

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MOROGORO)
AT MOROGORO
LAND CASE NO 03 OF 2021

MEXON JAPHTA SANGA 1ST PLAINTIFF

MEXONS ENERGY LIMITED2ND PLAINTIFF

VERSUS

NMB BANK PLC DEFENDANT

RULING

Hearing date on:06/05/2022

Ruling date on: 13/05/2022

NGWEMBE, J.

This ruling emanates from the court findings on two important legal issues, which necessitated an invitation of learned advocates to address the court. The two issues which was raised by the court *suo motto* are:-

1. Whether upon issuing notice of appeal in respect to an interlocutory order, the trial court stops its proceedings on the main case; and
2. Whether it is an automatic that the main suit must be stopped immediately upon successfully filing notice of appeal against an interlocutory ruling of the trial court?



These two issues were raised by this court *suo motto*, after realizing that the defendant herein, has successfully lodged notice of appeal intending to appeal against the ruling of this court arising from a preliminary objection based on *res-subjudice*.

Upon determining that objection, the court had a firm view that the suit under trial was not *res-subjudice* to another suit which is pending before the High Court Commercial Division. Soon after delivery of that ruling the court sought to proceed with the main trial. However, the defendant indicated its intention to appeal to the Court of Appeal, hence actualized its intention by filing a notice of appeal against that ruling. Henceforth, this court after serious perusal to the current statutes and several precedents, found it prudent to raise those two issues for the learned counsels to address them.

Rightly so, the learned counsels had diverse views, while the learned advocate for the plaintiff among others, argued strongly that, since the main suit is still pending in this court then; first the notice of appeal on interlocutory order is not a bar to proceed with the main suit; second even if that notice of appeal is successfully lodged to the Court of Appeal, yet it is not an automatic stay of proceedings of the main suit; Third, the main suit should proceed until either there is an application for stay of proceedings pending the final determination of the appeal, or until when the Court of Appeal calls for the records of this trial. To support his arguments, the learned advocate Daniel Welwel referred this court to section 2 of CPC and in the case of **Techlong Packaging Machinery Co. Ltd and Another Vs. A- one Products and bottlers ltd, Civil Application No. 517 of 2018**. Thus, rested by a prayer that the main suit may proceed as scheduled by this court.



In reply, the learned advocate Seni S. Malimi argued in the contrary, among others, he insisted that, once notice of appeal is successfully lodged to the Court of Appeal, such notice operates as bar against the jurisdiction of the trial court. In this case the notice of appeal is lodged in the Court of Appeal against the ruling on *res-subjudice*, therefore it is an automatic bar to, Land Case No. 03 of 2021, that must be stayed pending final determination of the intended appeal. Buttressed his argument by referring this court to the case of **AERO Helicopters (T) Ltd Vs. F.N. Janem [1990] TLR. 142** at page 144 – 145, and **Civil Appeal No. 91 of 2019 of Exaud Gabriel Mmari Vs. Yona Seti Akyo & 9 others** at page 5 & 6.

Proceeded to argue that, the holding of these two cases, provide an answer to both issues. Therefore, until the appeal is determined or the notice is withdrawn, otherwise, this court lacks jurisdiction to proceed with the main suit.

In rejoinder, the learned advocate for the plaintiff reiterated to his submission in chief and added that, since it is settled law that, the decision of the Court of Appeal constitutes a law in our jurisdiction, it means interlocutory ruling is not appealable and does not bind this court. That the decision in **AERO Helicopter** (Supra) was thoroughly discussed in **Civil Application No. 517 of 2018 at page 7 & 8**, the position of law in that application was upheld by the Court of Appeal. Thus, an appeal on interlocutory order is not an automatic stay of proceedings of the main suit. Added that stay of proceedings of the main suit is not an automatic, there must be an application for that



effect, which result to an order of stay, otherwise the court continue with its jurisdiction until the file is called by the Court of Appeal.

Having summarized briefly the arguments of learned counsels, I have observed that the two issues, requires deep thinking, careful consideration and thorough research on proper legal position, otherwise I sense, may interfere with the duty of the Court of Appeal. In any event, it is difficulty to discuss those two issues without slightly or by the way, touching the intended appeal.

It is known without qualification that statutorily; interlocutory orders are not appealable, but that point is subject to discussion by the appellate Court, otherwise I may prejudge or preempt the intended appeal.

This court invited the learned counsels to address the court on the way forward of the main case, which is pending before this court. The issue of whether interlocutory ruling is appealable or otherwise, is subject to determination by another forum or jurisdiction. Despite the learned counsels addressing vigorously on various relevant legal issues related to validity or invalidity of that notice of appeal, yet at this juncture, this court should refrain from discussing those issues, otherwise may interfere with the intended appeal. I will direct my mind to consider on the two issues of *whether upon issuing notice of appeal in respect to an interlocutory order, the trial court stops its proceedings of the main case, and whether it is an automatic that the main suit must stop immediate upon successfully filing notice of appeal against an interlocutory order?*



It is a settled law through various precedents that, the position is now settled that, once notice of appeal is successfully lodged to the Court of Appeal, same operates as a bar against the High Court or trial court to proceed with the matter. This position was clearly articulated in the case of **Milcan Kalondu Mrema Vs. Felix Christopher Mrema, Civil Appeal No. 64 of 2011** where the Court Observed:-

"it is now settled that once a notice of appeal to this court have been dully lodged, the High Court ceases to have jurisdiction over the matter"

The same vein was repeated in the case of **Arcado Ntagazwa Vs. Buyogera Nunyambo [1997] T.L.R. 242**, the Court stressed that:-

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

From the two precedents, the position of the law is clear like a brightest day light that, proceedings of the trial court must stop, automatically its jurisdiction is halted. The trial court will neither use its general powers under section 95 nor apply section 2 of CPC or other applicable statutes to remain with its jurisdiction. The consequence is clear that, whatever done after that notice of appeal becomes nullity.

Equally important is a question of whether such clear position of law is applicable on a matter which is none appealable by operation of law and by numerous precedents of the Court of Appeal? This is subject to the superior court to decide. Ideally, when a court order does not



determine conclusively the rights of the parties then a party even if is aggrieved therein should wait until the final outcome of the final verdict of the main suit, before he can appeal to the Court of Appeal. Grounds of appeal may include the interlocutory decisions. This position was clearly provided for in the Case of **Godwin Benard Kagaruki Vs. The Hon. President of the United Republic of Tanzania & 5 Others**), **Civil Appeal No. 270 of 2020** decided on 05 April, 2022. Likewise, in the case of **Mahendrakumar Govindji Mohamani t/a Anchor Enterprises Vs. Tata Holdings Corporation Ltd, Civil Appeal No. 50 of 2002,**

The question remains, whether the trial court may be barred to proceed with the main trial if, and only if, one party for whatever reasons, decide to lodge notice of appeal against an interlocutory ruling or order? Agreeably, once notice of appeal is issued on appealable orders or ruling, obvious the trial court lacks jurisdiction until final determination of the intended appeal or withdrawal of that notice and or striking out of that notice by the Court of Appeal. Even if the ruling or order is either appealable or otherwise, yet it is for the appellate court to answer it.

The current position does not prevail without danger of busy parties who are obsessed with objections and appeals with a view to frustrate the administration of justice. However, that is the law unless changes otherwise, this court cannot refuse to apply it. With deep hearted I am obliged to follow the law as it is, accordingly, I rule out that the main suit shall wait for the final determination of the intended appeal or until the said notice is withdrawn or struck out by the respect Court of Appeal.

It is so ordered.

Date at Morogoro this 13th May, 2022.



P.J. NGWEMBE

JUDGE

13/05/2022

Court: Ruling delivered in chambers at Morogoro on this 13th day of May, 2022 in the presence of advocate Daniel Welwel for the plaintiff and advocate Seni Malimi for the defendant.



P.J. NGWEMBE

JUDGE

13/5/2022