY MINISTRY OF
WORKS & ANOTHER VS. TWIGA PAPER
PRODUCTS, Civil Application No. 18 of 2007
(unreported) and*

*(iii)-OMARI SHAMBA & OTHERS VS
NATIONAL HOUSING CORPORATION, Civil
Application No. 2 of 2005 (unreported)...”*

I also note that after learning that execution proceedings were scheduled to begin in the High Court Land Division on 5th April, 2016, the applicant did not waste much time and filed this application for extension of time on 6th April, 2016.

In the circumstances of this application where the applicant had applied to the Registrar of the High Court to be supplied with a copy of the decree together with record of proceedings, and he had not been supplied with the requested documents, the applicant has shown


good cause to explain the delay to lodge an application for stay of execution of a decree.


In the result, the applicant is granted the extension in order to file its application for stay of execution of the decree in High Court Land Division Land Case No. 282 of 2008. The applicant shall lodge its application for stay of execution within thirty (30) days from the date of the delivery of this Ruling. Costs of this application shall abide the outcome of the impending appeal.

DATED at **DAR ES SALAAM** this 30th day of June, 2016.

I.H. JUMA
JUSTICE OF APPEAL

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




E.F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL