

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

CIVIL APPLICATION NO. 136 OF 2004

In the Matter of an Intended Appeal

**AHMED ATHUMANI NGANGA & 2 OTHERS.....
APPLICANT**

VERSUS

**HATIBU ABDALLAH.....
RESPONDENT**

**(Application for Stay of Execution from the decision of the High
Court of Tanzania at Dar es Salaam)**

(Ihema, J.)

dated the 5th day of April, 2002

in

(PC) Civil Appeal No. 38 of 2000

R U L I N G

NSEKELA, J.A.:

This is an application by the applicant Ahmed Athumani Nganga, by a Notice of Motion for stay of execution of a decree of the High Court pending appeal to this Court. Both the applicant and the respondent, Hatibu Abdallah, appeared in person and unrepresented.

At the outset, I pointed out to the applicant that though the notice of motion was supported by an affidavit sworn by the applicant himself, there was no extracted decree or order attached to the application. In reply, the applicant simply stated that he was not aware of such a requirement.

In (CAT) Civil Application No. 138 of 2000, **Consolidated Holdings Corporation v. Rajani Industries Limited** (unreported), a single judge of this Court stated -

“I am in no doubt that application for stay of execution of decree, which is filed without being accompanied by a copy of the decree sought to be stayed, would be incompetent. The Court cannot be expected to consider staying a decree it has not seen”.

In Civil Application No. 84 of 2003, **Hassani Ramadhani v. Saada Mussa** (unreported) this Court again struck out an application for stay of execution because it was not accompanied by the order sought to be stayed. The Court stated thus -

“It is the practice of the court and not the requirement of the rules to require the attachment of the order to the application. Nonetheless, it is also common ground in my view that the practice and procedure evolved by the Court in connection with appeals or

applications has the same legal force as
the express provisions of the rules.”

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This practice of the Court was endorsed in Civil Reference No. 1 of 2005, **Sugar Board of Tanzania v. 21st Century Food and Packaging Ltd. and Two Others** (unreported) as being the current legal position to which parties to an application for stay of execution must adhere to. In the application before me, there is neither a decree nor an order of the decision of Ihema, J. In (PC) Civil Appeal No. 38 of 2000 dated the 5.2.2002.

In the result, the application is hereby struck out with costs as being incompetent.

DATED at DAR ES SALAAM this 17th day of October,
2005.

H.R. NSEKELA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

(S. M. RUMANYIKA)
DEPUTY REGISTRAR