

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

**CIVIL APPLICATION NO. 588/17 OF 2019**

**1. GABRIEL MATHIAS MICHAEL  
2. HAMIS SHEHA RIKO ..... APPLICANTS**

**VERSUS**

**HALIMA FERUZI & 2 OTHERS ..... RESPONDENTS**

**(Application for extension of time to apply for stay of execution of the  
decree involving the decision of the High Court of Tanzania (Land Division)  
at Dar es Salaam)**

**(Kente, J.)**

**Dated the 28<sup>th</sup> day of April, 2015**

**in**

**Land Case No. 297 of 2009**

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**RULING**

8<sup>th</sup> & 13<sup>th</sup> May, 2020

**KITUSI, J.A.:**

This is an application for extension of time within which an application for stay of execution may be lodged. The law, Rule 11 (4) of the Tanzania Court of Appeal Rules, 2020 requires:-

*" (4) An application for stay of execution shall be made within fourteen days of service of the notice of execution on the applicant by the executing officer or from the date he is otherwise made aware of the existence of an application for execution."*

The Notice of Motion which has triggered off this application as well as the affidavit of Mr. Samson Mbamba, learned advocate for the applicants, cite one major ground for the delay in fulfilment of the requirement under rule 10 of the Rules, that requires the applicant to show good cause for the delay. There are also written submissions to support the application. The cited main reason for the delay is that service of the application for execution was effected on the applicants on 7<sup>th</sup> August 2019, but they could not file their application for stay of execution within the stipulated 14 days because they had not filed a Notice of Appeal yet.

The genesis of the matter in brief is that the applicants lost in Land Case No. 297 of 2009 which was later numbered as Land Case No. 297 A of 2009, at the High Court, Land Division. Aggrieved by that decision, they preferred an appeal, Civil Appeal No. 23/17 of 2017, which was however, struck out on 18<sup>th</sup> June, 2019 for being incompetent. Still bent at challenging the decision, the applicants went back to the drawing board and started all over it again by applying for extension of time to lodge a fresh Notice of Appeal, which was granted on 10/12/2019. This application was lodged on 19/12/2019, about nine days later.

At the time of hearing of the application on 8<sup>th</sup> May 2020, the respondents, three of them, had not filed any affidavit in reply, and only

two of them entered appearance. These were Halima Feruzi, and Egbert Kalugendo, the first and second respondents respectively. They informed me that they resisted service of notice of hearing, but subsequently collected the documents from the Court Registry. The third respondent, one Nurdin Ally Said did not enter appearance.

Mr. Samson Mbamba, learned advocate appeared to prosecute the application on behalf of the applicants, and informed the Court that service on all the respondents was effected, and substantiated that assertion by producing copies of affidavits of service

I am satisfied, not only from the contents of the affidavit of service but from the statements of the first and second respondents that service was effected. On that basis I granted Mr. Mbamba's prayer to proceed in the absence of the third respondent, under Rule 63(3) of the Rules.

Submitting in support of the application, Mr. Mbamba for the applicant cited the case of **Mekefason Mandari & Others v. The Registered Trustees of the Archdiocese of Dar es Salaam**, Civil Application No. 397/17 of 2019 (unreported) where it was held that since existence of the application for revision was a precondition for the applicants to file for stay of execution, the pendency of that application for revision constituted good cause. The learned counsel submitted that in the present case Notice of Appeal was a pre-condition for filing an

application for stay of execution, therefore the delay caused by pursuing an extension of time to file it constitutes good cause.

The two respondents who entered appearance threw in the towel and left the Court to decide on the matter. I am satisfied that the matter presents no unfamiliar tale and should be disposed of with ease. The delay that Mr. Mbamba has referred to and given an account of in the written submissions is one that has over the recent years been called technical delay. See **Fortunatus Masha v. William Shija and Another** [1997] T.L.R 154, and, **Yara Tanzania Limited v. DB Shapriya and Co. Limited**, Civil Application No. 498/16 of 2016 (unreported), and many others cited in the case of **Ally Ramadhani Kihyo v. The Commissioner for Customs, Tanzania Revenue Authority and Another**, Civil Application No. 29/01 of 2018 (unreported). Since the intended application for stay of execution could only be made by a party who has lodged a notice of appeal, the applicant's pursuit of an order of extension of time to lodge notice and the subsequent filing of the same was a technical delay that could not be avoided.

Aware that my powers under rule 10 of the Rules are discretionary, and that I should exercise that discretion judiciously, I am inclined to grant the application. This is because the decision as to what amounts to good cause depends on the relative circumstances of a given case and it is my

finding that the applicant has shown good cause. See **KABDECO v. WETCU LIMITED**, Civil Application No. 526/11 of 2017 (unreported). I am of the view that the length of the delay and the reason for the delay are in favour of my order granting the application. It is also my conclusion that the respondents will not be inconvenienced by a grant of the application than will the applicant if the order is withheld.

In the circumstances I grant the application and order that the application for stay of execution should be filed within 14 days of the delivery of this ruling. Costs of this application to be in the main cause.

**DATED at DAR ES SALAAM this 12<sup>th</sup> day of May, 2020.**

I. P. KITUSI  
**JUSTICE OF APPEAL**

Ruling delivered this 13<sup>th</sup> day of May, 2020 in the presence of 1<sup>st</sup> applicant in person and 1<sup>st</sup> and 2<sup>nd</sup> respondents in person, is hereby certified as a true copy of the original.



  
G.H. HERBERT  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**