

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

CIVIL APPLICATION NO. 1571 OF 2024

GAPCO TANZANIA LIMITED..... APPLICANT

VERSUS

**MUSLIM YUSUFALI BHARWANI
T/A NYERERE ROAD SERVICE STATION.....RESPONDENT**

**(Application for stay of execution of the judgment and decree of the
High Court of Tanzania, Dar es Salaam Sub-Registry)**

(Philip, J.)

dated the 12th day of February, 2024

in

Civil Case No. 228 of 2022

.....

RULING

25th & 28th February, 2025

MANSOOR, J.A.:

This is an application for stay of execution of the decree issued by the High Court, Dar es Salaam Sub Registry in Civil Case No. 228 of 2022. The judgement was delivered on 12th February 2024 by Hon B. K Phillip, Judge of the High Court. The application is supported by the affidavit of Advocate Kapimpiti Mgalula, the Counsel for the applicant herein.

In the judgement of the High Court, the applicant was ordered to pay the respondent herein a sum of USD 115,000/= being compensation for the money paid for the good will for dealership agreement. The applicant was also ordered to pay the respondent a sum of TZS

107,596,576.46/=, being the value of the lost stock which got lost when the business premises was demolished. The applicant was also ordered to pay the respondents a sum of TZS 81,514,500/= being loss arising from the destruction of furniture and office equipment/machines. Additionally, the applicant was ordered to pay the respondent a sum of TZS 26,500,000/= being loss of cash, and general damages to the tune of TZS 70,000,000/=.

Immediately after the judgement was delivered by the High Court, the applicant herein filed a notice of intention to appeal with the intentions of challenging the judgement issued by the High Court. While the judgement of the High Court was delivered on 12th February 2024, the Notice of Appeal was filed on 15th February 2024. A copy of the notice of appeal was served to the respondent's counsel, namely, Prime Attorneys on 23rd February 2024.

Despite the existence of the Notice of Appeal and while the applicants were waiting to be furnished with the copies of proceedings and judgement for purposes of lodging an appeal before this court, the respondent herein initiated the execution proceedings before the High Court on 12th December 2024; the application for execution was registered as Execution No. 29710 of 2024, and this application for execution was served onto the applicant on 19th December 2024.

In a bid to preserve the subject matter of the appeal, on 23rd December 2024, the applicant herein filed this present application for stay of execution. Indeed, the application was filed within the time prescribed under Rule 11 (4) of the Court of Appeal Rules, 2019 as amended by GN No. 188 of 2024, which provides as follows:

"Rule 11 (4) "An application for stay of execution shall be made within fourteen days of service of the notice of execution on the applicant by the executing officer or from the date he is otherwise made aware of the existence of an application for execution.

The respondent who was represented by Advocate Nazario Michael Buxay did not file the Reply Affidavit to oppose the application. However, during the hearing of the application, Counsel Buxay intimated to court that, he does not object the application if the applicant is willing and ready to furnish security for the due performance of the decree, in the case that the appeal is not successful.

Now, having perused the Notice of Motions and its accompanying affidavit, and having considered the submissions made by the applicant's counsel, the issue for determination is whether the applicant has met the threshold for granting of a stay of execution order as prescribed in Rule 11 (5) and (7) of the Rules.

From the material facts provided before the court by the applicant through the affidavit of Advocate Kapimpiti Mgalula, it is crystal clear that the applicant has met all the conditions set in Rule 11 (3), (4), (5) and (7) of the Rules, in that he has filed the Notice of Appeal in time and has timely served it to the other party. The applicant has filed the present application within 14 days from the date he became aware of the execution thus in compliance to Rule 11 (4) of the Rules. The applicant has shown good cause and that it is prudent and for the greater interest of justice to preserve the subject matter of the intended appeal otherwise the appeal would be rendered a nugatory, thus in total compliance to Rule 11 (3) of the Rules. The applicant also has complied with the conditions set in Rule 11 (5) of the Rules, in that he has deposed in the affidavit that the respondent has applied in the execution proceedings for attachment of the applicant's bank account kept in CRDB Bank PLC, in Account No. 01J109791660, and that if the garnishment of the applicant's bank accounts shall be allowed to proceed, and if the appellant shall succeed in the intended appeal , it will be impossible to recover the money which will be already pocketed by the respondent.

That on the balance of conveniences, the applicant will suffer more loss and inconveniences if the subject matter of the appeal would not be protected and preserved, and the respondent will not be prejudiced as he

will have a bank guarantee issued by the applicant assuring him that in the case that he wins the appeal, he could easily call for the bank guarantee.

It is also trite law that, the court must grant stay of execution only where it is satisfied that the applicant has shown good cause and all the conditions enumerated in Rule 11 (4), (5), and (7) have been met. This was also held by this court in the case of **Joseph Soares @ Goha vs Hussein Omary**, Civil Application No. 12 of 2012(unreported). The court stated as follows;

"The Court no longer has the luxury of granting an order of stay of execution in such terms as the Court may think just; but it must find that the cumulative conditions enumerated in Rule 11(2) (b)(c) and (d) exist before granting the order. The conditions are

- i. Lodging a Notice of Appeal in accordance with Rule 83;*
- ii. Showing good cause and;*
- iii. Complying with the provision of item (d) of sub rule 2"*

In the instant application, and as explained herein above, the applicant had complied with all the pre-conditions of Rule 11 (7) and Rule 5 (a) and (b) of the Rules. That, in the affidavit of the applicant and the

submissions made by the applicant's counsel, all the pre requisites for a granting of a stay order have been met.

In conclusion therefore, I find and hold that the application herein has merit and I shall allow it and I hereby grant stay of execution of the Decree issued on 12th February 2024 in Civil Case No. 228 of 2022 pending the determination of the intended Appeal to this Court. I further order that the applicant shall furnish a Bank Bond Guarantee from the reputable bank equivalent to the decretal sum of TZS 2,856,111,000/=, and a Bank Bond Guarantee of USD 115,000/= or its equivalent amount in Tanzania Shilling as security for the due performance of the decree within 30 days from the date of this Ruling.


It is so ordered.

DATED at **DODOMA** this 28th day of February, 2025.

L. A MANSOOR
JUSTICE OF APPEAL

The Ruling delivered this 28th day of February, 2025, in the presence of Mr. Kapimpiti Mgalula, learned counsel for the Applicant and Ms. Nasra Buxay, learned counsel for the Respondent linked via Video Conference from Dar es Salaam, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL