

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
MISC. CIVIL APPLICATION NO. 627 OF 2021
(Originating from Execution No. 40 of 2021)

OILCOM TANZANIA LIMITED..... APPLICANT

VERSUS

PAYAS R. MOREMI & GENOVEVA KILIBA

t/a BETTER LIFE INVESTMENT..... RESPONDENT

Date of last Order:23/02/2022

Date of Ruling: 01/04/2022

R U L I N G

MGONYA, J.

Before this Court is the Application for stay of execution of which an order was granted *Exparte*. Where as in cause of hearing of the matter *interparties*, Mr. Ramadhani Karume Counsel for the Applicant prayed for an amendment of the pleadings. Mr. Karume learned Counsel stated before this Court that the prayer made is pursuant to **Order VI Rule 17** of the **Civil Procedure Code Cap. 33 [R.E. 2019]** which allows an amendment of the pleadings at any stage of the proceedings.

The prayer before the Court was supported by the case of ***MOTOHOV VA AUTOGARAGE LTD & ANOTHER [1971] HC NO. 81 and EASTERN BAKERY VS KASTELINO [1958] EA 461***. Counsel for the Applicant was of the opinion that the

cases above both held that the Court has the power to order for an amendment at any stage of the proceedings.

Moreover, it was the Applicant's submission that the wish to amend the pleadings is based on taking the matter to the Court on which the matter emanated from. At first the application was heard *ex parte* pending **Misc. Application No. 111 of 2021** of which the same was determined on the **31/12/2021** whereas the Court denied to have granted the prayer for extension of time to file a notice of appeal.

It is from the denial of the prayers for an extension of time to file a notice of appeal that the Applicant has pursued for a second bite to the Court of Appeal and the application is already filed within the said Court and registered as **Civil Application No. 54/01 of 2022**. Lodged at the Dar es salaam Registry on **14/2/2022**.

Mr. Karume Counsel for the Applicant stated that, the prayer is based on the essence of facts for the purpose of determining controversy between the parties so as to attain substantive justice. The existing pleadings before the Court that is to say the Application with the Affidavit accompanying the same do not mention the facts causing the amendment, hence the prayer at hand of which a supplementary affidavit to

accommodate the missing facts so as to clear the parties in time of interparty hearing so as to reach a fair decision.

In reply the Respondents submitted that, it has been admitted by Counsel for the applicant that **Application No. 111/2021** for extension of time was dismissed. Since the matter praying for an extension of time has been dismissed, I find it hearing of this matter interparty is not of necessary anymore as the matter appears to be overtaken by event.

Countering on the prayer for an amendment, the Respondents submits that the same has no reason but only a delaying tactic to this matter before this Court and the Respondent strictly objected the prayer by the applicant.

Having gone through the records and submission of the parties, I am now at a position to rule out on the prayer by the Applicant's Counsel. The Applicant's Counsel has prayed before this Court for an amendment of the pleadings under **Order VI Rule 17 of the Civil Procedure Code Cap. 33 [R. E 2019]**. From the above I will shortly address this prayer, since this is a Court of record. However, I won't take much of the Court's time to expound on this for the same is well known that pleadings are what are consisted in a suit. And the same have been identified under **Order VI Rule of the Civil Procedure Code (supra)**.

Before us is an Application and hence moving the Court under **Order VI Rule 17** of the **Civil Procedure Code (Supra)** is wrong citation of the law and hence the Court cannot be moved in such a way. An application is instituted by chamber summons and an affidavit hence the Applicant ought to have properly move the Court in amending the same.

However, from the circumstances of the matter before us, that the Applicant has filed an application for stay of execution pending an application for extension of time to file a notice to appeal to the Court of Appeal. The stay of execution was granted *Exparte* and hence the parties appeared on a date set for *inter parties* hearing.

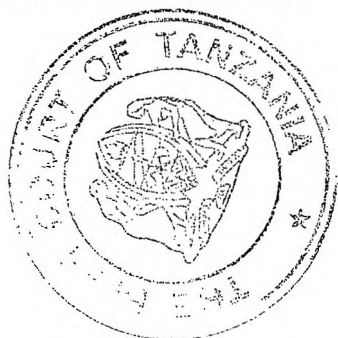
It is from that hearing that this Court was notified that the application for extension of time before Hon. Mruma, J. was dismissed. The Applicant states that a pursue to appeal against the denial for extension of time has already been filed with the Court.

However, it is from the knowledge of dismissal of the application for extension of time that I find this Application has been taken by events. The Applicant intended for this application to be heard under certificate of urgency pending the application for extension of time. It is logical that since the

extension of time was not granted then this application legally has no legal stand.

It is from the above and the records before this Court that, I find this application demises and the same is **dismissed with costs.**

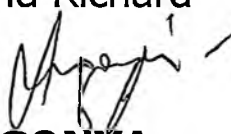
It is so ordered.




L. E. MGONYA
JUDGE
01/04/2022

Court: Ruling delivered before Hon. Nongwa- Deputy Registrar in presence of Mr. Zake, holding brief for Ramadhan Karume, Advocate for Applicant, Respondent absent and Richard –RMA.




L. E. MGONYA
JUDGE
01/04/2022