

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**COMMERCIAL CASE NO. 108 OF 2018**

**BETWEEN**

**INTERNATIONAL COMMERCIAL BANK (T) LTD .....DECREE HOLDER**

**Versus**

**YUSUFU MULLA..... 1<sup>st</sup> JUDGMENT DEBTOR**

**SHAHIDI MULLA.....2<sup>nd</sup> JUDGMENT DEBTOR**

**Date of last order: 30<sup>th</sup> November, 2021**

**Date of Ruling: 22<sup>nd</sup> December, 2021**

### **RULING**

**MKEHA, J.**

When the two judgement debtors were served with a notice to show cause, as to why an application for execution of a decree against them for USD 2,258, 517.49 should not be granted, they promptly filed an affidavit containing reasons why the application ought to be refused.

In response thereto, the decree holder's advocate Mr. Zacharia Daudi filed a counter affidavit. The judgment debtors are being represented by Mr. George Nyangusu learned advocate from Prime Attorneys.

The parties' arguments were made by way of written submissions. From written submissions by Mr. George Nyangusu learned advocate and from the affidavit of the judgment debtors, an order suspending these execution proceedings is being asked for the main reason that there is a pending application for stay of execution filed by the judgment debtors at the Court of Appeal. That, whereas the said application was filed on 17.07.2020, the same was registered as Civil Application No. 282/16/2020. The same awaits determination.

Mr. Zacharia Daudi learned advocate for the decree holder submitted in reply that, there is no pending application for stay of execution filed by the judgment debtors at the Court of Appeal. According to the learned advocate and in terms of paragraph 12 of the counter affidavit, pendency of the purported application is disputed because of failure of the judgment debtors to serve the affected persons with notice of motion as per the dictates of Rule 55(1) of the Court of Appeal Rules. Mr. Zacharia Daudi learned advocate was fully aware of the position that pendency of an application for stay of execution before the Court of

Appeal, may be a ground for suspending execution proceedings at the High Court. He cooperatively cited to this court the decision in **CRDB BANK PLC VS FINN W. PETERSEW & THREE OTHERS, CIVIL APPLICATION NO. 367 OF 2017**. The operative portion of the said decision is to the effect that: "Unless stay of execution is sought and granted by the Court, execution at the High court will proceed".

The only issue for determination is whether the judgment debtors have placed sufficient materials before this court proving pendency of an application for stay of execution of the decree sought to be executed.

Paragraph 12.2 of the judgement debtors' affidavit indicates the way advocate Mohamed Mkali on 17<sup>th</sup> July 2020, lodged under a certificate of urgency, an application for stay of execution before the Court of Appeal. A copy of the actual application endorsed with the Court's seal indicating that the application was filed on 17.07.2020, was annexed to the affidavit. The application appears to have been registered as Civil Application No.282/16/2020.

Under Paragraph 12 of the decree holder's counter affidavit Mr. Zacharia Daudi learned advocate notes the facts hereinabove but proceeds maintaining that, service of the notice of motion is disputed. In his submissions the learned advocate was of the view that since the

affected person had not been served in terms of Rule 55 (1) of the Court of Appeal Rules, then the inevitable conclusion should be that, there is no pending application for stay of execution.

But upon further perusing previous proceedings, I noted the learned advocate's remarks that, he had been served with an affidavit for showing cause, which had been filed by the judgment debtors. That, he was served on 21/08/2020. He asked to be granted leave to file a counter affidavit. The affidavit which the learned advocate was referring to, is the affidavit containing matters regarding pendency of the application for stay of execution at the Court of Appeal. See: This court's execution proceedings dated 24/08/2020.

I am in tandem with the learned advocate for the decree holder that the judgment debtors might have failed to effect service of the notice of motion in terms of the Rules, but that is not an area I am permitted to go at this moment. Irregularities in effecting service (if any) do not change the fact regarding, whether, there is a pending application for stay of execution at the Court of Appeal. It is my holding that, the judgment debtor's affidavit proves the fact that, by the 17<sup>th</sup> day of July, 2020 the judgment debtors had filed an application for stay of execution before the Court of Appeal. Issues regarding service of the

application to the affected parties will be determined by the Court having jurisdiction to determine the said application and not this court.

And since I cannot predict with precision as to what will be the Court's decision in the said application, it is only fair to halt these execution proceedings to await the Court's decision. For the foregoing reasons, and on strength of the decision in **CRDB BANK PLC VS FINN W. PETERSEN & THREE OTHERS.** (supra), the execution proceedings are hereby suspended.

I make no order as to costs.

Dated at DAR ES SALAAM this 22<sup>nd</sup> day of December, 2021.



  
**C.P. MKEHA**

**JUDGE**

**22/12/2021**

**Court:** Ruling is delivered in the presence of parties' advocates.



  
**C.P. MKEHA**

**JUDGE**

**22/12/2021**