

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: KOROSSO, J.A., KITUSI, J.A. And KHAMIS, J.A.)

CIVIL APPLICATION NO. 276/02 OF 2022

**TANZANIA PHARMACEUTICAL
INDUSTRIES LIMITED.....1ST APPLICANT**
RAMADHAN RASHID MADABIDA.....2ND APPLICANT

VERSUS

**DHARAM SINGH HANSPAUL
& SONS LIMITED.....RESPONDENT**

**(Application from the Judgment and Decree of the High Court of Tanzania
at Arusha)**

(Gwae, J.)

dated the 24th day of November, 2020

in

Land Case No. 04 of 2019

RULING OF THE COURT

9th & 13th February, 2024

KHAMIS, J.A.:

Dharam Singh Hanspaul & Sons Limited, the respondent herein, sued Tanzania Pharmaceutical Industries Limited and Ramadhan Rashid Madabida (the first and the second applicants, respectively) in the High Court of Tanzania at Arusha for declaration that the duo were in breach of the contract for sale of a landed property measuring 20,235 square meters on Plot No. 34, Themis Industrial Area, Arusha Municipality registered under Certificate of Title No. 2727.

Upon trial, the presiding Judge (Gwae, J) was satisfied that, the plaintiff had proved its case on the balance of probabilities and on 24th November, 2020 he entered judgment and decree in favour of the respondent. The learned Judge concluded that, the applicants were in breach of the contract and ordered them to pay a sum of TZS. 460,000,000/= being refund of the purchase price, interest on TZS. 360,000,000/= at the rate of 2.5% per month from the date it was paid to them by the respondent as the first instalments to the date of delivery of the judgment, and interest thereon at the court's rate of 7% per annum from the date of judgment to the date of satisfaction of the decree.

Aggrieved by the whole judgment and decree of the High Court, the applicants issued a notice of appeal on 22nd day of December, 2020 followed by other necessary steps towards filing of an appeal. While in that process, the applicants were served with a notice of execution in respect of Application for Execution No. 12 of 2022 in which the respondent sought an order of arrest and detention of the second applicant as a civil prisoner. The application for execution was served on the applicants' counsel on 12th May, 2022.

Acting under rules 11 and 48 of the Tanzania Court of Appeal Rules, 2009 [the Rules], the applicants filed a notice of motion for stay of

execution of the impugned judgment and decree on the grounds that: if execution is carried out and the second applicant is arrested and detained as a civil prisoner, he will suffer irreparably and his freedom will be unfairly curtailed based on a decree emanating from a contract that he was not privy to; and that, fairness, equity and natural justice demands maintenance of status quo pending determination of the intended appeal.

The notice of motion was accompanied by an affidavit affirmed by Ramadhan Rashid Madabida, who is also the Managing Director of the first applicant. He partly deposed that, the applicants are ready and willing to deposit security for the due performance of the decree in the form of insurance guarantee or proof of ownership of immovable property.

The respondent filed an affidavit in reply deposed by one Salimu Juma Mushi, learned advocate, duly retained to represent the company. Mr. Mushi generally disputed contents of the second applicant's affidavit and subjected him to strictest proof thereof.

When the application was set for hearing before us, Messrs. Dennis Msafiri and Salim Mushi, learned advocates, appeared for the applicants and the respondent, respectively.

Mr. Msafiri moved us to grant the order sought on the ground that, the applicants fulfilled all legal requirements in respect of an application

for stay of execution. He contended that, apart from other formalities that are evident in the application, the applicants made a firm undertaking to provide security in a form of landed properties on Plots Nos. 58, 59, 60, 61, 62, 63 and 64, Low Density, Themis Hill Industrial Area, Arusha Municipality comprised under Certificate of Title No. 2576, L.O No. 44068 with a 99 years lease effective from 1st January, 1981 or abide by what the Court directs.

He asserted that, the landed property is free from any encumbrance(s) whatsoever, and is registered in the name of the first applicant. Further, he alluded that, the same is not involved in the present dispute.

In reply, Mr. Mushi essentially did not challenge the application. He is grounding his arguments on the fact that, the landed property offered as security for due performance of the decree was not stated in the applicants' affidavit and thus urged us to make an order subjecting the applicants to a statutory declaration expressing that the offered property is free from any encumbrance. He further requested us to order the applicants to produce the original certificate of title for inspection and be under the safe custody of the Court.

We have carefully examined the notice of motion, the affidavit in support thereof and the counsel submissions as reproduced above. In so doing, we have come to terms that, in an application for stay of execution like this one, the applicant must cumulatively adhere to the legal requirements as stated in rule 11(3), (4), (5) (a) (b) and (7) of the Rules, thus: the application for stay of execution should be made within fourteen days of service of the notice of execution or from the date the applicant otherwise is made aware of the existence of the application for execution; it is shown that substantial loss may result to the applicant if the order is not made; security has been given for the due performance of the decree or order as may ultimately be binding upon the applicant; an application for execution is accompanied by copies of a notice of appeal, decree or order appealed from, judgment or ruling appealed from and notice of the intended execution.

The above stated legal stance has been applied by this Court in a plethora of authorities. In **Mantrac Tanzania Limited v. Raymond Costa**, Civil Application No. 11 of 2010 [unreported], we addressed ourselves on the mode of giving security for the due performance of the decree. In so doing, we pointed out that:

"To meet this condition the law does not strictly demand that the said security must be given prior to the grant of stay order. To us, a firm undertaking by the applicant to provide security might prove sufficient to move the Court, all things being equal to grant the stay order provided the Court sets a reasonable time limit within which the applicant should give the same."

In **Ongujo Wakibara Nyamarwa v. Beatrice Greyson Mmbaga**, Civil Application No. 200/17 of 2021 [unreported], we signaled that, a mere firm undertaking to furnish security suffices the requirement and that, no particulars of the security are required. We added that, in so doing, the applicant demonstrates his readiness and willingness to comply with whatever order the Court may direct.

In the instant matter, the issue is whether the applicants have fulfilled necessary conditions for the grant of the application for stay of execution. Having examined the record and upon careful consideration of the counsel submissions, we are satisfied that all legal requirements were met. We say so because, the application for execution in Execution No. 12 of 2022 was lodged in the trial court on 3rd March, 2022 and served on the applicants on 12th May, 2022. The notice for hearing of that application was equally served on the applicants' counsel on 12th May, 2022. The

present application was presented for filing on 25th May, 2022 hence timely lodged within 14 days.

In the notice of motion and the affidavit in support of the application, the applicants demonstrated that, if execution is let to proceed, the applicants will suffer irreparable loss since the second applicant, an elderly man who is more than seventy - two (72) years old, will be subjected to civil imprisonment.

Lastly, the applicants expressed their willingness to deposit with the Court a certificate of title in respect of landed properties as security for the due performance of the decree or order as may ultimately be binding. In the course of submissions, Mr. Msafiri particularized that, the landed properties offered are on Plots Nos. 58, 59, 60, 61, 62, 63 and 64, Low Density Area, Themis Hill, Arusha Municipality registered in the first applicant's name under Certificate of Title No. 2576, L.O No. 44068.

In the circumstances, we are well content that, the applicants have cumulatively indulged the conditions for the grant of the application for stay of execution of the decree. We therefore find that, the application is meritorious and thus granted. Consequently, we hereby order that the decree in Land Case No. 4 of 2019 of the High Court of Tanzania, Arusha

Sub – Registry, be stayed pending determination of the applicants’ appeal in this Court.

As for the security for the due performance of the decree, we have considered this requirement and noticed that rule 11(5)(b) of the Rules has not specifically pointed out the type of security to be furnished. The specification of the type of security to be given is left in the discretion of the Court as re-affirmed in **B. R Shindika t/a Stella Secondary School v. Kihonda Pitsa Makaroni Industries**, Civil Application No. 269 of 2015 [unreported], wherein this Court interpolated that:

"That rule leaves it open to the Court to exercise its discretion in determining reasonable security to be deposited. We are well aware that the discretion is to be exercised judiciously. The amount to be deposited will therefore very much depend on the circumstances of each case."

Given that there is a firm undertaking to provide landed properties as security for the due performance of the decree, we find it opportune to order that, the applicants should deposit to the Registrar of this Court the original certificate of title in respect of the landed properties on Plots Nos. 58, 59, 60, 61, 62, 63 and 64, Low Density Area, Themis Hill, Arusha Municipality [Certificate of Title No. 2576, L.O No. 44068] free from any

encumbrance(s) whatsoever. The said security shall be deposited within thirty days (30) to be reckoned from the date of delivery of this ruling. Costs to abide the outcome of the intended appeal.

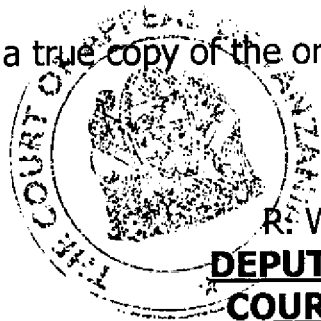
DATED at **DAR ES SALAAM** this 13th day of February, 2024.

W. B. KOROSSO
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

The ruling delivered this 13th day of February, 2024 in the presence of Mr. Dennis Msafiri, learned advocate for the applicants also holding brief for Mr. Salim Mushi, learned advocate for the respondent is hereby certified as a true copy of the original.



[Signature]
R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL