

IN THE COURT OF APPEAL OF TANZANIA

AT TANGA

(CORAM: MBAROUK, J.A, MWARIJA, J. A. And MWANGESI, J.A.)

CIVIL APPLICATION NO. 110/12 OF 2017

STANSLAUS NGANYAGWA..... APPLICANT

VERSUS

**1. SEIF HAMOUD
2. FAX AUCTION MARTRESPONDENTS**

**(An application for stay of execution of the decision of the
District Land and Housing Tribunal at Tanga)**

(B.K. Kishenyi - Chairman)

dated 25th April, 2012

in

Civil Application No. 71 of 2011

RULING OF THE COURT

18th & 20th April, 2018

MBAROUK, J.A.:

Before us is an application for stay of execution made under Rule 11(2) (c) and (e) of the Tanzania Court of Appeal Rules, 2009 (the Rules) seeking for the following orders:-

"(a) An order for staying the execution proceedings and or orders thereof under a decree in respect of application No. 71/2012, to possibly, be executed by the 2nd Respondent under the instructions of the 1st Respondent, his agents, employees or any other person in relation to such acts, allowed to evict the Applicant from the suit property located on Plot No. 99 Block KBVI Raskazone Area, within Tanga City, be granted pending the hearing of this application inter-parties.

(b) Costs to follow the events.

(c) Any other order(s) that Hon. Court may deem fit and just to grant."

The application is supported by the affidavit sworn by Stanslaus Nganyagwa, the applicant.

This is an unusual and peculiar application, because this Court is not vested with powers to entertain an application for stay of execution from a District Land and Housing Tribunal without having passed at the High Court. In this application there is no decision or decree of the High Court found attached with the application which can be stayed by this Court. That means, from the outset this application is incompetent.

In this application, the applicant appeared in person unrepresented, whereas Mr. Mohamed Kajembe, learned advocate appeared for the 1st Respondent and Mr. Julius Singano an Officer from the 2nd Respondent appeared.

When the application was called on for hearing, the Court wanted to satisfy itself as to whether it is properly before the Court. This was for the reason that the applicant has failed to attach to the application copies of the notice of appeal and decree of the decision of the High Court.

To start with, Rule 11(2) (b) of the Rules as it stood at the time when the applicant filed the application provided as follows:-

"(2) Subject to the provision of sub-rule (1) the institution of an appeal shall not operate to suspend any sentence or to stay execution but the Court may-

(a) N/A

(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 83, an appeal, shall not operate as a stay of execution of the decree or order appealed from except so far as the High court or tribunal may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order.

(c) N/A..."

The wording of Rule 11(2) (b) of the Rules implies that a notice of appeal is a vital document which ought to be attached in the record of the application for stay of the execution, because the Court cannot know whether the applicant has already filed his notice of appeal to show his intention to appeal. This Court in the case of **Alex Kyola vs. Twaha Said Massawe**, Civil Application No. 220 of 2013 (unreported) struck out the application because the applicant failed to attach a copy of the notice of appeal in his application for stay of execution. Apart from the notice of appeal, the applicant has also failed to attach a copy of decree subject to be stayed which is also a vital document in an application for stay of execution.

Where a decree subject to be stayed is not accompanied in the application for stay of execution, the Court is left with no other option but to find the application incompetent and hence strike it out. See the decision of this Court in **Naftary Petro vs Mary Protas**, Civil Application No. 8 of 2015 and **Seleman Zahoro & Two Others vs Faisal Ahmed Abdul (legal Representative**

of the deceased Ahmed S. Abdul), Bk Civil Application No. 1 of 2008 (both unreported). In **Seleiman Zahoro** (supra) this Court observed that:-

*"We must out rightly say that the application before the Court is incompetent. Why? The application is seeking for an order for stay of execution. Rule 11(2) (b) (c) and (d) of the Court Rules is clear on the conditions which the applicant must comply with before being granted the order for stay of execution. **There must be a notice of appeal lodged in accordance with Rule 83 of the Court Rules. It must be lodged within thirty days from the decision the applicant seeks to impugn. The decree which forms the subject matter of the application must also accompany the application for stay of execution."***

(Emphasis added).

Reacting on the matter raised by the Court *suo motu*, the applicant knowingly being a lay person, it took him a long time to acknowledge and admit that he has failed to incorporate the required documents. However, finally he admitted that his application is without those required documents in his application. That made him later to pray to be allowed to make necessary corrections.

On his part, Mr. Kajembe, readily conceded to the defects raised by the Court *suo motu*. He added that, those defects render the application incompetent and the same should be struck out.

On the part of Mr. Singano, he simply said that, what their office has done is just to execute the court order and has appeared in Court to abide to the directives in the summons of the Court. He then said, he has nothing to comment on the matter which is now before the Court.

In view of the concession made by the parties on the matter raised by the Court *suo motu*, we find the application before us incompetent for failure to attach a copy of the notice of appeal and decree from the High Court's decision. In the circumstances, we are constrained to find no competent application before us. For that reason, we strike it out.

DATED at **TANGA** this 20th day April, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

S. S. MWANGESI
JUSTICE OF APPEAL

I certify that this is a true copy of the original


E. Y. MKWIZU
DEPUTY REGISTRAR
COURT OF APPEAL