

IN THE COURT OF APPEAL OF TANZANIA
AT ZANZIBAR

(CORAM: MBAROUK, J.A., MKUYE, J.A., And WAMBALI, J.A.)

CIVIL APPLICATION NO. 92/15 OF 2018

ZANZIBAR UNIVERSITYAPPLICANT

VERSUS

**1. ABDI A. MWENDAMBO
2. SULEIMAN OMAR ALI
3. RAMADHAN ALI HIMID }RESPONDENTS**

(Application from the decision of High Court of Zanzibar at Vuga)

(Sepetu, J.)

**dated the 13th day of October, 2017
in
Civil Case No. 20 of 2009**

RULING OF THE COURT

12th December & 14th December 2018

MKUYE, J.A.:

The applicant was aggrieved by the judgment and decree of the High Court of Zanzibar dated 13th October, 2017 in Industrial Division-Civil Case No. 20 of 2009. She duly lodged a notice of appeal on 1st November, 2017, and in order to stop the execution of the decree, she lodged this application seeking an order for stay of execution pending the hearing and determination of the intended appeal on the following grounds:

- (1) The applicant has filed a notice of appeal against the said judgment and decree and they verily believe that in the intended appeal the Court of Appeal will turn down the said judgment and decree.*
- (2) The judgment and decree of the High Court of Zanzibar (Hon. Justice Mkusa. I. Sepetu) given at Vuga on the 13th day of October, 2017 is problematic, is doomed to failure and will be rejected by the Court of Appeal.*
- (3) If the Respondent is allowed to execute the said decree, the Applicant will suffer irreparable damages.*
- (4) The costs of and incidental to this application abide by the result of the said appeal.*

The application is by way of Notice of Motion which is made under Rule 11 (3) of the Tanzania Court of Appeal Rules, 2009 (the Rules) as amended by the Tanzania Court of Appeal Rules (Amendment) Rules, 2017 (G.N. No. 362 of 2017). The same is supported by an affidavit duly affirmed by Suleiman Salim Abdulla, learned advocate for the applicant. The applicant also filed her written submission on 16/1/2018. The respondents did neither file their affidavits nor written submissions in reply.

When the application was called on for hearing before us, the applicant was represented by Mr. Suleiman Salim Abdulla learned counsel. The 1st and 3rd respondents did not enter appearance while the 2nd respondent appeared in person and unrepresented. Mr. Abdulla intimated us that the 1st and 3rd respondent did not appear because their dispute has already been settled out of court. He, therefore, prayed and we granted leave for the matter against them to be withdrawn.

In support of the application, Mr. Abdulla in the first place adopted the notice of motion, the affidavit as well as the written submissions in support of the application. Further to that, the counsel for the applicant submitted that the application was made without delay as it was filed within 14 days after having been served with a notice of execution. He further contended that the applicant is likely to suffer loss as the respondent who is unemployed would not be in a position to refund the amount awarded to him in case the applicant's appeal succeeds. On top of that he argued that, the applicant has undertaken to furnish a security of any amount of money as the Court may determine for the due performance of the

decree. In that regard, he prayed to the Court to grant the application of stay for execution sought.

On his part, the 2nd respondent, being a layperson and not conversant with legal issues left the matter in the hands of the Court to decide.

After having dispassionately considered the grounds raised in the application, the averrement in the affidavit and the submissions of the learned advocate for the applicant, we think our starting point would be Rule 11 (5) (a), (b) and (c) of the Rules which sets out the conditions which are to be satisfied before the Court can order stay of execution.

The said Rule provides as follows:

- "(5) No order for stay of execution shall be made under this rule unless the Court is satisfied that:*
- (a) substantial loss may result to the party applying for stay of execution unless the order is made;*
 - (b) the application has been made without unreasonable delay; and*
 - (c) security has been given by the applicant for the due performance of such decree or*

order as may ultimately be binding upon him."

The conditions for the grant of stay of execution have been emphasized in a number of decisions of this Court. For instance in the case of **Therod Fredrick v. Abdusamadu Salim**, Civil Application No. 7 of 2012 (unreported) the Court observed as follows:-

"On the terms of the present Rules, the Court no longer has the luxury of granting an order of stay of execution on such terms as the Court may think just; rather, the Court must be satisfied, just as the applicant will be required to fulfil the following cumulative requirements:-

- 1. Lodging a notice of appeal in accordance with Rule 83;*
- 2. Showing good cause;*
- 3. Complying with the provisions of item (d) (i), (ii) and (iii) [Now Rule 5 (a), (b) and (c)].-See also **Manjit Singh Sandhu and 2 others v. Robiri R. Robiri**, Civil Application No. 15 of 2014; **Tanzania Breweries Limited v. Anthon Nyingi**, MZA Civil Application No. 12 of 2014; **Mantrac Tanzania Ltd v. Raymond***

Costa, Civil Application No. 11 of 2010
(all unreported)”

We wish also to point out that the three conditions we have enumerated above have to be conjunctively and not disjunctively satisfied by the applicant before the applicant’s application for stay of execution is granted - (See **Arusha Hardware Traders Ltd And 2 others v. M/s Exim Bank Tanzania Limited**, Civil Application No. 38 of 2015 (unreported)).

Subjecting the above tests to the material before us, we are satisfied that the applicant has met all the conditions. This is so because the applicant lodged a notice of appeal within time as per Rule 83 of the Rules. She lodged it on 1st November, 2017 after the decision sought to be stayed was delivered on 13th October, 2017 which was 18 day after the delivery of the decision. On top of that, she lodged this application on 18th December, 2017 after having been served with the notice of execution on 5th December, 2017. She therefore, lodged it within 13 days which was in compliance with Rule 11 (4) of the Rules.

As to the second condition, we are also satisfied that substantial loss may be occasioned to the applicant if the application

for stay of execution is not granted. This is established in item 3 of the notice of motion and paragraph 7 of the affidavit in support of the application. The award given to the respondent of 10,346.80 USD as outstanding salary and the sum of Tshs. 20,000,000/= as compensation for harassment is a huge amount of money which may not easily be refunded by the 2nd respondent who is unemployed, if the applicant's appeal succeeds.

As regards the third condition relating to furnishing or undertaking to give security for the due performance of the decree, we are similarly satisfied that she has satisfied it. The applicant has, through paragraph 9 of the affidavit, specifically averred that she is willing to pay any amount of money as security of costs as this Court may direct. Therefore, this condition has been satisfied as well.

After having given due consideration of the matter before us, we are settled in our mind that the applicant has satisfied all the conditions to warrant us grant the stay of execution.

We, therefore, grant the application and stay the execution of the decree of the High Court of Zanzibar, Industrial Division in Civil Case No. 20 of 2009 pending hearing and determination of the appeal. We further order that the applicant should deposit a banks'

guarantee of the decretal sum to the tune of 10,346.80 USD and Tshs. 20,000,000/= within twenty one days of the delivery of this ruling. Each party is to bear its own costs.

It is so ordered.

DATED at **ZANZIBAR** this 13th day of December, 2018.

M. S. MBAROUK
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

F. L. K. WAMBALI
JUSTICE OF APPEAL

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




B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL