

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
(IRINGA SUB-REGISTRY)  
AT IRINGA**

**MISC. CIVIL APPLICATION NO. 2553 OF 2024**

(Arising from Civil Case No. 03 of 2018)

**RUTALE HOSEA MPOGOLE ..... APPLICANT**

**VERSUS**

**AMELO IBRAHIM MYOVELA ..... RESPONDENT**

**RULING**

Date of Last Order: 07/05/2024 &  
Date of Ruling: 06/06/2024

**S.M. KALUNDE, J.:**

The respondent, AMELO IBRAHIM MYOVELA, filed Civil Case No. 03 of 2018, against the applicant seeking for *inter alia* a declaration that the applicant was in breach of an agreement for sale and purchase of maize. He sought for payment of TSZ. 88,500,000.00; interests, general damages and costs of the case. Having heard the parties, this court delivered its decision in favour of the respondent. The court ordered the applicant to pay the respondent TSZ. 78,000,000.00 in special damages; payment of TSZ. 30,000,000.00 in general damages. The decision of this court was delivered on the 24<sup>th</sup> day of September, 2021.

Armed with the judgment and decree of the court the respondent proceeded to lodge **Execution No. 01 of 2023**, which sought to execute the judgment and decree in Civil

Case No. 03 of 2018. The said application was struck out following an objection on a point of law raised by the applicant. Immediately thereafter, the respondent lodged **Execution No. 04 of 2023**.

For his part, desiring to challenge the decision of this court in Civil Case No. 03 of 2018, and being out of time, the applicant filed **Misc. Civil Application No. 16 of 2023**. In the said application, the applicant is seeking an extension of time for lodging a notice of appeal against the decision of this court in Civil Case No. 03 of 2018. Believing that Execution No. 04 of 2023, may proceed to its merits against his interests, the applicant lodged the present application which seeks the following orders:

- (1). An order to stay execution of the judgment and decree in Civil Case No. 03 of 2018, pending determination of Misc. Civil Application No. 16 of 2023;*
- (2). An order for maintenance of status quo pending determination of the application for extension of time;*
- (3). Costs of the application and any other order(s).*

The present application has been initiated by way of a chamber summons taken out under Order XXI Rule 24(1) and section 95 of **the Civil Procedure Code [Cap. 33 R.E.**

**2019]**. (hereinafter "**the CPC**"). The application is supported by an affidavit dully sworn by Rutale Hosea Mpogole, the applicant. The respondent did not resist the application.

To prosecute the application, Mr. Michael Kisakali, learned Advocate appeared for the applicant while learned counsel Mr. Innocent Kibadu appeared for the respondent.

In support of the application, Mr. Kisakali sought to adopt the contents of the chamber summons and affidavit as part of his submissions. The learned counsel added that the respondent has filed Execution No. 04 of 2023 intending to execute the judgment and decree in Civil Case No. 03 of 2018. He submitted that the applicant has filed Misc. Civil Application No. 16 of 2023, which seeks to apply for extension of time to file a notice of appeal to challenge the decision in Civil Case No. 03 of 2018. The learned counsel urged the court to grant the application so that the application for execution may be stayed pending determination of Misc. Civil Application No. 16 of 2023, which is pending before this court.

In reply, Mr. Kibadu, briefly, intimated that the respondent was not resisting the application. He added that because they supported the application, they did not file their counter affidavit. The learned counsel advised that the application be granted.

In light of the above background and submissions, the issue for my determination is whether or not the application is merited.

As pointed out earlier, this application is brought under Order XXI Rule 24(1) of the CPC. The respective provisions read as follows:

*"24.- (1) 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, to enable the judgment debtor to apply to the court by which the decree was passed or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution or for any other order relating to the decree or execution which might have been made by such court of first instance or appellate court if execution had been issued thereby, or if application for execution had been made thereto."*

It is trite that the purpose of seeking stay of execution is to maintain the status quo obtaining at the time when the judgment and decree, subject of the application for stay was delivered. The above view was stated by the Court of Appeal in **Hassan Transport Limited vs. Karibu Forwarding & Clearing Co. Ltd**, Civil Application No. 37 of 1999 and **D.B. Shapriya & Co. Ltd. versus Bish International B.V.**, Civil Application No. 67 of 2002 (all unreported) (unreported).

In **Hassan Transport Limited vs. Karibu Forwarding (supra)**, the Court (Lubuwa J.A.) stated as under:

*"The central issue in this application is whether the grant of a stay of execution is warranted in the circumstances of the case. It is relevant to consider the principal objective of seeking a stay of execution. It is common ground that stay of execution is granted in order to maintain the status quo as it obtains at the date of the judgment; the subject matter of execution was delivered".*

I am also aware that once a notice of appeal to the Court of Appeal has been lodged, this court lack jurisdiction to entertain an application for stay of prosecution. This view was stated by the Court in the case of **Tanzania Electric Supply Company Limited vs. Dowans Holdings SA (Costa Rica) & Another**, Civil Application No. 142 of 2012, CAT at DSM (Unreported). In that case, dissatisfied with the judgment of this court (dated 28<sup>th</sup> September, 2011), the applicant duly lodged a notice of appeal to the Court of Appeal in terms of Rule 83 of the Tanzania Court of Appeal Rules, 2009. The Notice was logged on 04<sup>th</sup> October 2011. Subsequently, the applicant moved this court in terms of Rule 11(2) (b) of the Rules, to grant an order staying the execution of the decree. This court (**Twaib, J** as he then

was) declined to grant the application for want of jurisdiction and dismissed the application.

Following the dismissal by this court, the applicant went for a "second bite" to the Court of Appeal seeking for the same orders. The application was lodged under Rule 11(2) (b) and (c) of the Rules. In considering the jurisdiction of this court in granting an order for stay of execution where there are proceedings before the Court of Appeal, the Court (Rutakangwa, J.A.) at page 11 stated:

*"It goes without saying, therefore, that it will need an amendment to the Act to confer jurisdiction to the High Court to entertain matters relating to stay of execution once a notice of appeal has been dully lodged"*

In this application, the applicant is seeking to stay the execution the judgment and decree in Civil Case No. 03 of 2018. The affidavit filed in support of the application demonstrate that the respondent has filed Execution No. 04 of 2023 intending to execute the judgment and decree in Civil Case No. 03 of 2018. It is also on record that, before this court, the applicant has filed Misc. Civil Application No. 16 of 2023, which is pending before this court. In the said application, the applicant is seeking for extension of time for lodging a notice of appeal out of time against Civil Case No. 03 of 2018. The notice has therefore not been filed. Under

those circumstances, this court has jurisdiction to entertain the application.

It is trite that in considering whether or not to grant an application for stay of execution, a court may consider factors such as whether the appeal has, prima facie, a likelihood of success; or whether its refusal is likely to cause substantial and irreparable injury to the applicant. The court may also consider the balance of convenience.

In the present case, having examined the pleadings and submissions of the parties, I am satisfied that a refusal of the application for stay of execution at this stage would likely cause substantial and irreparable injury to the applicant. I also think, balance of convenience tilts in favour of the applicant.

For the foregoing reasons, considering that the application is uncontested, I find the application to be meritorious. It is accordingly allowed. The execution of Civil Case No. 03 of 2018 is stayed pending determination of Misc. Civil Application No. 16 of 2023.

**It is so ordered.**

**DATED at IRINGA this 06<sup>TH</sup> day of June, 2024.**



  
**S.M. KALUNDE**

**JUDGE**