

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 61 OF 2021

(Originating from Civil Case No. 326 of 2002)

A.H. JAMAL (*as Administrator of the Estate of*

Late Alnoor Tajdin Nanji) **1ST APPLICANT**

SONIX CORPORATION **2ND APPLICANT**

VERSUS

WELLWORTH HOTELS & LODGES LIMITED **RESPONDENT**

RULING

MRUMA, J.

The Applicant A. H. Jamal (suing as the administration of the estate of the late of Alnoor Tajdin Nanji) instituted Miscellaneous Application No. 61 of 2021 seeking for orders that this honourable court be pleased to grant leave to him to appeal to the court of Appeal against the decision of the Deputy Registrar of this court (Fovo, DR) in execution proceedings.

At first, this matter was before my brother in bench Rwizile, J. and upon his transfer to another working station it was re-assigned to me. When counsel for the parties appeared before me for the parties appeared before me for the first time on 4/8/2021 Mr. Audax Vedasto, counsel for the Applicant informed the court that my predecessor had requested counsel for the parties to address court on two issues namely:-

1. Whether or not the decision of the Deputy Registrar of this court in appealable to the Court of Appeal and;

2. Whether the present application is properly before the court as it has not been accompanied with a copy of the impugned decision.

A scheduling order was made for the counsel for the parties to file the submissions. Unfortunately, they did not comply.

I have no doubt that in terms of Rule 1 (9) of Order XLIII of the Civil Procedure Code (Cap. 33 R.E. 2019), Deputy Registrar of the High Court has powers to order that a decree be executed under order XXL Rule 21. That is what the Deputy Registrar did in Civil Case No. 326 of 2002 from which these proceedings emanate.

Apparently there is no specific provision in the Civil Procedure Code or any other law which governs procedure of appeal from the decision of a Deputy Registrar or Registrar of the High Court but generally the practice has been that any person who is dissatisfied with a decision of the Registrar or Deputy in his or her capacity as such may refer that decision to a judge.

Secondly, in terms **Rule 1 of Order XL**, no appeal lies from an order made under Order XXI Rules 9 and 10 in execution proceedings. Thirdly, pursuant to **Order XLI Rule 1** where, before or on the hearing of a suit in which the decree is not subject to appeal or where in the execution of any such decree any question of law or usage in having the force of law arises, on which the court trying the suit or appeal or execution the decree entertain reasonable doubt the Court may, either of its own motion or on the application of any of the parties draw up a statement of the facts of the case and the point on which doubt is entertained and refer such statement with its own opinion on the point for the decision by the High Court.

That said, it is my finding that the decision of Registrar or Deputy Registrar in exercising his or her powers of execution under Order XXI cannot be appealed to the Court of Appeal and the Orders is actually not appealable in view of Rule 1 of Order XL of the Civil Procedure Code.

Accordingly, I find that this application is misconceived. I struck it out.

Order accordingly.




A. R. Mruma

JUDGE

11/11/2021