



**ECOBANK TANZANIA LIMITED v. DOUBLE A. CO. LIMITED & 3
OTHERS**

COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(Mwambegele, Levira and Rumanyika, JJ. A)

CIVIL APPLICATION NO. 178/16 OF 2021

(Application for stay of execution of the Ruling and Order of the High Court of Tanzania, Commercial Division at Dar es Salaam, Fikirini, J., dated 21st day of May, 2019 in Commercial Reference No. 2 of 2019.)

Court of Appeal Rules – Stay of Execution – Condition for granting stay of execution- Whether failure to attach a copy of a decree appealed from is fatal,

The applicant applied for a stay of execution of the ruling and order of the High Court of Tanzania, Commercial Division in Commercial Reference No. 2 of 2019 passed by Fikirini, J. The applicant had previously filed Commercial Case No. 164 of 2018, which was struck out on 07/03/2019 due to a defective plaint, following a preliminary objection raised by the respondents. After the case was struck out, the respondents filed a bill of costs which was taxed at TZS 17,744,176,115 and USD 168,250.5236, excluding VAT. The applicant was aggrieved by the decision and filed Commercial Reference No. 2 of 2019, but Fikirini, J. upheld the decision of the Taxing Officer on 21/05/2020. The applicant filed a notice of appeal on 04/06/2020 against the decision of the High Court. Meanwhile, the respondents, as decree holders, initiated the execution process through Taxation Cause No. 33 of 2019. The applicant contended that if the decree was not stayed, she would suffer irreparable loss.

The respondents opposed the application, arguing that it was incompetent as it was not accompanied by a copy of the decree being appealed from, as required under Rule 11(7) (b) of the Rules and they pointed out that only the ruling on the bill of costs issued by the Taxing Officer on 09/08/2019 was attached to the application.



Held:

- (i) The law is settled that for the full Court to grant a stay of execution, the check list of the requisite conditions stated under rule 11(4) (5) and (7) of the Rules should be satisfied cumulatively.

Application granted.

Statutory provisions referred to:

- (i) The Court of Appeal Rules, 2009 under rules Rule 11 (3), (4), (5) (a) – (c), (6), (7) (b), (c).

Case referred

- (ii) Mantrac Tanzania Limited v. Raymond Costa, Civil Application No.11 of 2010 (unreported).
- (iii) Joseph Antony Soares @ Goha v. Hussein s/o Omary, Civil Application No. 6 of 2012 (unreported).
- (iv) Hai District Council and Another v. Kilempu Kinoka Laizer and 15 Others, Civil Application No. 10/15 of 2017 (unreported).
- (v) Salvatory Gibson v. William Laurent Malya and Another, Civil Application No. 6/05 of 2017 (unreported).
- (vi) Sudi Kipetio and 3 Others v. Bakari Ally Mwera, Civil Application No. 94 of 2004 (unreported).

Ms. Inviolata Wangom, for the Applicant.

Mr. Raphael Dismas, for the Respondent.