

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

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**CONSOLIDATED MISC. COMMERCIAL APPLICATION NO. 58 &60 OF 2023**

**BETWEEN**

**SGS SOCIETE GENERAL DE SURVEILLANCE S.A.....1<sup>ST</sup> APPLICANT**

**SGS TANZANIA SUPERINTENDENCE COMPANY LIMITED ....2<sup>ND</sup> APPLICANT**

**CRAIG JOHN WILSON .....3<sup>RD</sup> APPLICANT**

**SAMUEL KOJO GYAN.....4<sup>TH</sup> APPLICANT**

**JEAN FREDRIC GEORGES MARIE HELLEN.....5<sup>TH</sup> APPLICANT**

**CARLA DENISE F. DE GEYSELEER .....6<sup>TH</sup> APPLICANT**

**KWOK WANG NG .....7<sup>TH</sup> APPLICANT**

**JEAN PAUL ANTOINE BONVIN.....8<sup>TH</sup> APPLICANT**

**VERSUS**

**VIP ENGINEERING AND MARKETING LIMITED.....RESPONDENT**

**RULING**

Date of last order:21/07/2023

Date of ruling:08/09/2023

**AGATHO, J.:**

The applicants are seeking leave to appeal to the Court of Appeal of Tanzania (CAT) against Execution Proceedings in Commercial Case No. 16 of 2000. The ruling in respect of execution application was delivered on 17<sup>th</sup> March 2023. The present consolidated application was by way of chamber summons supported by an affidavit deposed by Timon Vitalis, the applicants' counsel. The respondent contested the application by filing

a counter affidavit deposed by Sisty Bernard, one of the counsel for the respondent.

Before sketching the background of the application, it suffices to state the grounds for applying for leave to appeal to CAT as captured in paragraph 22 of the affidavit supporting the application. These are:

- i. Whether a declaration by the Court of Appeal that a judgment of the High Court is invalid does not render a decree extracted from such a judgment invalid and incapable of being executed.
- ii. Whether this court erred in law for lifting the Applicants' corporate veil in order to execute a decree extracted from a judgment which the Court of Appeal declared invalid.
- iii. Whether this court erred in law in lifting the Applicants' corporate veil without joining the 3<sup>rd</sup> and 8<sup>th</sup> Applicants in the application for lifting the corporate veil.
- iv. Whether the court erred in law in lifting Applicants' corporate veils without hearing the 3<sup>rd</sup> and 8<sup>th</sup> Applicants.
- v. Whether this court erred in law in lifting the Applicants' corporate veil on the basis of hearsay evidence and belief.
- vi. Whether this court erred in law in computing the amount due to the respondent without hearing the parties.

- vii.** Whether this court misconstrued Order XXI Rule 39(2)(d) of the Civil Procedure Code by applying it in the circumstances of this case; and
- viii.** Whether the court erred in fact and law in holding that the judgment debtors had previously undertaken to furnish security for performance of the decree.

It is clear from the applicants' submission in chief and rejoinder submission that they condensed their grounds for seeking leave to appeal into: invalidity of the decree extracted from the invalid judgment, denying the parties fundamental right of fair trial and a judge decided on the basis of the hearsay evidence and beliefs.

The facts leading to present application for leave to appeal to the CAT can be briefly restated as follows: that 23 years ago there was a Commercial Case No. 16 of 2000 in which the respondent sued the 1<sup>st</sup> and 2<sup>nd</sup> applicants and Tanzania Revenue Authority, and the matter ended in favour of the respondent. On 19<sup>th</sup> December 2005, Kimaro J (as she then was) composed the judgment. The said judgment was delivered by the Registrar of HCCD on 22<sup>nd</sup> December 2005. On 31<sup>st</sup> January 2006 Kimaro J (as she then was) made corrections to typographical and arithmetic errors in the judgment. She however did not deliver the judgment. This

judgment came to be delivered by Mwambegele J, successor judge (as he then was) on 15<sup>th</sup> July 2016. But the pronouncement of judgment by Mwambegele J came after the CAT nullified the decision of Mruma J. This followed *suo motu* revision done by the CAT in Civil Revision No. 5 of 2011 dated 11<sup>th</sup> December 2014 and 10<sup>th</sup> February 2015. The CAT clearly ruled that the judgment in Commercial Case No. 16 of 2000 signed by Kimaro J on 19<sup>th</sup> December 2005 was never invalidated. Moreover, on 20<sup>th</sup> March and 24<sup>th</sup> June 2019 in Civil Appeal No. 124 of 2017 an appeal between the same parties before the CAT, it was struck out after the CAT sustained the Preliminary Objection because of the incompetency of record of appeal inter alia the appellants attached copy of judgment that was not signed.

Although the written submissions in this application were bulky, the bottom line is whether the grounds put forward by the applicants raise a point of law or a point of general importance worth to be examined by the CAT. The grant of leave to appeal to the CAT is not automatic. It is only granted if the court is satisfied that there are arguable issues (points of law or points of general importance) to be determined by the CAT.

This court is unimpressed with the jabs the parties threw at each other that there are contemptuous facts or falsehood in the facts

submitted. Rather than spilling ink over such unmeritorious issues, the court focuses on the grounds raised in support of application for leave to appeal to the CAT. That however does not mean the court condones falsification or contemptuous behaviours of advocates. In a fit case the advocates may be admonished.

Nonetheless, the court has scanned through the submissions by the parties for and against the grant of leave to appeal. It has been observed that the respondent has fronted her submissions on the background of the case. Along that the respondent trashed the submissions made by the applicants without directing the objections directly towards the legal points raised. It may also be said that in tracing the background of the application, the respondent's submission became cryptic. In fact, on page 8 of the respondent's written submission, there is restatement of the grounds raised by applicants to support application for leave to appeal to the CAT with little or without critical analysis. The said points are (1) the invalidity of the decree hinged on a defective judgment; (2) denying the parties a fundamental right to a fair trial; and (3) in execution proceedings the judge decided on the basis of hearsay evidence and belief.

The court examined the maze of submissions made and noted that some of the grounds raised by the applicants lack substance. For instance,

the issue that the fundamental right to fair trial was denied, this may be frivolous because there were not only written submissions for the 1<sup>st</sup> and 2<sup>nd</sup> applicants filed by their learned counsel Seni Malimi dated 1<sup>st</sup> December 2021 but also the summons were issued and published in the Daily Newspaper dated 9<sup>th</sup> May 2022 as rightly pointed out by the respondent.

The remaining two grounds, that of invalidity of the decree hinged on a defective judgment and that in execution proceedings the judge decided on the basis of hearsay evidence and belief, these appear to have substance to be examined by the CAT. However, on the issue of invalidity of the decree extracted from defective judgment, the CAT held that the judgment of Kimaro J (as she was) was never invalidated (see pages 16-17 of the CAT ruling in Civil Revision No. 5 of 2011 dated 3<sup>rd</sup> February 2015). What the CAT invalidated was the judgment delivered by the registrar as the law at that time did not allow such officer to deliver the judgment written by the judge. Consequently, the CAT struck out the appeal. Besides that, the CAT *suo motu* revised the proceedings of HCCD by Mruma J, and nullified the same and ordered the judgment to be pronounced by another successor judge. That order was implemented by Mwambegele J (as he then was) who pronounced the judgment of Kimaro

J. From that it follows that the decree from which the execution proceedings emanated may not be invalid. But it is not for this court to say as that is a matter that can be determined on appeal at the CAT. In **Godwin Lyaki and Boniface Augustine v Ardhi University, Civil Application No. 491/01 of 2021 CAT at DSM** the CAT held that the court should not consider the merit of appeal rather to consider whether there is arguable case or point of law worth examination on appellate stage by the CAT.

Regarding the third ground that in the application for execution the judge's decision based on hearsay evidence and belief, the court is precluded from determining the merit of this ground too. It is only the CAT that can determine the merit of that ground. Moreover in **Hamisi Mdida Said Mbogo v Registered Trusteed of Islamic Foundation, Civil Appeal No. 232 of 2018 CAT at Tabora, at page 11**, the case of **MS Airport Properties Limited v The Registrar of Titles and AG, Civil Application No. 389/17 of 2019 CAT at DSM** at page 6 and the case of **Rutagatina C.L. v the Advocates Committee and Clavery Mtindo Ngalapa, Civil Application No. 98 of 2010 CAT** the Court of Appeal held that, it is trite law that in an application for leave the applicant must demonstrate that there are some arguable points of law or matters

of general importance emanating from the impugned decision. That is what applicants have tried to do in the instant application.

For the foregoing reasons, the court finds the application to have merit. There are two issues worth to examined by the CAT, namely, whether the decree from the execution proceedings emanated was extracted was invalid, and whether in the application for execution the judge decided on the basis of hearsay evidence and belief. Therefore, the leave to appeal to the Court of Appeal is granted. But given the nature of the application at hand, each party shall bear its costs.

Order accordingly.

**DATED at DAR ES SALAAM this 8<sup>th</sup> Day of September 2023.**



**U. J. AGATHO**

**JUDGE**

**08/09/2023**



**Date:** 08/09/2023

**Coram:** Hon. U.J. Agatho J.

**For Applicants:** Tumaini Michael, Advocate

**For Respondent:** John Chuma and Sisty Bernard, Advocates

**C/Clerk:** Cosmas

**Court:** Ruling delivered today, this 8<sup>th</sup> September 2023 in the presence of Tumaini Michael, counsel for the Applicants, and John Chuma, and Sist Bernard counsel for the Respondent.



**U. J. AGATHO**

**JUDGE**

**08/09/2023**