

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 529/01 OF 2023

ALAF LIMITED APPLICANT

VERSUS

THE BOARD OF TRUSTEES OF THE

PUBLIC SERVICE SOCIAL SECURITY FUND (PSSSF).....1ST RESPONDENT

ALAF SAVINGS AND CREDIT

CO-OPERATIVE SOCIETY LIMITED (ALAF SACCOS)2ND RESPONDENT

(Application for stay of execution of the judgment and Decree of the

High Court of Tanzania (Dar es Salaam District Registry)

at Dar es Salaam)

Masabo,J

dated 22nd of April, 2021

in

Civil Case. No. 88 of 2017

RULING

24th & 26th July, 2023

MGONYA, J.A.:

In this application which was filed under the certificate of urgency, the same is made under rule 51(2) of the Tanzania Court of Appeal Rules, 2009 (the Rules), with three basic prayers. Extension of time to file an application for stay of execution of the Judgment and Decree of the High Court of Tanzania (Dar es Salaam District Registry) in Civil Case No. 88 of

2017, An *Ex-parte* Order for stay of Execution of Decree in High Court in Civil Case No. 88 of 2017 (Dar es Salaam District Registry) pending hearing and determination of the application *ex-parte* and *interparte* Order staying the Execution of the Decree of the High Court pending final determination of the intended Civil Appeal.

As the law requires, this application is made by way of notice of motion made under Rules 4(1) and 4(2) (a) and (b), 11(3) 11(4), 11(5) (a) to (b), 11(6), 11(7) (a) (b) (c) and (d) and rule 48(1) of the rules. The notice of motion is supported by the affidavit of one Hamida Hassan Sheikh the applicant's counsel.

When the application was called on for hearing, before the Court was Ms. Hamida Hassan Sheikh learned counsel who represented the applicant, whereas the 1st respondent enjoyed the services of Mr. Francis Wisdom and Nyambilila S. Ndoboka both State Attorneys. For the 2nd respondent no one entered appearance despite of being duly served.

Before I proceed with the determination of the application on merit, I wanted to ascertain from Ms. Sheikh, learned counsel for the applicant, whether the application which appears to be omnibus in its form is properly before the Court. She admitted that the same does not seem to be proper and regular but they were compelled by circumstances as they needed to save the time. Ms. Sheikh elevated her prayer for leave to

amend and refile the application by separating the prayer for extension of time and that of stay of execution.

On the opposite side, Mr. Wisdom the learned State Attorney, straight away resisted the prayer for amendment for being incompetent. He implored this Court to struck out the matter.

In her rejoinder Ms. Sheikh submitted that the irregularity in the application did not prejudice the respondent. Hence an order to amend cannot be the same as striking out. She further invited the Court to invoke rule 4 of the rules which allows the Court to depart with the rule where necessary for the interest of justice.

Having heard the parties' counsel, the nagging question is whether the application is proper.

Rule 4 (1) of the Rules reads as follows: -

4.-(1) The practice and procedure of the Court in connection with appeals, intended appeals and revisions from the High Court, and the practice and procedure of the Court in relation to review and reference; and the practice and procedure of the High Court and tribunals in connection with appeals to the Court shall be as prescribed in these Rules or any other written law, but the Court may at any

time, direct a departure from these Rules in any case in which this is required in the interests of justice.

It is clear from the above sub-rule that for the interest of justice the Court may direct a departure from the Rules in appeals, intended appeals, revision, review and reference. It was Ms. Sheikh contention that, as the irregularity in the application did not prejudice the respondents then the Court has to depart from its Rules.

As it has been alluded above that, this application contains three applications whereby the first prayer is for extension of time for filling an application for stay of execution and the second prayer is an order for stay of execution. From these prayers the irritating question is, for which reason this court should enlarge the time to file an application which is already before the court? I get the concern of Ms. Sheikh that they filed the omnibus application so as to save time, but I decline to accept as filing improper application cannot be condoned on that reason.

A close look at paragraph 5(a) and (b) of the affidavit in support of the application it is clear that, the applicant was un able to file an application for stay of execution within the 14 statutory days. Therefore, the application is time barred. That being the case, this Court has no jurisdiction to entertain the matter which is time barred.

It is a trite law that once the issue of time limitation is established, it has the effect of causing the jurisdiction of the Court to cease. There are plethora of authorities by this Court which underscored the said position of the law, to mention few are; **Njake Enterprises Ltd v. Blue Rock, Ltd and another**, Civil Appeal No. 69 of 2017, **Mayira B. Mayira and 4 Others v. Kapunga Rice Project**, Civil Appeal No. 359, **Mondorosi Village Council and 2 Others v. Tanzania Breweries Ltd and 4 Others**, Civil Appeal No. 66 of 2017, **Filon Felicion Kwesiga v. Board of Trustees of NSSF**, Civil Appeal No. 136 of 2020, and **Muse Zongori Kisere vs. Richard Kisika Mugendi & Others**, Civil Application No. 244/01 of 2019 (all unreported). In **Muse Zongori Kisere's** case (supra) the Court stated that:

"...it is settled that once the issue of time limitation is established, it has the effect of causing the jurisdiction of the Court to cease."

The above being the position of the law, it was the duty of the applicant to file an application for enlargement of time first for the Court to acquire jurisdiction to determine an application for stay of execution. Upon being granted the said application which is discretionary granted upon sufficient cause established, then they should proceed with filling other application.

Likewise, going through the applications as they appear in the notice of motion, it is clear if the Court have to proceed with the hearing of the same as they appear, it means the Court should hear the parties on the prayer for extension of time along with an *ex-parte* application for stay (under rule 10 and 60(1) of the rules respectively) and proceed to compose its ruling. However, I find the said decision will be a nullity as the Court has no jurisdiction to hear *ex-parte* application for stay of execution until the enlargement of time is granted. It is from this reasoning I find that, filling an application for extension of time together with the applications of stay of execution in a single application is improper and misconceived. It was stated by this Court in the case of **Rutagatima CL vs. Advocates Committee & Another, Civil Application No. 98 of 2010**, that;

"Under the relevant provisions of the law an application for extension of time and an application for leave to appeal are made differently. The former is made under Rule 10 while the latter is preferred under Section 5 (1) (c) of the Appellate Jurisdiction Act read together with Rule 45. So, since the applications are provided for under different provisions it is clear that both cannot be "lumped" up together in one application, as is the case here."

On the premise above, I am satisfied that the application above is misconceived, therefore as to what remedy to follow. Since the above irregularity was established by the Court, then therefore under rule 4(2) of the rules, in order to meet the end of justice, I order amendment of the application by separating the prayers and refiling it as sought by the applicant.

It is so ordered.

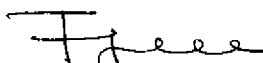
DATED at DAR ES SALAAM this 26th day of July, 2023.

L. E. MGONYA

JUSTICE OF APPEAL

The Ruling delivered this 26th day of July, 2023 in the presence of Ms. Hamida Sheikh, learned counsel for the appellant, Ms. Nyambilila Ndoboka & Fransis Wisdon, learned counsel for the 1st respondent and Absence of the 2nd respondent, is hereby certified as a true copy of the original.




F. A. MTARANIA
DEPUTY REGISTRAR
COURT OF APPEAL