

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MWANZA  
AT MWANZA**

**MISC. CIVIL APPLICATION NO. 145 OF 2021**

*(Originating from Application for execution of the decree in civil case No. 18/2020 at  
Magu Primary Court)*

**TPB BANK PLC ..... APPLICANT**

**VERSUS**

**LENARD MKAMA ..... RESPONDENT**

**RULING**

21/2/2022 & 4/3/2022

**ROBERT, J:-**

The applicant, TPB Bank PLC, moves this Court by way of chamber summons to grant the following orders:

- “
- (a) *That, this honourable Court be pleased to stay an execution of decree in Civil Case No. 18 of 2020 of Magu Urban Primary Court pending the appeal to this Honourable Court.*
  - (b) *Costs to follow the events*
  - (c) *Any other relief this Honorable Court shall find it to grant”*

The application is supported by an affidavit sworn by one Julius Mushobozi, counsel for the applicant and resisted by the respondent who filed his counter-affidavit on 7<sup>th</sup> December, 2021 to that effect.

Briefly stated, facts giving rise to this application reveals that, on 2<sup>nd</sup> July, 2020 Magu Urban Primary Court delivered judgment in Civil Case No. 25/2020 and ordered the applicant herein to pay the respondent TZS 10,000,000/= being damages arising from the applicant's alleged illegal conducts in the process of recovery of outstanding loan from the respondent. Aggrieved, the applicant preferred an appeal to the District Court of Magu which was registered as Civil Appeal No. 18 of 2020. The appeal was dismissed by the District Court for non-appearance of the applicant without notice.

Thereafter, the applicant applied for restoration of Civil Appeal No. 18/2020 vide Misc. Civil Application No. 17/2020 at Magu District Court. The application was dismissed allegedly without the applicant being heard. Subsequently, the applicant applied for revision of Misc. Application No. 17/2020 at this Court vide Civil Revision No. 5 of 2021. The High Court revised the dismissal order of the District Court, restored Misc. Civil Application No. 17 of 2020 and ordered the matter to proceed with the hearing before another Magistrate of Competent Jurisdiction.

After the hearing, the District Court dismissed the restored Misc. Civil Application No. 17 of 2021. Dissatisfied, the applicant alleged in her

affidavit that she lodged her memorandum of appeal to the High Court at the District Court as required by law. In the course of that process, the respondent filed an application for execution of the decree at the primary court. Hence, the applicant filed this application seeking to stay execution of the decree pending the determination of the lodged appeal.

When this matter came up for hearing on 21/2/2022, the applicant was represented by Mr. Maro Samwel, learned counsel whereas the respondent appeared in person without representation. Hearing proceeded orally.

Submitting in support of the application, Mr. Samwel argued that, the applicant is a public financial institution thus incase her properties are attached she will suffer untold inconvenience and further that, in case execution is left to proceed the applicant shall incur irreparable loss while the appeal has extreme likelihood of success. He referred the Court to the Copy of Notice of Execution lodged at the primary court which is annexed at paragraph 6 of the applicant's affidavit and a copy of the Memorandum of Appeal to the High Court attached at paragraph 5 of the affidavit which the applicant allegedly lodged at the District Court as required by the Law.

Resisting the application, the respondent submitted that this application should not be granted since there is no pending appeal in the Court as alleged by the applicant. He recounted the background of this matter and insisted that the restored application (Misc. Application No. 17/2021) having been dismissed by the District Court on 22/9/2021 there has been no pending appeal in Court in respect of that decision.

In a short rejoinder, counsel for the applicant reiterated that, Misc. Land Application No. 17 of 2020 having been dismissed again by the District Court she lodged her appeal to the Court through the District Court as required by law and the said appeal is still in the registration process. He maintained that, since the respondent seeks to execute the decree in civil case No. 18/2020, the applicant prays for stay of execution pending the determination of their appeal.

To grant an application for stay of execution the applicant is required to prove that: - One, there is a pending suit in which she is likely to succeed; two, she is likely to suffer irreparable loss if the application is not granted; and three, the balance of convenience weighs in the favour of the applicant more than the respondent (see **Tanzania Electric Supply**



**Company (TANESCO) VS Independent Power Tanzania Ltd (IPTL)  
& 2 Others (200) TLR 324 – 328.**

In the present application, on whether there is a pending appeal which is likely succeed, the applicant relies on the copy of a memorandum of appeal to the High Court (annexure C) filed at the District Court and stamped by the District Court on 8<sup>th</sup> October, 2021. In his part, the respondent is disputing the presence of a pending appeal in Court on grounds that the alleged appeal is not yet registered at the High Court. However, immediately thereafter the alleged appeal was assigned before me having been registered as (PC) Civil Appeal No. 15 of 2021 and parties were invited to address the Court in respect of this appeal.

The issue now is whether the applicant has chances of success in the pending appeal. The Memorandum of Appeal in the pending appeal seems to challenge the decision of the District Court in Misc. Application No. 17/2020 and Civil Appeal No. 18/2020. While I find it untimely to comment on the competence and merit of the lodged appeal for fear of pre-empting the pending appeal, I am of the view that the circumstances of this case raises issues which require an imposing determination by this Court

regardless of which party is likely to succeed. Thus, this Court considers that, the applicant has an arguable case to be determined by this Court.

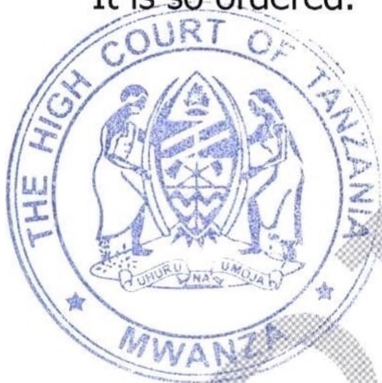
Coming to the question whether the applicant is likely to suffer irreparable loss if the application is not granted. The applicant stated at paragraph 7 and 8 of the affidavit that, she is a public financial institution thus in case her properties are attached she will suffer untold inconvenience as the respondent is an ordinary person whose material status is unpredictable and further that in case execution is left to proceed she shall incur irreparable loss. Indeed, this Court has considered that, if an order for stay of execution is not granted, the respondent will be entitled to enjoy the fruits of his decree against the respondent's resources which may not be redeemable without inconvenience in case the appeal is decided in favour of the applicant given that the dispute in the original case is alleged to arise from the events which took place in the process of recovery of outstanding loan from the respondent. That said, I consider this issue to have been addressed affirmatively.

With regards to the balance of convenience, this court is of the views that, the balance of convenience weighs in favour of granting the prayers sought by the applicant because whereas the refusal of the prayers may

affect the significance of the pending appeal by affecting the subject matter of the appeal before the determination of the pending appeal, the grant may not cause any new hardships as the Court strives to determine the pending appeal within the shortest time possible.

That said, an order for stay of execution in respect of this matter is hereby granted pending the determination of the appeal filed in this Court. I give no order for costs.

It is so ordered.



  
**K.N. ROBERT**  
**JUDGE**  
**4/3/2022**