

IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISCELLANEOUS CIVIL CAUSE NO. 37 OF 1998

CRDB BANK LIMITED.....APPLICANT

VERSUS

GEOEGE KILINDU.....1st RESPONDENT

HON. ATTORNEY GENERAL.....2nd RESPONDENT

Date of last order - 11.8.2008

Date of Ruling - 15.8.2008

RULING

SHANGWA_r 1 ■

This is an application for leave to appeal against the decision of this court Bubeshe J (Rtd) given on 20th February 2004 in which she dismissed the Applicant's application for lifting the attachment of the judgment debtors Bank Account No. 992180901 at Samora Branch pending the hearing of the application for stay of execution to permanently stay execution of the decree for payment of money.

The Application is supported by affidavit of Mr. Herbert Nyange sworn on 5th November, 2007. Mr. Nyange argued it on behalf of the Applicant by way of written submissions. In his written submissions, Mr. Nyange gave a detailed background to this application which I need not go into for the purposes of determining this application. Mr. Mwezi Mhango for the 1st Respondent conceded to this application.

I have gone through the ruling of Bubeshi J (Rtd) which the Applicant wishes to challenge to the Court of Appeal of Tanzania in order to satisfy myself as to whether it raises any legal issues which are worthy of consideration by the Court of Appeal of Tanzania. At page 5 of her typed ruling Bubeshi, J. (Rtd) asked herself two Questions which she answered negatively. The first question she asked herself is whether this Court could lift the attachment and order for a permanent stay of execution. The second question

she asked herself is whether this court could invoke S.95 of the Civil Procedure Code to correct what Advocate Nyange termed as an erroneous decree in that it is not in line with the Ruling of the trial judge. She gave two reasons for answering the two questions negatively. First, that the money involved namely Tshs. 2006,795,883/= had been deposited into this court and that there was no application for stay properly filed to move this court to lift the attachment and order for a permanent stay of execution Second, that this court lacks the legal muscle to correct what Advocate Nyange termed as an erroneous decree because doing so would amount to reviewing or sitting in appeal of the judgment of this court.

At page 5 of his written submissions, Mr. Nyange listed four points/issues upon which this application for leave to appeal to the Court of Appeal against the decision of this Court Bubeshi, J. (Rtd) dated 20th February, 2004 is based. These points are as follows:-

1. Whether the Drawn Orders of 7th June, 2000 and 13th May, 2003 reflected the rulings

of the High Court as regards payment of monetary compensation to the 1st Respondent.

2. Whether the execution proceedings and resultant orders were regular and legal.

3. Whether the High Court is without legal muscles to correct drawn orders which are inconsistent with its ruling and to arrest execution of such drawn orders. .

4. Whether execution is complete and therefore unquestionable when made pursuant to null/void /irregular execution proceedings.

In my view, these issues are involved in the orders and rulings of this court. I find them to be important issues of law to be considered by the Court of Appeal of Tanzania. I therefore grant this application for leave to appeal to the Court of Appeal of Tanzania against the ruling of this Court Bubeshi, J.

(Rtd) dated 20th February, 2004.

A. Shangwa
JUDGE
15.8.2008

Delivered in open Court this 15th day of August, 2008 in the presence of Mr. Mwezi Mhango for the Applicant holding brief for Mr. Nyange for the Respondent.

A. Shangwa

JUDGE

15.8.2008