

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

(CORAM: MKUYE, J.A., KENTE, J.A., And KIHWELO, J.A.)

CIVIL APPLICATION NO. 33/01 OF 2021

TANZANIA TELECOMMUNICATION COMPANY LIMITED.....1ST APPLICANT
ATTORNEY GENERAL 2ND APPLICANT

VERSUS

M/S TILISHO GROUP RESPONDENT

**(Application for stay of execution of the Judgment and Decree of the High
Court of Tanzania at Dar es Salaam Registry)**

(De- Mello J.)

Dated the 2nd day of October, 2019

in

Civil Case No. 227 of 2013

RULING OF THE COURT

3rd October & 19th December, 2022

KENTE, J.A.:

On the 3rd October, 2022, when this application for stay of execution of the decree of the High Court (sitting at Dar es salaam) in Civil case No. 227 of 2013 was called for hearing, Mr. Lukelo Samwel, learned Principal State Attorney appeared along with Mr. Emmanuel Mkonyi also learned Principal State Attorney and Mr. Joseph Tibaijuka, learned State Attorney to

represent the applicants, Tanzania Telecommunication Company Limited and the Attorney General. On the other hand, the respondent M/s Tilisho Group was represented by Ms. Miriam Majamba, learned advocate.

Submitting in support of the application, Mr. Samwel contended generally that the applicants had fulfilled all the conditions requisite for grant of any application of the present nature. However, on being probed by the Court, the learned Principal State Attorney went out of his way to prevaricate about the fundamental question as to whether Rule 11(4) of the Court of Appeal Rules, 2009 (the Rules) which requires an application for stay of execution to be made within fourteen days of service of the notice of execution on the applicant or from the date the applicant is made aware of the existence of an application for execution had been complied with. Whereas the learned Principal State Attorney claimed that the applicants became aware of existence of the application for execution after they were served with a notice requiring them to appear before the Registrar of the High Court on 9th February, 2021 he supplied to the Court a copy of the said

notice which, however as opposed to his contention, it showed that the notice was received by the first applicant on 28th January, 2021.

Now, if the said notice is anything to go by, it follows that the present application which was filed on 15th February, 2021 was officially filed after eighteen days of service of the notice of execution on the applicants. Needless to say, that was contrary to the dictates of Rule 11(4) of the Rules.

Given the situation, Ms. Majamba had a smooth and almost effortless moment to put up a fight and argued that, the application before us was time barred. Briefly dealing with the question as to the way forward, given the circumstances, Ms. Majamba pressed very briefly for the application to be struck out on account of being time barred. For his part, in rejoinder, Mr. Samuel had nothing to convince us other than pointing an accusing finger to the respondents for allegedly filing an affidavit in reply, after more than one and half years of being served with the notice of motion.

Now, that the respondent had filed affidavit in reply after expiry of one and half years, cannot be a justification for entertaining this application which was filed out of the period prescribed by law. We thus find merit in

the submission made by Ms. Majamba. The application is therefore time barred and it cannot be allowed to stand. We accordingly strike it out with costs.

It is so ordered.

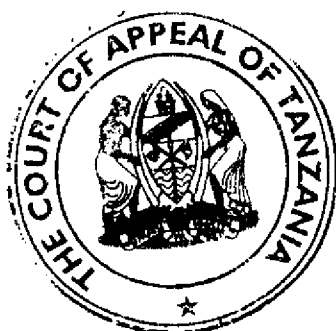
DATED at DAR ES SALAAM this 23rd day of November, 2022.

R. K. MKUYE
JUSTICE OF APPEAL

P.M. KENTE
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

The ruling delivered this 19th day of December, 2022 in the presence of Ms. Dorine Mhina, learned State Attorney for the Applicants and Ms. Miriam Majamba, learned counsel for the respondent is hereby certified as a true copy of original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL