

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**(CORAM: KOROSSO, J.A., RUMANYIKA, J.A. And MGONYA, J.A.)**

**CIVIL APPLICATION NO. 489/16 OF 2022**

**THE HON. ATTORNEY GENERAL ..... APPLICANT**

**VERSUS**

**ELECTRICS INTERNATIONAL COMPANY LIMITED..... 1<sup>ST</sup> RESPONDENT**

**PUBLIC SERVICE SOCIAL SECURITY FUND..... 2<sup>ND</sup> RESPONDENT**

**(Application for stay of execution of the Decree of the High Court of  
Tanzania, Commercial Division at Dar es Salaam)**

**(Philip, J.)**

**dated on 1<sup>st</sup> day of October, 2020**

**in**

**Miscellaneous Commercial Cause No. 15 of 2018**

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**RULING OF THE COURT**

*27<sup>th</sup> September & 16<sup>th</sup> October, 2023*

**RUMANYIKA, J.A.:**

The applicant, The Attorney General, seeks an order for stay of execution pending the hearing and determination of an application for extension of time to file revision. The application is by notice of motion made under rules 4(2) (b), 11(3), 11(4), 11(5)(a) and (c), 11(6) and (7)(b)(c)(d) and 48 of the Tanzania Court of Appeal Rules, 2009 as

amended, herein after referred to as “the Rules”. It is supported with an affidavit sworn by George N. Mandepo, a Principal State Attorney.

The factual background of the matter is fairly long as it is gathered from the supporting affidavit. However, we will summarize it as follows: The applicant is the chief legal advisor of the Government. The 2<sup>nd</sup> respondent, the successor of the then PPF is a public institution, established under the Public Service Social Security Fund Act No. 2 of 2018. On 6<sup>th</sup> November, 2008, the defunct PPF contracted the 1<sup>st</sup> respondent for the construction of some buildings for the College of Informatics and Virtual Sciences of the University of Dodoma. However, during the implementation of the two contracts, there arose some variations resulting into additional costs, for steel structure elements and the construction of the parking lot. This gave rise to a dispute which the parties referred to an Arbitrator. Upon hearing of the matter, the Arbitrator ruled in favour of the 1<sup>st</sup> respondent and awarded it TZS 2,466,925,071 which comprised of TZS 1,593,256,912 being additional costs for the Food Court (Canteen), TZS 683,206,450 as additional costs for the IT Laboratory and TZS 461,709 being additional costs for the construction of the parking lot.

The 1<sup>st</sup> Respondent referred the Arbitral Award to the High Court Commercial Division vide Miscellaneous Commercial Cause No. 15 of 2018 for registration. PPF unsuccessfully filed a petition to set aside the said Arbitral Award vide Miscellaneous Commercial Cause No. 38 of 2018. That application was struck out, thus, giving rise to the Arbitral Award, being registered as a court Decree. Upon registration of the Award, the 1<sup>st</sup> Respondent filed Miscellaneous Commercial Cause No. 15 of 2018 for execution. On the other hand, the 2<sup>nd</sup> Respondent being the successor of the PPF filed Civil Appeal No. 249 of 2018 in the Court to challenge the decision of the High Court registering the Arbitral Award. The appeal involved the 1<sup>st</sup> and 2<sup>nd</sup> respondents. However, on 25<sup>th</sup> October, 2021, the said appeal was struck out for being incompetent.

On 6<sup>th</sup> June, 2022 the 1<sup>st</sup> respondent filed an amended application for execution also involving the applicant and attached the 2<sup>nd</sup> respondent's Bank Account No. 01J1042998100 with CRDB Bank. From there, the applicant filed an application for extension of time within which to file revision, vide Civil Application No. 479/16 of 2022. The applicant further averred that, the bank account sought to be attached is the government's property which is not liable to be attached. It is also averred that, if the intended execution is not stayed, then the said

application for extension of time will be rendered nugatory causing the 2<sup>nd</sup> respondent to encounter hardships in paying the beneficiaries of the Fund thus, and the applicant and the 2<sup>nd</sup> respondent to suffer great loss. On the prospects of the application for extension of time, the applicant avers that it has overwhelming chances of success.

At the hearing of the application on 27<sup>th</sup> September, 2023, Mr. Edwin Joshua Webiro learned Senior State Attorney appeared being assisted by Ms. Rehema Mtulya and Mr. Ayoub Sanga both learned state attorneys. Mr. Samson Mbamba and Ms. Anna Shayo learned counsel appeared for the 1<sup>st</sup> and 2<sup>nd</sup> respondents respectively.

Onset, we invited Mr. Webiro to address the Court whether the application was filed within time prescribed under rule 11(4) of the Rules. The learned Senior State Attorney was quick to state that, the Court rules do not provide for time limit within which applications of this nature to be filed, as is the case, it was pending determination of an application for extension of time to file revision. He urged us to invoke rule 4(2) (b) of the Rules asserting that, the sixty days' rule applies in the circumstances, as the fall-back position. Therefore, he beseeched us to find and hold that, this application was lodged within time. Since, the applicant became aware of the existence of the application for execution

on 27<sup>th</sup> July, 2022 and filed the instant application on 19<sup>th</sup> August, 2022 which is within sixty days required.

Responding to Mr. Webiro's proposition, Mr. Mbamba contended that, the 14 day's rule on a limitation period prescribed under rule 11(4) of the Rules is cross cutting. Since, it applies in all cases and situations, irrespective of whether an application is for stay of execution of a decree pending determination of an application for extension of time to file revision, as is here, or to file an appeal. Additionally, Mr. Mbamba asserted that, in any case, the requisite conditions for issuing an order for stay of execution are the same, including a firm undertaking by the applicant to give security for due performance of the respective decree, from which an appeal may arise. He cited our unreported decision in **Mekefason Mandali And 8 Others v. The Registered Trustees of The Archdiocese of Dar es Salaam**, Civil Application No. 491/17 of 2019 to reinforce his proposition.

Upon hearing the submissions of the parties' learned counsel and authorities cited, we wish, at the very outset to address Mr. Webiro's noble point, whether, in considering to grant an order staying execution of the decree, in this case, pending determination of an application for extension of time to file revision, in terms of rule 4(2) (a) and (b) of the

Rules, the Court has to do away with the requisite conditions stipulated under rule 11(4) and (5) of the Rules for granting an order for stay of execution of a decree, pending determination of appeal. With respect, Mr. Webiro's point cannot be more incorrect. Much as, we appreciate both the fact and law that, rule 4(2) (a) of the Rules applies to matters where no provision is made by the Rules or any other written law.

Respectfully, we accept Mr. Mbamba's proposition that, in all cases, the requisite conditions inclusive of the limitation period for the grant of an order of stay of execution of decree remain the same. That, the said granting is irrespective of whether or not the stay of execution being sought is pending determination of an appeal, a review, or reference.

The foregoing apart, the central issue for our determination is whether the instant application is time barred. Very clearly, Rule 11(4) of the Rules sets a limitation period of fourteen days, within which to file applications of this nature as follows:

***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.*

(Emphasis added).

From the above quoted text, it is clear to us that, the applicant had fourteen days to file the instant application.

At least, there are two main facts which are not disputed, for the determination of this application. **One**, that, the 1<sup>st</sup> respondent filed the respective amended application for execution on 6<sup>th</sup> June, 2022, as averred in paragraph 16 of the affidavit supporting this application and **two**, that, the instant application was filed on 19<sup>th</sup> August, 2022.

The accrual of fourteen days set under rule 11(4) of the Rules for the filing of an application for an order to stay execution is free of any ambiguity as noted above. Very unfortunately, the applicant herein did not tell when the respondent served him with the respective application for execution, or when he became aware of the existence of the intended execution.

However, the record is clear to us that, the 1<sup>st</sup> respondent had applied for execution, vide Misc. Application No. 15 of 2018, on 24<sup>th</sup> May, 2022, as averred in paragraph 16 of the supporting affidavit. Now that, as observed above, the applicant did not tell when the respective

notice of execution was served on him, we are forced to draw an adverse inference, which we hereby do. We take the notification date to be 6<sup>th</sup> June, 2022. Therefore, the applicant filed the application forty three days later, which is about twenty nine days late.

In conclusion, we strike out the application for being time barred. Costs in the course.

**DATED at DAR ES SALAAM this 13<sup>th</sup> day of October, 2023.**

W. B. KOROSSO  
**JUSTICE OF APPEAL**

S. M. RUMANYIKA  
**JUSTICE OF APPEAL**

L. E. MGONYA  
**JUSTICE OF APPEAL**

The ruling delivered this 16<sup>th</sup> day of October, 2023 in the presence of Ms. Rehema Mtulya, learned State Attorney for the Applicant and Mr. Steven Biko, Principal State Attorney for 2<sup>nd</sup> Respondent, also holding brief for Mr. Samson Mbamba for the 1<sup>st</sup> Respondent, is hereby certified as a true copy of the original.



  
F. A. MTARANIA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**