

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION No 388 OF 2020

**(Arising From Consent Settlement Order dated 30th September 2020 of the
High Court of Tanzania, Dar Es Salaam District Registry in Civil Case No 75
of 2020 Madeha, J)**

BETWEEN

JMC COURIER (T) LIMITED.....APPLICANT

VERSUS

AFRICARRIERS LIMITED.....RESPONDENT

RULING

MRUMA, J.

Before me is an application for stay of execution of decree in civil case No. 75 of 2020 pending hearing of an application extension of time within which the Applicant JMC Courier Tanzania Limited could lodge application for review of the judgment and decree resulting from a consent Settlement order passed by this court Honourable Madeha, J (Judge Mediator) in Civil Case number 75 of 2020. This application has been brought under Rule 24 (1) of Order XXI and Sections 68(e) and 95 of the Civil Procedure Code [Cap 33 R.E. 2019] and as is the practise, it is accompanied by the applicant's affidavit which is the supporting

evidence to support her request for a stay of execution pending the said request for an extension of time to open a review.

This application was brought the same day i.e. on 11 August 2021 with another application namely Miscellaneous Civil Application No. 387 of 2021 which seeks for extension of time within which the present Applicant can file a review which I have just handed down my verdict. The result of this application was highly dependent on the decision of Application number 387 of 2021.

Rule 24(1) of Order XXI under which the application is pegged states as follows:-

"The court to which a decree has been sent for execution shall upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment debtor to apply to the court by which the decree was passed or to any court having an appeal jurisdiction in respect of the decree or the execution thereof, for an order to stay execution which might have been made by such court of first instance or appellate court if execution had been made thereto"

From the cited enabling provision of the law under which this application has been brought, it is clear that the court that has the authority to issue an order to stay execution of a decree is the *"court to which the*

decree has been sent for execution" in order to enable the applicant to lodge an application to the court that passed the decree or the court that has appellate power to hear the appeal arising from that case.

The question Therefore, to be asked here is whether *this is the court to which the decree has been sent for execution or is the court with appellate jurisdiction over the matter?*

On my part, I have no doubt that this court is not one of the two Courts envisaged by Rule 24 (1) of Order XXI of the Civil Procedure Code. It is neither the court to which the decree has been sent for execution nor the court having appellate jurisdiction in respect of the decree or execution thereof.

Since this is the court that passed the impugned decree, the sited section of the law does not enable it to grant the requested relief. The correct law that would give this court the power to issue the requested orders should have been Rule 5(1) and (2) of Order XXXIX of the Civil Procedure Code which states:-

"An appeal shall not operate as a stay of proceedings under a decree or order appealed from except as far as the Court may order, nor shall execution be stayed by reason only of an appeal having been preferred

from the decree, but the court may, for sufficient cause, order the stay of execution of such decree;

And sub rule (2) of the same Order which provides that:

"Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom the court which passed the decree may on sufficient cause, order the stay of execution of such decree"

The marginal note of Rule 5(1) and (2) of that Order clearly state that those provisions are for stay by appellate court and by court which passed decree. Therefore, it was wrong for the applicant counsel to cite Rule 24(1) of Order XXI of the Civil Procedure Code to request for a stay of execution.

These shortcomings and the fact that Application number 387 of 2020 has been rejected for the reasons specified in the decision thereof makes this application no longer valid. Accordingly I reject it with costs.




A. R. Mruma

Judge

Dated at Dar Es Salaam this 8th day of September 2022.