

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**MBEYA SUB –REGISTRY**

**AT MBEYA**

**LAND APPEAL NO. 115 OF 2022**

*(Originating from the decision of the District Land and Housing Tribunal for Mbeya at Mbeya Application No. 54/2020)*

**ACCESS BANK TANZANIA LIMITED..... APPELLANT**

**VERSUS**

**SJ3 IWAWA COMPANY LTD..... RESPONDENT**

**RULING**

*Date of last Order: 5<sup>th</sup> June, 2024*

*Date of Ruling: 11<sup>th</sup> June, 2024*

**KAWISHE, J.:**

The appeal was called before this court for mention where, the respondents' learned counsel Mr. Benson Kuboja informed this court that he had a legal concern to present before the court. With the leave of this court, he stated that this appeal was dismissed before Hon. Mongela, J on 20<sup>th</sup> April, 2023. After the dismissal, the appellant filed application for restoration, Misc. Land Application No. 21 of 2023. The application was granted by Hon. Ngunyale, J.

Being dissatisfied with the restoration of the appeal, the respondent filed a revision to the Court of Appeal at Mbeya Registry on 29<sup>th</sup> January, 2024. That they prayed to the Court of Appeal to revise the decision in Misc. Land Application No. 21 of 2023, on legality, propriety and correctness of the ruling made by Hon. Ngunyale. J.

Mr. Kuboja added that they filed the notice of motion and served the appellant on 2<sup>nd</sup> February, 2024. He further submitted that the appellant filed their counter affidavit on 15<sup>th</sup> February, 2024, and the respondent filed applicant's written submission on 28<sup>th</sup> March, 2024 before the Court of Appeal (the Court). That decision of the Court of Appeal will have effect either to confirm the decision of the High Court or set it aside as it will deem fit before the Court.

Mr. Kuboja continued to submit that there is a relation between the revision filed to the Court and the legality of the appeal which is about to be heard. Thus, he prayed to this honourable court to stay the hearing of this appeal until the decision of the Court is made on the Misc. Land Application No. 21/2023 which restored this appeal. In bolstering his submission, he prayed to this court to be persuaded by the case of **Peter**

**Madeleka vs. attorney General, Civil Case No. 00007817 of 2024**

which has relevance to this matter.

Mr. Rwekeza, learned counsel for the appellant, replied that he agrees that there is a pending revision before the Court with an intention to challenge the decision which restored this appeal. He added that there is a procedure for stay of proceedings and hearing of a certain issue. That it is provided for under the Civil Procedure Code, which explains the procedure to stay a matter pending determination of a matter in the higher court.

Mr. Rwekaza further replied that the prayer to stay the hearing of this appeal is not in the proper forum. That after the respondent realized the restoration, they were supposed to apply to the Court for the stay. That this court would have been bound by an order of stay of proceeding from the Court. He insisted that is what happened in the case he cited, **Peter Madeleka** (supra). Mr. Rwekaza added that the legal issue brought by the learned counsel does not bar the hearing of this appeal. That from the reasons he adduced he contended that this court is not bound by the Court of Appeal's decision where the respondent filed the revision.

The learned counsel lamented that reasons of the stay are just a delaying tactics being played by the respondent to delay the appellant who is a financial institution to get his right. That the respondent is using this court to hide by filing a lot of objections and applications. He concluded by praying to this court to order hearing of the land appeal as there is no any order stopping this court from proceeding.

In his rejoinder Mr. Kuboja, stated that the learned counsel agrees that there is revision pending before the Court. He reiterated his position for stay of proceeding because there is an application for revision on the decision of this court which restored this appeal. That it is meant to determine whether the ruling was proper and legally made. He also replied that, there are no delaying tactics being played in this matter.

I have followed the rival submission from both parties for and against this matter at hand. In deliberating, this court found out that the basic question to be responded to is whether this court can proceed with this appeal when there is a revision filed before the Court of Appeal against the restoration of this appeal.

The respondent's leaned counsel submitted that, since there is a relation between the revision filed before the Court of Appeal and this

appeal, this court should stay the proceeding pending the decision of the Court of Appeal. On the other side, the appellant's learned counsel argued that, this court is not bound by the revision before the Court of Appeal. That the respondent should have sought an order from the Court of Appeal to stay the proceeding of this appeal.

The respondent's learned counsel submitted that they filed the notice of motion and served the appellant on 2<sup>nd</sup> February, 2024. He further submitted that the appellant filed their counter affidavit on 15<sup>th</sup> February, 2024, and they filed applicant's written submission on 28<sup>th</sup> March, 2024 before the Court of Appeal. As alluded earlier, the appellant's learned counsel agreed that there is a revision pending before the Court hence, he did not counter this submission. Thus, it is known to both parties that there is a revision pending before the Court of Appeal on the restoration of this appeal.

On the ground that since there is a revision pending before the Court thus, this court should stay the appeal. Though, the appellant's learned counsel insisted that this court should proceed with the hearing of the appeal, I am afraid that this court by so doing, will be creating a dilemma decision. I am not a prophet so that, I can prophesy the Court of Appeal's

decision on the revision before it. The Justices of Appeal may agree with the respondent's submission and set aside the ruling of the High Court to restore this appeal. Take it that, by the time the Court will be making decision, for any reason this court may have already made its decision. How will its decision be executed if the two decisions will not be in favour of the same party? Two differing decisions on the same matter and the same parties. Wisdom whispers to me that, I have to follow the rule of respecting the superiors. Even if I could see it clearly as submitted by the appellant's counsel that, the respondents are play delaying tactics, I cannot disregard the decisions of the Apex Court of the land. There is plethora of decisions on the position of the High Court once a notice of appeal is made to the Court. It is well established that the High Court ceases to have jurisdiction over the matter. This is well established in the case of **Exaud Gabriel Mmari vs. Yona Seti Akyo & Others** (Civil Appeal 91 of 2019) [2021] TZCA 726 (3 December 2021). The Court cited the case of **Milcah Kalondu Mrema vs. Felix Christopher Mrema**, Civil Appeal No. 64 of 2011 (unreported) where the Court observed that:

*"It is now settled that once a notice of appeal to this Court have been duly lodged, the High Court ceases to have jurisdiction over the matter."*

Also, the Court insisted the same in the case of **Arcado Ntagazwa vs. Buyogera Bunyambo** [1997] T. L. R. 242, it stated 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 to be withdrawn."*

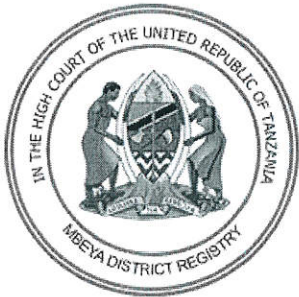
It is trite law that once there is a notice of appeal and there is no evidence that the same has been withdrawn, the High Court ceases to have jurisdiction on the matter before it. Where the High Court continued with the matter its proceedings become nullity. The judgment and the corresponding decree suffer the same fate.

Before me the counsel submitted that there is a notice of motion before the Court. It is not an appeal rather a revision. Should the High Court proceed with the appeal because the case law state about appeal? Since the Court is the same in both appeal and revision and its decision binds on the High Court, in my view, as long as there is a matter placed before the Court of Appeal, whether revision or appeal, the High Court ceases to have jurisdiction on the same. The decision on the revision is as good as the decision of the appeal over the High Court's decision.

Therefore, the revision filed by the respondent before the Court of Appeal challenging the decision of the High Court on the restoration of the appeal, has handcuffed me from proceeding with this appeal. In that, the issue raised is answered in the negative.

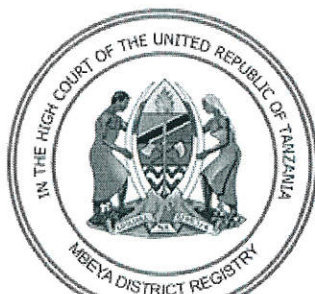
In the upshot, this court lacks jurisdiction to proceed with this appeal. As a result thereof, the proceeding of this appeal is hereby stayed pending the decision of the Court of Appeal in the revision filed before it by the respondent.

It is so ordered.



**E. L. KAWISHE**  
**JUDGE**  
**11/6/2024**

Dated and Delivered at **MBEYA** this 11<sup>th</sup> day of June, 2024 in the presence of Mr. Calvin Kuboja, learned counsel holding brief for Mr. Benson Kuboja, learned counsel for the respondents, Mr. Evance Rwekaza, learned counsel for the appellant.



**E.L. KAWISHE**  
**JUDGE**  
**11/6/2024**