

**IN THE COURT OF APPEAL OF TANZANIA**

**AT MUSOMA**

**CIVIL APPLICATION NO. 177/08 OF 2024**

**MARY SANGE.....APPLICANT**

**VERSUS**

**IBRAHIM ALLY KIGOMBE.....RESPONDENT**

**(Application for Stay of Execution of the Order of the High Court of Tanzania  
at Musoma)**

**(Komba, J.)**

**dated the 15<sup>th</sup> day of February, 2024**

**in**

**Reference No. 2024010900000417**

.....

**RULING**

*11<sup>th</sup> & 12<sup>th</sup> June, 2024*

**MWAMPASHI, J.A.:**

Before the Resident Magistrate Court of Musoma at Musoma in Civil Case No. 17 of 2007, the respondent herein, Ibrahim Ally Kagombe, won the case and obtained a decree against Mara Microfinance Company Limited (the Company) to which the applicant herein, Mary Sange, is one of the directors. In that case, it was decreed that the respondent's motor vehicle with Reg. No. T 111 ABF which was wrongly seized and detained by the Company, be handed back to the respondent. On appeal to the High Court of Tanzania at Musoma, in Civil Appeal No. 08 of 2012, the decree was confirmed and beefed up with an additional award of general damages, in favour of the

respondent, to the tune of Tshs. 10,000,000/= plus interest at the rate of 7%.

Having faced difficulties and failed to execute the decree against the Company, the respondent had to file, before the High Court, an application (Case Reference No. 20240109000000417) against the Company and its two directors namely; Mary Sange (the applicant herein) and Paulo Mayanja, for an order to lift the corporate veil of the Company. The application was granted on 15.02.2024 and the Company's corporate veil was lifted paving way for the respondent to execute the decree against the directors of the Company.

Dissatisfied with the High Court Order regarding lifting the corporate veil of the Company and intending to appeal against it, on the same date, that is, 15.02.2024, the Company and the two directors duly lodged the notice of appeal and applied for the copy of the proceedings for appeal purpose. Meanwhile, on 23.02.2024, the respondent filed an application for execution of the decree by way of attachment of the applicant's motor-vehicle and by committing her to prison as a civil prisoner.

After being served with a notice to show cause why the decree should not be executed in the manner applied for by the respondent on 07.03.2024, the applicant filed the instant application for stay of execution of the decree on 13.03.2024. The application is basically brought under rule 11 (3), (4),

(4A) (5), (6) and (7) of the Tanzania Court of Appeal Rules, 2009 (the Rules) and it is supported by an affidavit sworn by the applicant, Mary Sange. The application is resisted through an affidavit in reply affirmed by the respondent, Ibrahim Ally Kigombe. Additionally, in terms of rule 106 (1) of the Rules, both parties have filed their respective written submissions for and against the application

According to the notice of motion, the application is premised on a sole ground which is to the effect that:

*"1. The applicant herein has lodged with this Honourable Court the Notice of Appeal with a view to appeal against the ruling and Order of the High Court of the United Republic of Tanzania at Musoma before Honourable M.L. KOMBA, J. the Order which lifted the corporate veil of the Company to hold the applicant/Director liable to pay the decretal sum by attaching her personal property and committing her to civil prisoner without sufficient cause".*

At the hearing of the application, whereas Mr. Emmanuel Paul Mng'arwe, learned advocate, appeared and represented the applicant, the respondent appeared in person unrepresented.

In arguing the application, Mr. Mng'arwe began by adopting the supporting affidavit and the written submissions earlier filed on 08.04.2024 in support of the application. He then submitted that the application is

properly brought before the Court in accordance with rule 11 (3), (4), (5) and (7) of the Rules. It was further argued by him that, the three prerequisite conditions as required by the law have been complied with by the applicant. He pointed out that the application was filed on 13.03.2024 well within the prescribed period of 14 days from 07.03.2024 when the notice to show cause why the decree should not be executed, was served on the applicant.

On the requirement regarding substantial loss under rule 11 (5) (a) of the Rules, Mr. Mng'arwe referred me to paragraphs 11 of the supporting affidavit arguing that if the execution of the decree is not stayed, the applicant will suffer irreparable and substantial loss by losing her motor vehicle and also by being committed to civil prison. Regarding the issue of security for the due performance of the decree as may ultimately be binding upon the applicant, it was submitted by Mr. Mng'arwe that, as deposed under paragraph 11 of the supporting affidavit, the applicant is ready and willing to give, as security, her motor vehicle Make Toyota RAV4 with Reg. No. T 944 DGQ or any other form of security as directed by the Court.

Finally, citing the case of **Ungujo Mwakibara Nyamarwa v. Beatrice Greyson Mmbaga**, Civil Application No. 200 of 2021 (unreported), Mr. Mng'arwe insisted that since the three conditions for stay of execution have been cumulatively fulfilled, the application be granted with costs.

On his part, having adopted his affidavit in reply and the written submissions, the respondent contended that the application is baseless. He argued that the application is intended to further delay the execution of the decree. When probed on the kind of security that may be furnished by the applicant should the Court find the application grantable, the respondent contended that the decretal amount of Tshs. 20,200,000/= be deposited by the applicant to the Court bank account as security. He thus, prayed for the dismissal of the application with costs.

Mr. Mng'arwe had nothing to submit in rejoinder.

Having examined the notice of motion, the affidavits and written submissions filed for and against the application and after considering the brief submissions made by the parties the only issue for my determination is whether the application has fulfilled the prerequisite conditions warranting the grant of stay of execution of the decree.

The jurisdiction of the Court to order stay of execution of a decree upon good cause being shown, is derived from rule 11 (3) of the Rules, under which it is provided that:

*"11(3) In any civil proceedings, where a notice of appeal has been lodged in accordance with rule 83, an appeal, shall not operate as a stay of execution of the decree or order appealed from nor shall execution of a decree be stayed by reason only of*

*an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order”.*

Granting or refusing stay of execution of a decree or order is in the discretion of the Court and it is dependent not only on the circumstances of a particular case but mostly on consideration of three conditions articulated under rule 11 of the Rules; **One**, that the relevant application is timely brought, **two**, that substantial loss may result to the applicant if the application is refused and **three**, that security for the due performance of the decree or order as may ultimately be binding upon the applicant should his pending appeal fail, is given. Further, it is a settled position of the law that for an order of stay of execution to be issued, the applicant is enjoined to cumulatively satisfy the above three conditions. See – **National Housing Corporation v. AC Gomes (1997) Limited**, Civil Application No. 133 of 2009, **Joseph Soares @ Goka v. Hussein Omary**, Civil Application No. 12 of 2012, **Hai District Council & Another v. Kilempu Kinoka Laizer & 15 Others**, Civil Application No. 10/ 05 of 2017 and **Bahati Moshi Masabila t/a Ndondo Filling Station v. Hamis Maganga Kilongozi**, Civil Application No. 359/08 of 2023 (all unreported).

Guided by the above restated position of the law, and having considered the submissions made by the parties for and against the application, I am satisfied that the applicant has managed to meet all the

three required conditions. First of all, the application was timely filed. Having been served with the notice to show cause why the decree should not be executed in the manner applied for by the respondent on 07.03.2024, the applicant filed the instant application on 13.03.2024 which was well within the prescribed period of 14 days as provided under rule 11 (4) of the Rules.

Secondly, considering the fact that the decree is sought to be executed not only by attachment and sale of the applicant's motor vehicle but also by committing the applicant to civil prison, there is no gainsaying that if the execution of the decree is not stayed, the applicant will definitely suffer substantial and irreparable loss. The fact that if the application is refused substantial loss may result to the applicant, is averred under paragraphs 11 of the supporting affidavit. The condition under rule 11 (5) (a) of the Rules has thus, been met.


Thirdly, regarding the condition of furnishing security as required under rule 11 (5) (b) of the Rules, I find that by stating, under paragraph 11 of the supporting affidavit, that he is ready and willing to give her motor vehicle make Toyota RAV4 with Reg. No. T 944 DGQ as security for due performance of the decree as may ultimately be binding upon her, the applicant has, in terms of our decision in **Mantrac Tanzania Ltd v. Raymond Cost**, Civil Application No. 11 of 2010 (unreported), sufficiently made a firm commitment to furnish security.

In view of what I have discussed above, I find that the applicant has shown good cause warranting issuance of a stay of execution order as prayed in the notice of motion. Consequently, the application is granted and an order is made to the effect that, the execution of the decree of the Resident Magistrate Court of Musoma at Musoma in Civil Case No. 17 of 2007 as confirmed and beefed up by the High Court of Tanzania at Musoma, in Civil Appeal No. 08 of 2012, is stayed pending the hearing and final determination of the applicant's intended appeal. This stay order is however conditional upon a deposit in Court by the applicant of a bank guarantee to the tune of Tshs. 20,000,000/= or a deposit of that amount, that is, Tshs. 20,000,000/= to the Court bank account, within sixty (60) days from the date of this order. Costs to be in the cause.

**DATED at MUSOMA** this 12<sup>th</sup> day of June, 2024.

A. M. MWAMPASHI  
**JUSTICE OF APPEAL**

The Ruling delivered this 12<sup>th</sup> day of June, 2024 in the presence of Ms. Susana Jacob Gibai, learned counsel for the applicant and the respondent presence in person/unrepresented, is hereby certified as a true copy of the original.

  
S. A. MSHASHA  
**DEPUTY REGISTRAR**  
**HIGH COURT**

