

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

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC LAND APPLICATION NO. 28007 OF 2023**

*(ORIGINATING FROM EXECUTION NO. 79 OF 2021)*

**YAHAYA ATHUMANI.....1<sup>ST</sup> APPLICANT**

**RASHID ALLY.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**HELLENA ADAM ELISHA @ HELLEN SILAS MASUI.....1<sup>ST</sup> RESPONDENT**

**FOSTERS AND COMPANY LIMITED.....2<sup>ND</sup> RESPONDENT**

**RULING**

*7<sup>th</sup> & 28<sup>th</sup> March, 2024*

**L. HEMED, J.**

**YAHAYA ATHUMANI** and **RASHID ALLY** are the applicants in the instantaneous application. It has been bought under sections 68 (c)&(e), section 95 and Order XXI Rule 24 (1) of the Civil Procedure Code [Cap. 33 RE 2019]. The applicants seeks for the following orders: -

*"(a) Let the Honourable Court be pleased to grant any interlocutory orders pending determination of Civil Application No. 783/01 of 2023 which is pending at the Court of Appeal of Tanzania.*



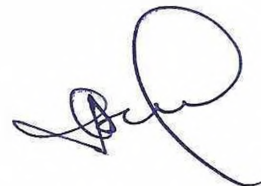
*(b) Let the Honourable Court be pleased to grant any interlocutory orders pending determination of Civil Application No. 783/01 of 2023 which is pending at the Court of Appeal of Tanzania.*

*(c) Any other relief or orders that the Honourable Court may find fit and just to grant thereof."*

The respondents **HELLENA ADAM ELISHA @ HELLEN SILAS MASUI** and **FOSTERS AND COMPANY LIMITED** contested the application.

Previously, the parties argued the application by way of written submissions. In the course of composing ruling, the court noted a point of law on jurisdiction that needed to be addressed before proceeding to determine the merits of the application. The point is,

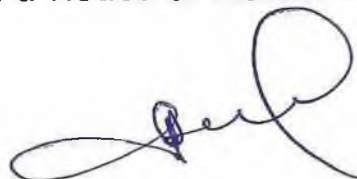
*"since there is a pending Civil Application No. 783/01 of 2023 in the Court of Appeal of Tanzania, whether this court has jurisdiction to determine the matter at hand."*



On 7<sup>th</sup> March 2024, I ordered the parties to address the court by way of written submissions. The same were to be filed by 21<sup>st</sup> March 2024. However, only the 1<sup>st</sup> Respondent who complied.

I have exhaustively read the submission filed by the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent was of the view that this court has no jurisdiction to entertain the matter at hand. **Mr. Hamis Mfinanga**, learned advocate who acted for the 1<sup>st</sup> Respondent was of the view that, once a Notice of Appeal is lodged in the Court of Appeal, this court ceases to have jurisdiction over the matter. He supported the argument by the decisions of the Court of Appeal Tanzania in serenity on **The Lake Ltd vs Dorcus Martin Nyanda**, Civil Revision No. 1 of 2019 and **A Winiei Mtui and three Others vs Stanley Ephata Kimambo (Attorney for Ephata Mathayo Kimambo)** Civil Application No. 19 of 2014 that, once a Notice of Appeal has been lodged in the Court of Appeal, the High Court ceases to have jurisdiction over the matter.

It was added that not only Notice of Appeal that can take away the jurisdiction of this court but also pendency of an application involving the parties on the same subject matter. The learned counsel proceeded to state that the applicants herein have already filed a Notice of Motion seeking for



restoration of Civil Application No. 602/01 of 2021 and at the sametime there is pending Civil Application No. 783/01 of 2023. He was of the view that the Notice of motion for restoration of Civil Application No. 602/01/2021 and that of Civil Application No. 783/01 of 2023 have ousted jurisdiction of this court to entertain the present Application.

I have considered the arguments advanced by the parties, the 1<sup>st</sup> Respondent in particular on the point of jurisdiction of this court to grant stay of execution. It is pertinent to determine whether this court has jurisdiction to entertain the Application for stay of execution while there is a pending Civil Application No. 783/01 of 2023 in the Court of Appeal of Tanzania.

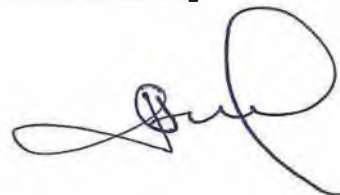
In **AERO Helicopter (T) Ltd v F.N. Jansen** [1990] T.L.R. 142, the Court of Appeal of Tanzania discussed the issue whether the High Court has jurisdiction to stay execution where there is a pending Appeal in the Court of Appeal of Tanzania. In that case, it was observed that, once proceedings of appeal to the Court of Appeal of Tanzania have been commenced the High Court cannot properly apply section 95 of the Civil Procedure Code [Cap 33 R.E 2019] to stay execution as the proceedings are no longer in the court.

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a large loop and a final flourish.

In the instant matter there is no dispute that Civil Application No. 783/01 of 2023 is pending in the Court of Appeal of Tanzania looking to restore Civil Application No. 602/01 of 2021. Additionally, there is Notice of Appeal in the court of Appeal of Tanzania against the decision of this court in Land Review No. 187 of 2022.

In view of the decision of the Court of Appeal of Tanzania in **AERO Helicopter (T)** (supra), where Notice of Appeal or revision has already been filed in the Court of Appeal as in the instant case, this court ceases to have jurisdiction to entertain application for stay of execution. In **Tanzania Electric Supply Company Limited vs Dowans Holdings (Costa Rica) and Another**, Civil Application No. 142 of 2012, the Court of Appeal of Tanzania stated that: -

*"The High Court and/or Tribunals had actually their inherent jurisdiction to grant orders of stay of execution pending appeal saved under section 95 of the Civil Procedure Code, Cap 33. This, **however, has always been subject to one condition that no proceedings in the matter have been commenced in this court.**" [Emphasis added]*





The above holding envisages that for the High Court to have jurisdiction to entertain application for stay of execution, there should be no proceedings of the matter which have commenced in the Court of Appeal of Tanzania. In the matter at hand, there is Notice of Appeal at the Court of Appeal of Tanzania against Land Review No. 187 of 2022 and Civil Application No. 738/01 of 2023 for restoration of Civil Application No. 602/01 of 2021.

The fact that this court has been notified as to the pendency of the aforesaid Civil Applications and Notice of Appeal in the Court of Appeal, then the principle laid down in **AERO Helicopter (T) Limited v. FN Jansen** (supra), applies squarely in this matter, that this court has no jurisdiction.

In the final analysis, I find merits in the point. This court has no jurisdiction to grant the application for stay of execution. The same is dismissed. The fact that the point was raised by the court *suo motto*, I refrain from ordering costs. Each party to bear its own. It is so ordered.

**DATED at DAR ES SALAAM this 28<sup>th</sup> March, 2024.**

  
**L. HEMED**  
**JUDGE**

