

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

CIVIL APPLICATION NO. 169 OF 2015

GAPCO TANZANIA LIMITEDAPPLICANT

VERSUS

RAMZAN D. WALJI COMPANY LTD..... RESPONDENT

**(Application for Extension of time to file an application for stay
of execution of the judgment and decree of the
High Court of Tanzania at Dar es Salaam)**

(Karua, J.)

**Dated 22nd day of May, 2015
in
Land Case No. 1 of 2010**

RULING

21st June & 22nd July, 2016

ORIYO, J.A.:

By a Notice of Motion lodged in Court, GAPCO TANZANIA LIMITED, (the applicant), using the services of IMMA Advocates, is asking the Court to exercise its discretionary powers under rule 10 of the Court Rules to extend the time available to the applicant to apply for Stay of Execution of the decree of the High Court, Mbeya, in Land Case No. 1 of 2010 between the parties.

The grounds upon which the extension of time is being sought as reflected in the Notice of Motion are as follows:-

1. The judgment in Land Case No. 1 of 2010 between **GAPCO Tanzania Ltd Vs Ramzan Walji Ltd Company Ltd** was delivered on 22 May, 2015.
2. Pursuant to Court of Appeal authorities, an application for stay of execution must be made within a period of 60 days from the day of the delivery of the judgment and it must **inter alia** be accompanied with the decree to be stayed.
3. Despite writing to the High Court in Mbeya on 26 May 2015, seeking proceedings and decree of the court, the decree was not ready until 3 August 2015, more than 60 days after the delivery of the judgment in Land Case No. 1 of 2010 between **Gapco Tanzania Limited V. Ramzan Walji Company Ltd.**
4. The delay in filing for stay of execution is not of the applicant's making.

The application is supported by a 13 paragraph affidavit of Anna Mwakatundu, an advocate and in house counsel for the applicant company According to the record, initially the applicant had the legal services of CRB Attorneys, in the High Court, Mbeya and

M/s IMMA Advocates were engaged after the conclusion of the High Court proceedings and for the purposes of appealing against the High Court decision. As ordinarily expected, it took some time for the newly engaged IMMA advocates to take over from CRB advocates, in pursuance of the intended appeal to the Court; hence the delay and the necessity of these proceedings for the enlargement of time.

Subsequent thereto, written submissions in support of the application for extension of time was lodged in the Court, by Imma Advocates, in compliance with Rule 106 (1) of the Rules.

An affidavit in Reply, on the part of the respondent, sworn by Mika Thadayo Mbise, learned counsel was lodged as well. In essence, Mr.Mbise does not dispute the contents of the affidavit of Anna Mwakatundu in support of the application; save for the ownership of the petrol station; the subject matter of the suit. The learned counsel had also separately, lodged a Notice of Preliminary Objection to that effect. The objection is couched in the following language:-

"(a) The application was not filed in the appropriate registry, as required by Rule 51(1) of the Tanzania Court of Appeal Rules, 2009, thereby causing unnecessary hardship to the Respondent.

WHEREFORE: The Respondent will pray for the application to be struck out with costs."

On 21/6/2016, when the application was called on for hearing the applicant was represented by Ms Fatma Karume, learned counsel while Mr. Abduel G. Kitururu, learned advocate appeared for the respondent.

In her brief but, focused submissions in support, , Ms Karume reiterated the underlying cause for the delay being the failure by the trial court's registry to timely issue the parties with a copy of the decree to enable them lodge a competent appeal in this Court.

On the part of the respondent, Mr. Kitururu, learned counsel, briefly submitted on the preliminary objection he had raised; on the application, having been not filed in the appropriate registry.

However, his oral submission took a dramatic turn, when his client stood up and informed the Court that he had been paid his dues and had no further claims against the applicant. With that information, there was mixed feelings from either side; and the proceedings were prematurely brought to an end.

In the circumstances, the parties took the liberty to pray that the matter be marked settled with no order as to costs.


Accordingly, by consent of the parties, the application is hereby marked settled with no order as to costs.

It is so ordered.

DATED at DAR ES SALAAM this 18th day of July, 2016

K.K. ORIYO
JUSTICE OF APPEAL

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


(T. K. Simba)
DEPUTY REGISTRAR
COURT OF APPEAL