

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 41 OF 2021

ABDALLAH SALEHE

RAMADHANI NDAUGA.....1ST APPLICANT

QUEREISH IDRISSA KOSKU..... 2ND APPLICANT

SAID NASSORO MSAMVU..... 3RD APPLICANT

VS

THE REGISTERED TRUSTEES

OF TABATA (MAGENGENI)

MUSLIM COMMUNITY..... RESPONDENT

Date of last Order:08/06/2021

Date of Ruling:04/02/2022

RULING

MGONYA, J.

In cause of hearing this Miscellaneous Civil application filed before this Honourable Court, the Respondent raised **2 (two) preliminary objections** to the effect that;

- 1. That, this honourable Court has no jurisdiction to entertain the matter.**

2. That, the 1st, 2nd and 3rd Applicants' Affidavits are defective for being erroneous in the verification clause.

The Applicants herein are being served by **Mr. Jumbe Abdallah**, learned Counsel and the Respondent is represented by **Mr. Juma Hamisi, Mpenda** who is Secretary to the Board of Trustees to the Respondent.

On the **first point of objection**, the Respondent in their submission states that this Honourable Court has no requisite jurisdiction to entertain the application at hand. The reason behind being that once a notice of appeal has been lodged, the High Court ceases to have jurisdiction over the matter save for the Application for leave to appeal and certification of law. The notice of appeal mentioned above has been annexed by the applicants in their affidavit which strictly prove that a notice has been filed already with Court of Appeal of Tanzania.

The Respondent further in their submission cited the cases of ***AERO HELICOPTERS TANZANIA LIMITED VS F.N JANSEN 1990 [TLR] 142 AND MOHAMMED ENTERPRISES TANZANIA LIMITED VS THE CHIEF HARBOUR MASTER, CIVIL APPEAL NO. 24 OF 2015, CAT 2018*** at Dar es Salaam to support the objection raised.

The Respondent further reiterates that **Rule 11 (3) of the Court of Appeal, 2009** as amended by **GN No. 362/2017** provides that it is the Court of Appeal which has powers to stay execution of a decree after a notice of appeal has been lodged. It is their contention that since the application above is neither for leave nor certificate of law hence this Court lacks jurisdiction and the same be dismissed.

Submitting on the **second objection** the Respondent states in their submission that the verification clause in all the 3 Applicants' affidavits has not been signed in the verification clause. It is a requirement that for an affidavit for use in Court it has to be signed at both the verification and jurat of attestation which is not the case in the Applicants' affidavits; hence making the same defective and that it can not be cured by the overriding principle. The case of **CHIKIRA LAURENCE JAHARI VS THE CHIEF SECRETARY & OTHERS, MISC. CAUSE NO. 08/2020** HC Main Registry was cited to support their argument. And it is from the above the Respondent states that the whole application is incompetent and should be struck out.

In reply to the above submission the, Counsel for the Applicants states that, the **first objection** by the Respondent is untenable in view of **Order XXI Rule 24 (1) of the Civil Procedure Code Cap. 33 [R.E. 2019]**, the same was cited for

ease of reference in the submission. It was also the Counsel's contention that a proper reading of this section shows that an application for stay of execution can be made at the High Court or Court of appeal and therefore the two Courts have Concurrent jurisdiction.

Moreover, it was also in the submission of the Applicants' Counsel that the rationale of **Order XXI Rule 24 (1) of the Civil Procedure Code** is to provide expediency in the sense that applications in the High Court of Tanzania are ordinarily determined faster than in the Court Appeal of Tanzania. The two cases cited by the Respondent were observed by the Applicant's Counsel not to be appropriate in supporting the objection raised and so they are distinguishable.

Countering the **second objection**, the Applicant's Counsel admits that the affidavits of the Applicants are defective for lacking signatures in their verification clauses and pleads that the same be cured on bases of rules of procedure and technicalities should not stand in the way of ensuring that justice is finally attained in the determination of cases in Courts.

It is at this juncture after the above submissions of the parties to this application that I am endeavoured to state the following in determination of the objections raised by the Respondent.

Firstly, as to the **first objection as raised** in this application that this Court lacks jurisdiction. It should be remembered that jurisdiction is basically known to be the official power to make legal decisions and judgements or the ability of a Court to attend to a matter filed or lodged before it. It is a crucial requirement that immediate after a matter is assigned before a Magistrate or Judge, the first thing on your checklist is to satisfy oneself that jurisdiction of that matter is vested upon the Magistrate/Judge and Court to entertain the same.

The records reveals that, this Court was **Civil Case No. 67B of 2015** of which was heard and decided to its finality. It is from this case that the Applicants filed a Notice to Appeal under **Rule 83 (1) Court of Appeal Rules 2009**, with the Court of Appeal. However, after filing the Notice of Appeal the applicants also filed for a stay of execution with the High Court.

The Respondent herein states that this Court has no jurisdiction to entertain the application for stay of execution while a Notice of Appeal has been lodged with the Court of Appeal. The Applicant's on the other hand state that the application is competent in view of **Order XXI Rule 24 (1) of the Civil Procedure Code**.

It is a well-known fact that, an appeal is deemed to have commenced in the Court of Appeal of Tanzania when a Notice to

Appeal is lodged with the Court. The Provisions of **Rule 83 (1) of the Court of Appeal Rules 2009**, provides for the filing of a Notice with the said Court.

However, within our jurisdiction and in the practice of the Court's business it is an old established principle and still appreciated that, once a notice of appeal has been duly lodged, with the Court of Appeal the High Court ceases to have jurisdiction over the matter. I do join hands with the Respondent in respect of this Principle.

In the case of ***SERENITY ON THE LAKE LTD VS DORCUS MARTIN NYANDA, CIVIL REVISION NO. 1 OF 2019*** the Court of Appeal made reference to 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*** where the Court held 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."

It is not only the cases above that celebrated the said principle but also the case of ***EASTERN AFRICAN DEVELOPMENT BANK VS BLUELINE ENTERPRISES LIMITED, CIVIL APPEAL NO. 101 OF 2009, CAT 2010*** where the Court of Appeal cited the case of ***ARCADO NTAGAZWA VS BUYOGERA JULIUS BUYANGO, (1997) TLR*** it was held that:

"Once the formal notice of intention to appeal was lodged in the Registry the trial judge was obliged to halt proceedings at once and allow for the appeal process to take effect, or until that notice was withdrawn or was deemed to be withdrawn".

Having said all of the above, the first objection is **hereby sustained; and since this 1st objection disposes the matter completely, I find no room in determining the 2nd objection.**

This application is hereby dismissed with costs.

It is so ordered.




L. E. MGONYA

JUDGE

04/03/2022

COURT: Ruling delivered before Hon. Luambano, Deputy Registrar in chamber in the presence of Mr. Juma Mpenda the Respondent's Principal Officer and in the absence of the Applicants and presence of Richard RMA.




L. E. MGONYA

JUDGE

04/03/2022