

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF DAR ES SALAAM**

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 254 OF 2022

AFRICAN ANIMALS (T) LIMITED APPLICANT

VERSUS

PRISCA KIMEME 1ST RESPONDENT

DOROTH KIMEME 2ND RESPONDENT

GERANDIN KIMEME 3RD RESPONDENT

ROBINSON KIMEME 4TH RESPONDENT

VERONICA KIMEME 5TH RESPONDENT

G.I. MAMBOLEO 6TH RESPONDENT

MATLIDA KIMEME 7TH RESPONDENT

(Arising from the decision of this Court in Land Case No. 96 of 2013)

RULING

12th and 12th July, 2022

KISANYA, J.:

The applicant has filed an application seeking an order of staying execution of the decree of this Court (Mgonya, J) dated 19th March, 2021 in respect of Civil Case No. 96 of 2013 pending determination of Civil Appeal No. 177 of 2022 which is pending in the Court of Appeal of Tanzania. The application is made under Order XXI, Rule 24(1) and sections 95 and 68(e) of the Civil Procedure Code, Cap. 33, R.E 2019 (the CPC) and supported by an affidavit of David Zhorholadaze, principal officer of the applicant company.

It is deduced from the supporting affidavit that, on 19th March, 2021, this Court entered a judgment and decree against the applicant in Land Case No. 96 of 2013. Aggrieved by that decision, the applicant lodged a notice of appeal to the Court of Appeal on 19th July, 2021 which was followed by a memorandum of appeal filed on 10th May, 2022.

In view of the above, when this matter came up for hearing today, I invited the parties to address me on whether this Court is clothed with jurisdiction to determine it. This issue was based on the fact that the appeal subject to this application is pending in the Court of Appeal of Tanzania.

Mr. Douglas Mmari who appeared holding brief for Mr, Alex Balomi learned advocate with instruction to proceed, conceded that this Court has no jurisdiction to entertain the matter. He went on praying to withdraw it but with no order as to costs. Save for costs, Mr. Methodius Tarimo, learned advocate who appeared for the respondents had no objection to the prayers made by the applicant's counsel.

I have noticed that parties are in agreement that the appeal subject to the present application for stay of execution is pending in the Court of Appeal. The law is settled that once a notice of appeal against the decision or order made by the High Court is lodged in the Court of Appeal, this Court (High Court) ceases to have jurisdiction over the matter. For instance, in the case of **Tanzania Electric Supply Company Limited vs. Dowans Holdings S. A.**

(Costa Rica) and Dowans Tanzania Limited (Tanzania), Civil Application No. 142 of 2012 (unreported) cited with approval in **Serenity on the Lake Ltd vs Dorcus Martin Nyanda**, Civil Revision No.1 of 2019 (unreported), the Court of Appeal underlined that:

*"It is settled law in our jurisprudence which is not disputed by counsel for the applicant that the lodging of a notice of appeal in this Court against an appealable decree or order of the High Court commences proceedings in the Court. **We are equally convinced that it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter.**"*(Emphasize added).

The Court of Appeal went on to hold that: -

"By entertaining the application for stay of execution while there was a pending notice of appeal lodged in this Court, the Deputy Registrar slipped in an error for lack of jurisdiction. The order was therefore unlawful."

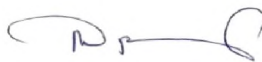
Being guided by the foregoing position, I agree with the learned counsel for both parties that this Court is not clothed with jurisdiction to hear and determine the present application. Notably, the mandate to determine the application for stay of execution pending appeal before the Court of Appeal is vested in the Court of Appeal itself. This is clearly provided for under Rule 11(2) and (3) of the Court of Appeal Rules, R.E. 2019.

For the reason I have given, I find the application to be incompetent before this Court. It is trite law that an incompetent matter cannot be withdrawn, amended or adjourned. See the case of case of **Ghati Methusela vs Matiko Marwa Mariba**, MZA Civil Application No. 6 of 2016 (unreported). That being the case, the applicant's prayer to have the matter marked withdrawn cannot be granted.

In the result, this application is hereby struck out. I make no order as to costs because the issue which formed the basis of this ruling was raised *suo mottu* by the Court.

It is so ordered.

DATED at DAR ES SALAAM this 12th day of July, 2022.



S.E. Kisanya.
JUDGE

