

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**(ARISING FROM EXECUTION PROCEEDINGS IN RESPECT OF**

**COMMERCIAL CASE NO 4 OF 2020)**

**BETWEEN**

**DUNCAN BRUCE MACDONALD..... DECREE HOLDER**

**Versus**

**AMINI NDERINGO KIMARO.....JUDGMENT DEBTOR**

**Last order: 25<sup>th</sup> August, 2022**

**Date of Ruling:13<sup>th</sup> September, 2022**

**RULING**

**MKEHA, J.**

The judgment debtor in these execution proceedings had raised a preliminary objection regarding maintainability of the proceedings. According to Mr. Cleophas learned advocate for the judgment debtor, the judgment debtor has filed an application for stay of execution at the Court of Appeal of Tanzania.

Ms. Bahati learned advocate for the decree holder was insistent that despite pendency of the application for stay of execution at the Court of Appeal, the executing court ought to proceed entertaining execution proceedings. On 31/03/2022 Mr. Ngwabi Emmanuel, one of the decree holder's advocate reported to the court that, his client had been served with an application for stay of execution that had been filed and registered at the Court of Appeal as Civil Application No. 394/16 of 2021. I then ask myself whether I should go on entertaining these execution proceedings in the circumstances of this case.

In the case of **CRDB BANK PLC VS FINN W. PETERSEN & THREE OTHERS, CIVIL APPLICATION NO. 367 OF 2017** the Court of Appeal held that, unless stay of execution is sought and granted by the Court, execution at the High Court will proceed. The said decision by the Court of Appeal suggests that, when an application for stay of execution is pending at the Court of Appeal, execution proceedings at the High Court have to await results of the application for stay before the Court as it is hard to predict with certainty whether the application will be granted or not.

It is for the foregoing reason I suspend these execution proceedings to await decision of the pending application before the Court of Appeal. It is so ordered.

DATED at DAR ES SALAAM this 13<sup>th</sup> day of September, 2022.



  
**C. P MKEHA**

**JUDGE**

**13/09/2022**

**Court:** Ruling is delivered in the presence of Ms. Bahati learned  
advocate for the decree holder.



  
**C. P. MKEHA**

**JUDGE**

**13/09/2022**