

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

CIVIL APPLICATION NO. 34 OF 2015

MRS LILY MARANDU

t/a LOLY ENTERPRISES APPLICANT

VERSUS

ARUSHA INTERNATIONAL

CONFERENCE CENTRERESPONDENT

**(Application from the decision of the High Court of
Tanzania at Moshi)**

(Massengi, J.)

dated the 12th day of June, 2015

in

Land Case No. 16 of 2011

.....

RULING

20th & 27th May, 2016

MZIRAY, J.A.:

In this application, the applicant prayed for two orders; an order granting him extension of time to file application for stay of execution of the High Court decree in Land case No. 16 of 2011 and an order staying execution of the said decree pending determination of an intended appeal. The application is made under the provisions of Rule 48 (1), (2), (3) and (4), Rule 10 and Rule 11 (2)(b), (c), (d) and (e) of the Court of Appeal Rules (the

Rules). The same is accompanied by an affidavit, duly sworn by one Lily Marandu.

The respondent confronted the application with a notice of preliminary objection to this effect:-

- i) That, there is no prospect of the intending appeal taking off on account of the applicant's failure to take an essential step namely, leave under section 47 (1) of the Land Dispute Courts Acts, Cap 216 RE 2002. That, the applicant has given no security or the due performance of the decree, contrary to rule 11(2) (d) (iii) of the Tanzania Court of Appeal Rules, 2009.*
- ii) That, the decree sought to be stayed pending appeal is materially defective.*

When the matter came on for the hearing of the preliminary objection raised, Dr. Chami, learned counsel appeared for the applicant while the respondent had the services of Mr. Mughwai, learned advocate. The two learned counsels addressed the Court on the preliminary objection and upon completion the ruling was reserved. Just before composing the ruling, I came to note a very important legal point, though, not raised but was crucial in the determination of this matter. Therefore, I ordered for the two learned counsels to be re-summoned and address me on whether or not the application was properly before this Court, particularly on account of the fact that the application combined two prayers **firstly**, application for extension of time, **secondly**, application for stay of execution. Without hesitation, Mr. Mughwai, the learned counsel for the respondent argued that this Court sitting as a single justice cannot entertain an application for stay of execution as the application of that nature is to be heard by a panel of justices. In that view, then, the learned counsel pointed out that the application was just as well incompetent and ought to be struck out. He therefore concluded

that as the application is incompetent there is no even a point to go to the merit of the preliminary objection but the remedy should be to strike out the application.

Responding on behalf of the applicant, Mr. Siay, learned counsel who was holding the brief of Dr. Chami, cautioned that there was an order to withdrawal the application for stay of execution made by the Deputy Registrar, one Ms. Maruma but he did not come with it because the same is with Dr. Chami who has travelled to Mbeya. Be that as it may, the application was brought in an omnibus form. The two prayers were improperly combined rendering the same incompetent. The application for extension of time is within the power of a single justice while that of stay of execution is vested in a panel of three justices. In the case of **Babie Hamad Khalid v. Mohamed Enterprises (T) Ltd and Two Others**, Civil Application No. 6 of 2011, the applicant combined an application for extension of time to institute a notice of appeal and an application for stay of execution. The Court observed that combining of the two applications, one of which is within the jurisdiction of a single

justice and the other one within the jurisdiction of three justices, rendered the application incompetent.

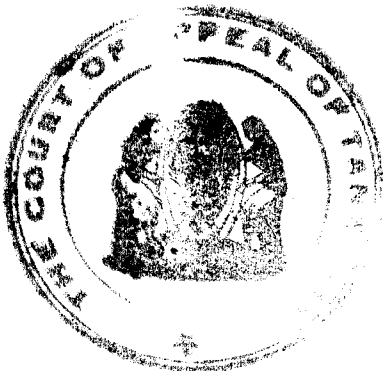
Since the application was incompetent for being brought in omnibus form even if we are to buy the argument by Mr Siay, learned counsel, still the Deputy Registrar in the circumstance had no power to withdrawal the application.

That said and on the basis that this application is incompetent, I will as hereby do struck out the same with no order as to costs.

DATED at ARUSHA this 26th day of May, 2016.

R.E.S. MZIRAY
JUSTICE OF APPEAL

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




P.W. BAMPIKYA
DEPUTY REGISTRAR
COURT OF APPEAL