

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

CIVIL APPLICATION NO. 432/16 OF 2019

**1. RUNGWE FREIGHT & CONSTRUCTION CO. LTD }
2. JIMMY BROWN MWALUGELO }..... APPLICANTS**

VERSUS

INTERNATIONAL COMMERCIAL BANK (T) LTD RESPONDENT

**(Application for extension of time to lodge application for stay of
execution of the Decree of the High Court of Tanzania
(Commercial Division) at Dar es Salaam)**

(Songoro, J.)

dated the 17th day of July, 2015

in

Commercial Case No. 105 of 2013

RULING

21st February & 10th March, 2020

LEVIRA, J.A.:

This is an application for extension of time within which to file application for stay of execution of the Decree of the High Court of Tanzania Commercial Division (Songoro, J.) dated 17/7/2015 in Commercial Case No. 105 of 2013. The Notice of Motion is supported by the affidavit of the second applicant and Principal Officer of the first applicant, Jimmy Brown Mwalugelo.

The application is not contested by the respondent. It is noteworthy that the respondent did not file affidavit in reply instead on 24/10/2019 she filed a notice of non contendere indicating the intension not to contest this application.

At the hearing of the application the applicants were represented by Mr. Samwel Shedrack, learned advocate, whereas the respondent was represented by Mr. William Mang'ena also learned advocate.

Submitting in support of the application, Mr. Shedrack stated that initially the applicants had filed an application for stay of execution. However, the said application was not successful as the applicants did not undertake to furnish security for due performance of such decree as may ultimately be binding upon them, that was on 3rd September, 2018. He added that, in 2019 the respondent filed an application for execution in the High Court, Commercial Division and the applicant was supposed to file an application for stay of execution within 14 days after the application for execution had been filed. However, he said, by the time execution application was being filed the applicants had already filed their application for review of the decision of the Court which was

delivered on 8/4/2019. Therefore, when they were served with the application for execution they were late for five days to apply for stay of the same, and hence, the current application for extension of time. Finally, Mr. Shedrack prayed for this application to be granted.

On his part, Mr. Mang'ena had nothing to add to the non contendere notice filed earlier on by the respondent.

Having considered the record and submission by the counsel for the applicant, I wish to state that Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules) under which this application is brought requires the applicant to show good cause to justify his application. It provides that:-

"The Court may, upon good cause shown, extend the time limited by these Rules or by any decision of the High Court or tribunal, for the doing of any act authorized or required by the Rules, whether before or after the doing of the act; and any reference to that time as so extended."

Therefore, the only issue which I need to consider is whether or not the applicants herein have advanced good cause to justify grant of

the application. Mr. Shedrack has advanced only one reason that, the applicants were served with the application for execution five days after the lapse of 14 days within which they could have filed their application for stay of execution without applying for extension of time. He also highlighted that the initial applicants' application for stay of execution was struck out for failure to indicate in the supporting affidavit the undertaking to furnish security for due performance of a decree. Under paragraph four (4) of the supporting affidavit it is stated that, the applicants were dissatisfied with the judgment of the Court delivered on 8th February, 2019 and thus they lodged their application for review of the said judgment which is still pending.

As pointed out earlier, the respondent is not opposing this application. Meaning that, the applicants are not at fault per se in the delay to file their intended application for stay of execution as they were served with the application for execution when it was already late.

Having considered the reason for the delay advanced by the applicants, I am satisfied that it falls squarely under good cause in terms of Rule 10 of the Rules as there was no way they could have filed an

application for stay of execution without first being served with the application for execution by the respondent, a fact which the respondent does not dispute as indicated above.

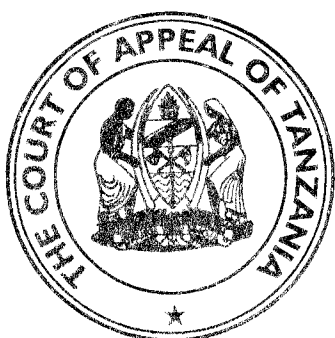
For the foregoing reason, I hereby exercise my discretionary powers and grant the application. The applicants are given 14 days within which to file their application for stay of execution.

It is so ordered.

DATED at **DAR ES SALAAM** this 6th day of March, 2020.

M.C. LEVIRA
JUSTICE OF APPEAL

The Ruling delivered this 10th day of March, 2020 in the presence of Mr. Jimmy Mwalugelo Managing Director for 1st and 2nd present and Mr. Yohanes Konda, learned Counsel for the Respondent is hereby certified as a true copy of the original.




B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL