



On her part, the respondent, duly represented by Mr. Elias Mkumbo, learned advocate, raised preliminary objection on points of law as follows:

- i. The Application before this Honorable Court is untenable in law for being preferred in contravention to Section 6 (1), (2) and (3) of Government Proceedings Act, (CAP. 5 R.E 2019) and Section 16 (1), (2) and (3) of Government Proceedings Act, (CAP. 5 R.E. 2019) as amended by the Written Laws (Miscellaneous Amendment) Act, No 1 of 2020, Section 26.
- ii. That the Application before this Honorable Court is untenable in law for being time barred.

My determination of the objection will begin with the second point of objection as it touches the jurisdiction of this court to entertain the application in the first place. The objection is that the application beforehand is time barred.

In his submissions to support this point of objection, Mr. Mkumbo submitted that the grounds upon which the applicant is moving this court to grant stay of execution is that she has a pending Civil Application No. 23/01 of 2023 in the Court of Appeal of Tanzania, at Dar es Salaam. He then cited the provisions of Rule 11 (4) of the Tanzania Court of Appeal Rules, which requires an application for stay of execution to be made

within fourteen days of service of the notice of execution on the applicant by the executing officer; or from the date the applicant is otherwise made aware of the existence of an application for execution. He then argued that when the applicant was invited to show cause in the said application of execution, they cited dependence on non-existing notice of appeal and finally on 20<sup>th</sup> December, 2022, the application for execution was finally granted. He then cited the provisions of Order XXI Rule 24(1) of the CPC which provides:

*"When Court may stay execution; 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,..."*

On what is reasonable time, Mr. Mkumbo submitted that it is the standard period provided under the Law of Limitation Act, Cap. 89 R.E.2019, Paragraph 21 Part III to the Schedule, which provides,

*"Applications under the Civil Procedure Code, ..... or other written Law for which no period of limitation is provided in the act, or any other written law is sixty days."*

He then argued that the applicant is out of time and that she did not indicate if they were granted an extension of time in the matter at hand. He supported his argument by citing the decision of the Court of Appeal

in the Case of **Ally Shaban and 48 others Vs. TANROADS and The Attorney General, Civil Appeal No.261 of 2020** where it was held on page 9 the held that;

*"Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff shall show the ground upon which the exemption from such law is claimed".*

He then submitted that in the matter at hand, the applicant did not show any ground and is silent on the issue of limitation and its exemption. He concluded that since the application was lodged beyond the prescribed time and because the limitation goes to the jurisdiction of this court, this court lacks the jurisdiction to proceed with this suit. His prayer was that the application is dismissed with costs.

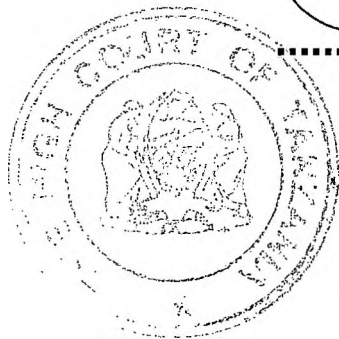
In reply, Mr. Ukong'wa, learned advocate representing the applicant, simply submitted that their application is not time barred. He did not substantiate his submissions in any way.

Parties were also to address the court whether, a notice having been filed to the court of appeal, this court has jurisdiction to entertain the application for execution. On his part, Mr. Mkumbo reiterated his submission that the application was filed out of the time

Having gone through the submissions, it is obvious that the applicant is seeking an order to stay execution for what is alleged to be a pending Civil Application No. 23/01 of 2023 which is an application for extension of time to apply for stay of execution. Indeed, there is no way the applicant can apply for stay of execution before the Court of Appeal if he has no notice of appeal or pending matter therein. That being the case, since the applicant is seeking enlargement of time to apply for stay of execution at the Court of Appeal, then the matter has gotten out of hands of this court and is within the jurisdiction of the Court of Appeal. That being the case, and taking into consideration the objection raised by the respondent that the application beforehand is out of time, I am in agreement with Mr. Mkumbo that the court has no jurisdiction to entertain the current application.

Having made the above findings, it is conclusive that this court has no jurisdiction to determine the application at hand. The application is therefore dismissed with costs.

Dated at Dar es salaam this 20<sup>th</sup> day of April, 2023.



A handwritten signature in black ink, appearing to be "S.M. Maghimbi", is written over a horizontal dotted line.

**S.M. MAGHIMBI**

**JUDGE**