

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**[ARUSHA SUB-REGISTRY]**

**AT ARUSHA**

**MISC.CIVIL APPLICATION No. 65 OF 2023**

**(Arising from Application for Execution No. 07 of 2022)**

**SAHARA MEDIA GROUP LTD.....APPLICANT**

**VERSUS**

**IAF (EAST) AFRICA LTD.....RESPONDENT**

**RULING**

26<sup>th</sup> March, 2024

**TIGANGA, J**

This Application has been preferred under Section 95 of the Civil Procedure Code Cap 33 R.E. 2019 and Section 2 (3) of the Judicature and Application of the Laws Act [Cap 358 R.E. 2019]. The Applicant seeks this Court to halt the proceedings in Application for execution No. 07/2022 pending final determination of an intended appeal which is expected to be filed before the Court of Appeal against an order which dismissed Misc. Application No. 158/2022. In this application, the Court is also required to give any other order or relief as it deems fit and just to grant.

The Application is made by Chamber Summons and supported by the Affidavit sworn by Raphael Shillatu, the Principal Officer of the

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Applicant Company. To appreciate what has triggered this application, I find it important to trace, albeit briefly, the background of the matter as can be deciphered from the affidavit filed in support of the application.

From the affidavit the following facts are apparent; the applicant was successfully sued by the Respondent before the Chief Magistrate Court of Nairobi, at Mlimani Commercial Court, in Civil Suit No. 5969 of 2017. Following that decision, the Respondent came and registered it with this Court as a foreign judgment in Misc Civil Cause No. 03/2021 consequent to that, the applicant lodged Misc Application No. 158 of 2022 to set aside the order made by this Court in Misc. Civil Cause No. 03/2021. However, the said Misc. Civil Application No. 158 of 2022 was dismissed on 24/04/2023 on merits. It is following that decision; that the applicant has commenced the appeal process by appealing to the Court of Appeal. Pending that process, this Court is now asked to halt the execution proceedings which is before this Court.

Before the application was heard on merit, the respondent raised a preliminary objection challenging the jurisdiction of this Court to entertain the application at hand. The hearing of the preliminary objection was conducted by way of written submissions. In support of the preliminary objection, the Counsel for the Respondent submitted that this Court has

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no jurisdiction to entertain the application for staying the execution where there is an appeal filed before the Court of Appeal. He cited and relied on the decision of the Court of Appeal of Tanzania, in the case of **Tanzania Electric Supply Company Limited vs Dowans Holding (Costa Rica) and Another**, Civil Application No. 142 of 2012 [2013] TZCA 434 (unreported) where it was held *inter alia* that, this Court has no jurisdiction over the matter where the Notice of Appeal to challenge the decision of the High Court has been duly lodged in the Court of Appeal.

In the circumstances, he prayed for the application to be dismissed with costs for want of jurisdiction.

In reply, the applicant submitted that the court's act to halt the proceedings is not the same as staying the execution. He submitted that in the decision of **Serenity on the Lake Ltd vs Dorcus Martin Nyanda**, Civil Revision No. 01 of 2019, the Court of Appeal of Tanzania at Mwanza in which it was held *inter alia* that:

*"...while already there was a notice of appeal filed in this Court. That the order had no backing of the law. What he was supposed to do after realizing that there was a pending appeal before this Court, was to halt the proceedings and pave the way for the appeal process to proceed..."*

The counsel asked the Court to halt the execution pending the decision of the Court of appeal. There was no rejoinder filed, therefore, that marks what the parties submitted for and against the preliminary Objection.

I have passionately passed through the submissions made, and I find it pertinent to point out that this application was made under the provisions of Section 95 of the Civil Procedure Code [Cap 33 R.E. 2019] and Section 2 (3) of the Judicature and Application of the Laws Act [Cap 358 R.E. 2019]. These provisions are non-specific, they are providing the general inherent powers of this Court, the provisions are not specifically providing for what the applicant is seeking from this Court, i.e. to halt the proceedings.

However it is a general principle as held in several cases that once the Appeal has been filed with the Court of Appeal, the High Court ceases, **In Tanzania Electric Supply Company Limited vs. Dowans Holdings S. A. (Costa Rica) and Dowans Tanzania Limited (Tanzania), Civil Application No. 142 of 2012** (unreported) in which it was held inter alia that,

*"It is settled law in our jurisprudence/ which is not*



*disputed by counsel for the applicant that the lodging of a notice of appeal in this Court against an appealable decree or order of the High Court commences proceedings in the Court. We are equally convinced that it has long been established law that once a notice of appeal has been duly lodged, the High Court ceases to have jurisdiction over the matter."*

Also see: **Tanzania Electric Supply Company Limited vs. Dowans Holdings S. A. (Costa Rica) and Dowans Tanzania Limited (Tanzania)**, Civil Application No. 142 of 2012 (unreported)

This general rule has three exceptions on matters specifically provided, one, an application for execution where there is no order for stay issued by the Court of Appeal, two, an application for leave to appeal if leave is required, and three, an application for certificate on point of law. see **East African Development Bank v. Blueline Enterprises Limited**, Civil Appeal No. 101 of 2009 (unreported), Also see, **Matsushita Electric Co. Ltd v Charles George t/a C.G. 8 Travers**, Civil Application No. 71 of 2001 (unreported), and **Mohamed Enterprises Tanzania Limited versus the Chief Harbour Master and Another**, Civil Appeal No. 24 of 2015, Court of Appeal of Tanzania, at Dar Es Salaam, (unreported).



It should also be noted, that under Rule, 11(2)(b) of the Court of Appeal Rules, 2009, it is provided that,

*"In any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 83, an appeal, shall not operate as a stay of execution of the decree or order appealed from except so far as the High court or tribunal may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order."*

The application at hand does not fall under the three exceptions, if the applicant wants the execution to be halted pending the determination of the appeal to the Court of Appeal, he is advised to apply for a stay of execution before the Court of Appeal under rules 11 of the **Tanzania Court of Appeal Rules, 2009** (the Rules).

That said, the application at hand is dismissed with costs for wants of merits.

It is accordingly ordered

**DATED** and **DELIVERED** at **ARUSHA** on 26<sup>th</sup> March 2024.



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**J.C. TIGANGA**

**JUDGE**