

TANZANIA / JUDGMENT

CIVIL APPLICATION NO 01 16 OF 2024 JITESH JAYANTILAL LADWA ANOTHER VS DHIRAJLAL WALJI LADWA 2 OTHERS

COURT
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IN THE COURT OF APPEAL OF TANZANIA AT PAR ES SALAAM CIVIL APPLICATION NO. 01/16 OF 2024 JITESH JAYANTILAL LADWA 1st APPLICANT INDIAN OCEAN HOTELS LIMITED 2 nd APPLICANT VERSUS DHIRAJLAL W AUI LADWA 1st RESPONDENT CHANDULAL W AUI LADWA 2nd RESPONDENT NILESH JAYANTILAL LADWA 3rd RESPONDENT (Application for stay of execution of the ruling and order of the High Court of Tanzania (Commercial Division) at Dar es Salaam) fNanaela, J.) dated 17th day of November, 2023 in Commercial Cause No. 02 of 2020

RULING

17th & 23rd September, 2024 ISMAIL, 3.A.: This is an application for stay of execution of the order of the High Court, Commercial Division (Nangela, J.), arising from Commercial Cause No. 2 of 2020. At stake in that matter, were complaints of an unfair prejudice petition against which the respondents moved the High Court to issue several reliefs which were premised on the contention that the 1st applicant's conduct and operations of the affairs of the 2nd applicant were unlawful and prejudicial to the interests of the company and the respondents who are the shareholders and directors of the 2nd applicant. The applicants in the instant matter were the losing parties (respondents) in the original matter which was instituted by the respondents, then featuring as the petitioners. The High Court was convinced that the respondents had done enough to prove that the 1st applicant's conduct of the affairs of the 2nd applicant were prejudicial to the interests of the respondents. Consequently, the High Court granted the petition and issued a raft of orders and reliefs, a few of which are as follows:

- (i) That, since there has been no proper meetings in which the appointment of one Michael Gayo Luwongo as a Director of the 2nd respondent was called, a matter which the 1st petitioner averred to have been carried out in violation of the MEMARTS of the 2nd respondent, his appointment in whatever manner it might have occurred was unlawful and is hereby revoked. (ii) The directors of the Company (the 2nd respondent) (who, for clearance of doubts include the petitioners herein) are hereby directed to call for an Annual general Meeting of the Company in accordance with the requirements of the law, and one of the agenda of the meeting should include taking stock of the Company's assets and

financial status. (Hi) The Directors are further hereby ordered to call for a special meeting of the Directors and, in that Directors' meeting they should, as one of their agenda, appoint in line with Article 78 of the MEMARTS, a managing director who shall run and manage the affairs of the company on a day-to-day manner and in accordance with the MEMARTS of the 2nd respondent and the law. The notice of motion, predicated on rule 11 (4), (4A) and (6) of the Tanzania Court of Appeal Rules, 2009 (the Rules), is supported by an affidavit of Jitesh Jayantilal Ladwa, the 1st applicant, and a supplementary affidavit sworn by John Chuma, the applicants' legal counsel. These affidavits set out grounds on which the order of stay of execution is sought. In the former, the most significant depositions are found in paragraphs 5, 6, 7, 8 and 9. The averment by the 1st applicant is that he is aggrieved by the decision of the High Court and that, vide a notice of appeal attached as Annex D, the applicants have signaled their intention to appeal to this Court. In the impendency of the appeal, the respondents have served a copy of the Board Resolution on the 1st applicant through 3 which changes in the running of the affairs of the 2nd applicant have been effected, including transfer of directorship and membership in the 2nd applicant company. The affidavit has also stated the reason as to why, in the applicants' contention, they stand to suffer more than the respondents if the stay order is not granted. The deponent has also given an undertaking for furnishing security for the due performance of the decree. The supplementary affidavit provides an account of the incidents which allegedly occurred when the respondents allegedly attempted to wrestle control of the 2nd applicant's premises in execution of the order of the High Court. The application has been ferociously opposed by the respondents. Through a joint affidavit affirmed by the respondents, the contentions by the applicants have been scoffed at. Regarding the board resolution, the respondents averred that its passage was part of the day-to-day running of the affairs of the company and in compliance with the Memorandum and Articles of association of the company, and that that had nothing to do with implementation of court orders. As such, they contended, there was nothing to be stayed. On the nature of the court order, the respondents averred that the same was merely a declaration which did not require enforcement and, therefore, incapable of being stayed. The respondents have found no irreparable loss to be suffered by the applicants if the stay order is not granted. On the contrary, the respondents stand to suffer loss and inconvenience if the stay order is granted as stated in paragraph 8 of the affidavit in reply. When the matter was called on for hearing, the applicants were represented by Messrs. Jeremia Mtobesya, Sisty Bernard and John Chuma, all learned counsel, whereas the respondents enjoyed the services of Mr. Robert Rutaihwa, learned advocate. Before the hearing got underway, Mr. Rutaihwa rose and informed me that the respondents had shared with him their concerns on the handling of the matter. While stating that he did not share their position, he implored me to allow one of the respondents to address me on their concerns. I acceded to the prayer and allowed Mr. Nilesh Jayantilal Ladwa, the 3rd respondent, to address me on behalf of his colleagues. The 3rd respondent submitted that he is a minority shareholder in the 2nd applicant and that the respondents' concerns stem from Miscellaneous Commercial Cause No. 62 of 2020 which brought about Civil Revision No. 640 of 2023. He argued that, in view of my involvement in the latter matter

as one of 5 the panel members, when the matter was heard and determined by this Court, the respondents were firmly of the belief that the decision in Civil Revision No. 640 of 2023 would influence the decision in the instant matter. He called for my recusal from the conduct of the matter. In his brief rebuttal, Mr. Mtobesya submitted that, whilst it is true that I was involved in the cited proceedings, the applicants in the said matter were the Attorney General and the Registrar of Companies and that the 1st applicant in the instant matter was the 1st respondent who, along with the rest of the respondents, lost the matter. Mr. Mtobesya was not convinced that the decision in the cited proceedings would have any bearing on the decision in the instant matter. He argued that, grant of a stay order is dependent on the fulfilment of three key conditions as set out in rule 11 of the Rules. The learned counsel further contended that recusal of a judicial officer from the conduct of proceedings is guided by law, arguing that the conditions governing the recusal had not been met to warrant my decision to recuse myself from the matter. When the parties were done with their submissions, I gave a short order dismissing the prayer for recusal. As I did that, I reserved the reasons for my decision, promising that such reasons would be stated in 6 this ruling. I then ordered the parties to address me on the substance of the application. In arriving at the decision, I was guided by a narrow question as to whether, conditions exist for acceding to the prayer for recusal. I wish to state, at the outset, that the law acknowledges the fact that a judicial officer presiding over a matter must win the confidence of the parties who appear before him by ensuring that his conduct 'on and off the field' exhibits nothing but an impeccable or unquestionable impartiality and all other forms of detachment from an interest in the matter at stake. In other words, the presiding judicial officer should not carry any bias against either of the parties. In law, bias is said to exist in the form described by the West's Encyclopedia of American Law, 2nd Edn., 2008, wherein it was defined to mean: "Predisposition of a judge, arbitrator, prospective juror, or anyone making a judicial decision, against or in favour of one of the parties or a class of persons. This can be shown by remarks, decisions contrary to fact, reason or law, or other unfair conduct." Further description of bias was expounded by the same authors in the following words: "A particular influential power which sways the judgment; the inclination or propensity of mind towards a particular object.... Justice requires that the judge should have no bias for or against any individual; and that his mind should be perfectly free to act as the law requires." Over the course of time, a party's need to prove bias has gained some stringency, as he is now required to demonstrate that what is alleged to exist is not merely an imaginary danger of bias. It has to be a real danger of bias. A classic example of the mould in which real danger of bias can be said to exist was stated by Buxton J who, in propounding principle (v) of the principles laid in *Paul Jonathan Howell & Others v. Marcus Lee Millais* [2007] EWCA Civ 270, he held: "An example of a real danger of bias is where 'there was animosity between the judge and any member of the public involved in the case *Locabail UK Limited v. Bayfield Properties Limited* [2000] QB 451 (CA) at 25, the categories of such danger are not dosed, "if for any other reason there was real grounds for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections" then recusal would be necessary." As he held so, the learned Lord Justice threw a word of caution

when he held as hereunder: "...the mere fact that a judge has decided a case adversely to a party or criticized the conduct of a party or his lawyers will rarely if ever be a ground for recusal. However, a real danger of bias might be thought to arise if there were personal friendship or animosity between the judge and a member of the public... the same would, I think, be true if there were personal animosity against a firm of solicitors or his partners." [Emphasis is added] The important take away from the quoted excerpt is that, only the real danger of bias is what would count and serve as a ground on which a recusal would be sought and granted. Back home, the position was made clearer through the pronouncements made by the Court. These decisions came up with three circumstances under which a party may ask for recusal. Thus, in *Issack Mwamasika & 2 Others v. CRDB Bank Limited*, Civil Revision No. 6 of 2016 [2016] TZCA 546 (28 September 2016, TANZLII), we quoted the reasoning in the earlier decision in *Laurean G. Rugaimukamu v. Inspector General of Police & Another*, Civil Appeal No. 13 of 1999 (unreported), in which it was held: "An objection against a judge or magistrate can legitimately be raised in the following circumstances: One, if there is evidence of bad blood between the litigant and the judge concerned. Two, if the judge has close relationship with the adversary party or one of them. Three, if the judge or a member of his close family has an interest in the outcome of the litigation other than the administration of justice. A judge or a magistrate should not be asked to disqualify himself for flimsy or imaginary fears." The foregoing position echoed what the Court accentuated in its earlier decision in the *Registered Trustees of Social Action Trust Fund and Another v. Happy Sausages Ltd and Others* [2003] T.L.R. 264 (at p. 273) wherein it was held: "It is our considered view that it would be an abdication of judicial function and an encouragement of spurious applications for a judicial officer to adopt the approach that he/she should disqualify himself/herself whenever requested to do so on application of one of the parties on grounds of possible appearance of bias. A judicial officer should not automatically stand aside whenever requested to do so..." As stated earlier on, my involvement in Miscellaneous Commercial Cause No. 640 of 2023 is what is said to have triggered the respondents' apprehension of fear and the feeling that the decision in this matter might go against them. With respect, this contention does not fall in any of the settled circumstances calling for recusal. That such involvement may be the basis for raising an alarm is a contention that cannot find any purchase, knowing that the involvement in the said matter, irrespective of the outcome, would not predetermine my conduct in the instant matter. The decision in the cited matter hinged on the factual setting which necessitated holding in favour of the applicants. The factual considerations in that case are non-transferrable and cannot determine what is at stake in the instant application. In any case, as Mr. Mtobesya alluded to, all of 11 the parties in the instant application were on the losing side in that matter. To underscore the fact that the outcome would not predetermine my conduct in this matter, I find obliged to rely, yet again, on Lord Buxton, who, in extracting a statement from the decision in *Drury v. British Broadcasting Corporation & Another* [2007] EWCA Civ 605, he settled on the following conclusion: "The mere fact that the judge made a finding against a party on a previous occasion even if he had been critical to that party did not found a later objection to the judge sitting in another matter. It was

however also plain that where there was any room for doubt as to which course to adopt that doubt should be resolved in favour of recusal." See also: *Locabail (UK) Limited v. Bayfield Properties Limited*

[2000] QB 451. My conviction is that, the respondents who levelled the allegation of bias bore the onus of proving that such bias truly existed. In none of their representations, have I found anything that would be interpreted, albeit remotely, that in all of the matters over which I presided or took part, the decisions that came out were actuated or influenced by any bias which would lead to any real danger of bias in the subsequent matters, including the instant application. I need to remind the parties, that I also presided over an appeal that involved the 1st applicant as one of the parties against whom the findings of the appeal were unfavourable. This was Criminal Appeal No. 111 of 2022 between the Director of Criminal Prosecutions and Jitesh Jayantilal Ladwa and Elly Chirongo Musyangi. This was an appeal against the subordinate court's decision which upheld the 1st applicant's preliminary objection, leading to striking out of the charge sheet and his eventual discharge from the then pending criminal trial. This outcome did not have any bearing on subsequent matters for the obvious reason i.e. they drew no convergence or relationship. It is in view of the foregoing, that I find the call by the respondents deficient to move me to step out of my involvement in the matter. There is simply nothing of substance and the reasons given are, with respect, nothing short of spurious and I cannot act upon. Reverting to the substance of the application, the first jab was thrown by Mr. Mtobesya who contended that the application had met the 13 conditions for its grant. He argued that, the grounds in the supporting affidavit and in paragraph (b) (i) in the notice of motion supported that contention. He also referred to paragraphs 2 and 3 of the supplementary affidavit which averred on what the applicants termed as an invasion into the 2nd applicant's premises that occurred on 29th December, 2023, triggering meetings with law enforcement officers. Mr. Mtobesya further argued that, in law, executions may be effected without enlisting the courts' assistance, and the case in point, in his view, was the holding in *Ibrahim Twahili Kusundwa & Another v. CRDB Bank PLC & 3 Others*, Civil Appeal No. 194 of 2021 [2024] T7CA 7 (19 January 2024, TANZLII). The learned counsel considered what happened on 29th December, 2023, as an attempt to execute the order of the High Court without enlisting the assistance of the court. Making reference to rule 11 (7) (d) of the Rules, the learned counsel argued that the notice of execution would not always be availed, contending that there was a move to execute the decree, and that the mode of execution adopted by the respondents is what brought the instant application. He also referred me to paragraph 6 of the affidavit on the board meeting that was convened and came up with a board resolution 14 (Annex. E). He contended that the cut-off time against which timeousness of the application may be gauged is the date on which such meeting was held. Mr. Mtobesya further argued that, allowing the respondents to wrestle control of the premises while the appeal is pending will cause substantial loss to the applicants. He implored me to be guided by the decision of the Court in *Ungujo Wakibara Nyamarwa v. Beatrice Greyson Mmbaga*, Civil Application No. 200/17 of 2021 [2022] TZCA

732 (21 November 2022, TANZLII). Regarding security for the due performance, Mr. Mtobesya's take is that paragraph 9 has fulfilled this condition as the applicants have undertaken to furnish such security, in the manner to be directed and at the quantum to be assessed by the Court. He brought to my attention, the decision of the Court in *Mapius Otieno v. Machimu Mayara*, Civil Application No. 279/8 of 2024 [2024] TZCA 515 (2 July 2024, TANZLII) in which a commitment that the property will remain the way it is was considered to be sufficient. He, in the end, prayed that the application be granted and that costs be in the cause. Mr. Rutaihwa valiantly opposed the application. He began by stating that he considered the application to be starkly different from applications 15 for stay as we know them, and that the difference resided in the nature of the order issued by the High Court, and the requirement of the law. The learned counsel contended that the parties in this application are shareholders and directors of the 2nd applicant and have their rights and obligations cast on the statutory provisions i.e. the Companies Act. That includes the right to run the affairs of the 2nd applicant. He argued that, as a company, the 2nd applicant must conduct annual general meetings and file annual returns. Mr. Rutaihwa strenuously argued that the law requires that the management of the company must have at least two directors while the current state of affairs means that such requirement has not been fulfilled. He was of the contention that what is sought through the instant application is a stay of statutory obligations and not a stay of execution. Regarding the conditions for the stay of execution, Mr. Rutaihwa argued that the orders by the High Court are merely directory in nature and they require no enforcement, reiterating his earlier stance that the respondents were doing no more than implementing a statutory requirement as provided by law. On the time limitation, the learned counsel argued that, since there was no notice of intended execution, it was difficult to see how one would compute 14 days during which the application for stay of execution should be filed. This created an uncertainty, he argued, as to whether the counting starts from the date on which the board resolutions were passed or the date on which the alleged invasion was carried out. He argued that the application has all the hallmarks of an afterthought because, whereas the alleged invasion was carried out on 29th December, 2023, the affidavit in support of the notice of motion indicated that the same was affirmed on 21st December, 2023. With regard to irreparable loss, Mr. Rutaihwa argued that the toss flipped on the respondents' side and that, should the application be granted, the loss to be suffered by the respondents will be humongous and irreparable, as stated in paragraph 8 (i) - (vi) of the affidavit in reply. This would include letting the 2nd applicant be run solely by the 1st applicant. The learned counsel argued that, while the law requires that particulars of the loss to be suffered be sufficiently detailed, the applicants have given no details of the loss to be suffered by them. On the requirement of furnishing security for the due performance of the decision of the High Court, the contention by the respondents' counsel is that, paragraph 9 of the affidavit contains a general statement which provides nothing on the kind of security to be furnished. He ruled out the issuance of a bank guarantee since the order appealed against did not state the quantum at stake. Mr. Rutaihwa took a swipe at the proposal of issuing a commitment bond as it is not feasible

to commit what the law prohibits i.e. running of the affairs of the company by a single person. The learned counsel wound up his submission by referring me to the decision of the Court in Yasmine Haji v. Anthony Amin Haji, Civil Application No. 406/01 of 2024 [2024] TZCA 828 (26 August 2024, TANZLII) in which it was held that mere declaratory orders which do not confer rights on the parties are non-executable and incapable of being stayed. He was adamant that, since the conditions for stay have not been cumulatively met, the application is devoid of merit, praying that the same be dismissed with costs. Mr. Mtobesya submitted in rejoinder that circumstances of this case were akin to the case of Ibrahim Twahili Kusundwa (supra) which did not require issuance of formal notice of execution, and that paragraph 6 of the affidavit and paragraphs 3 and 4 of the supplementary affidavit tell the entire story. He referred me to Annexure E whose paragraph 18 contains a resolution which was made towards execution of the order of the High Court. He described the situation as falling in sub-rule (7) (d) which has the words "if a n y "to accommodate situations like this. On the time limitation, Mr. Mtobesya argued that the cut-off date is 19th December, 2023, the date on which Annexure E was passed. He held on to his contention that the depositions contained in the affidavit in support constitute the evidence that shows that the loss to be suffered by the 1st applicant would be substantial because there is a contestation on the respondents' membership in the 2nd applicant. Regarding the enforceability of the order, the learned counsel argued that, unless it is willingly satisfied, the same is executable, as it provides for the ouster of Mr. Michael Gayo Luwongo from the board of directors, and that if he does not vacate the office then a court order will be required to get him out. It will also require moving BRELA to effect the changes. He sought to distinguish the decision in Yasmine Haji (supra) from the circumstances of this case as the setting is also different. The learned counsel argued that, seeking entry is also an enforcement of the order and so is the taking control of the affairs of the company. 19 In respect of the security for the due performance, Mr. Mtobesya argued that a commitment bond or any direction will suffice. I have reviewed the application, the parties' depositions, the counsel's submissions and the cases cited. In my view, the pertinent question to be resolved is whether the application has met the threshold for its grant. It is worth of note, that stay of execution is grantable upon a cumulative fulfilment of the conditions set out in rule 11 of the Rules. Of most relevance are sub-rules (4) and (5) which provide that a stay order is predicated on demonstration that (i) the application has been filed timely i.e. within 14 days from the date of service of a notice of execution or knowledge of the filing of an application for execution of a decree; (ii) possibility of suffering substantial loss if stay is not granted; and (iii) presence of an undertaking for furnishing security for the due performance of the decree. The need for an imperative fulfilment of these conditions has been underscored in many a decision - see: Airtel Tanzania Limited

- v. Ose Power Solutions, Civil Appeal No. 336/01 of 2017 (unreported); Aidan George Nyongo v. Magege Machenja & 3 Others, Civil Application No. 237/17 of 2016 [2020] TZCA 1832 (30 October 2020, TANZLII). From the foregoing, there arises a question as to whether these

conditions have been met by the applicants. Starting with preference of the application without undue delay, the contention by Mr. Mtobesya is that, from the date on which the respondents convened and passed a resolution to the date of filing the application, 14 days set out by law had not been exceeded. Mr. Rutaihwa has decried the pegging of the computation of time on the date of the resolution and the uncertainty on what triggered the applicants' action. He maintained that, either way, this was an inexecutable order against which stay cannot be granted. I am in agreement with Mr. Mtobesya when he argued that the steps towards the implementation of what the High Court pronounced itself on began with the passage of the resolution in a meeting held on 19th December, 2023. This is a cut-off date from which the 14 days are to be computed. This can also be gathered from the preambular section of the resolution where reference has been made to the court order, confirming that the steps taken, starting with the passage of the resolution, were informed by what the High Court ordered. I hold the view that, counting to 2nd January, 2024, when the same was filed, this application is timeous. Regarding substantial loss to be suffered by the parties, the settled position is that, stay of execution is an order whose object is preservatory. It preserves the rights of the contending parties before a determination is made on their rights on appeal. We emphasized this position in the most recent decision of the Court in *Director Tanga Cement Company Limited v. Ephraim Joram*, Civil Application No. 307/18 of 2024 [2024] TZCA 907 (19 September 2024, TANZLII) wherein an inspiration was sought from the decisions of the courts in Kenya and Uganda. In *RWW*

- v. *EKW* [2009] *Eklr*, the Court of Appeal of Kenya held on that subject as follows: "The purpose of an application for stay of execution is to preserve the subject matter in dispute so that the rights of the appellant who is exercising undoubted right of appeal if successful is not rendered nugatory." [Emphasis supplied] 22 In what appears to echo what the Kenyan court decided, in the case of *Attorney General v. Walugembe Daniel*, Civil Application No. 390 of 2018, the Ugandan Court of Appeal held thus: "An application for stay of execution is without doubt premised on threat of execution of an order or decree appealed from. Therefore, an application such as this seeking order for stay of execution must first satisfy the Court that indeed the orders or decree appealed from is capable of being stayed and there is an inherent danger." [Emphasis added] What comes out of the quoted excerpts is that an order for stay of execution is essentially a tool that is meant to preserve the rights of the protagonists i.e. the decree holder and judgment debtor, in a matter, as they await a face off on appeal, lest the appeal is rendered nugatory. We underscored this position in *Director Tanga Cement Company Limited* (*supra*) in which an excerpt from Justice C.K. Thakker's book, titled: *Civil Procedure*, 6th Edition, 2011 Reprint, Eastern Book, was quoted as saying: "The object underlying Rule 5 is to safeguard the interests of both, the judgment holder and judgment debtor. It is the right of decree holder to reap the fruits of his decree. Similarly, it is the right of the judgment debtor not merely to get barren success in case his appeal is allowed by the appellate court. This rule strikes a just and reasonable balance between these opposing rights." [Emphasis added] In the instant matter, the applicants have given an account of what they consider to be a looming substantial loss if implementation of the

decision of the High Court is not thwarted. The respondents have taken the view that the disclosure by the applicants is not as wide and detailed as it should be, arguing that particulars of the loss to be suffered by the respondents if stay is granted are far graver than those that the applicants are likely to suffer. Having heard the contending submissions, it behoves me to state that, much as the respondents' disclosure of loss to be suffered is admirably descriptive, there is no known rule which requires that the loss to be suffered by the applicant must have details of surgical precision. In my considered view, it is enough if the applicant is able to demonstrate that the loss to be suffered by him is substantial and with the potential of rendering the pending appeal a mere academic exercise which will not achieve the intended objective even if the appeal court were to decide in 24 the applicant's favour. Mindful of this reality, I take the conviction that the applicants have sufficiently demonstrated the magnitude of the loss to be suffered and, in consequence, I find that this requirement has been fulfilled. Next is the question of furnishing of security for the due performance of the decree or order. This condition is intended to ensure that the applicant is kept under the obligation of ensuring that the decree holder does not have to chase the applicant and break a sweat in realizing the fruits of the decree, where the appeal or revision is adjudged unmeritorious. On the form of security that an applicant should give, our decision in *Mantrac Tanzania Limited v. Raymond Costa*, Civil Application No. 11 of 2010 (unreported) provides an invaluable guidance, as follows: "... the other condition is that the applicant for stay order must give security for the due performance of the decree against him. To meet this condition, the law does not strictly demand that the said security must be given prior to the grant of the stay order. To us, a firm undertaking of the applicant to provide for security might prove sufficient to move the Court, all things being equal, 25 to grant a stay order, provided the Court sets a reasonable limit within which the applicant should give the same." The foregoing excerpt underscores the statutory requirement as enshrined in rule 11 (5) (b) of the Rules, and what it actually means is that, it is enough if the applicant undertakes to provide security without having to deposit a cash sum. In the instant case, the applicant has undertaken to furnish such security consistent with what the Court will guide. This is gathered from paragraph 9 of the 1st applicant's affidavit. Having given the undertaking and leaving to the Court to decide on the kind of security, my unflustered view is that the applicant has done what the law demands of him to secure a stay order. Since, as stated above, the object of issuing a stay order is to preserve the interests of the parties by striking a balance, while mindful of the fact that the appeal is not rendered nugatory, the circumstances obtaining in this case require that the form of undertaking by the applicants should be that which does not require issuance of a bank guarantee as would otherwise be customarily required. This is so because the order whose execution is sought to be stayed does not have a 26 quantified monetary obligation against the applicants. In such a case, a firm undertaking, by way of a commitment bond would, in my considered view, suffice. The bond should constitute a firm undertaking to the effect that nothing constituting the affairs of the 2nd applicant will be dissipated, alienated or squandered for the entirety of the pendency of the appeal and during the 1st applicant's stewardship. This is consistent with what we held in a number of our previous decisions, including the case of *Mapius Otieno*

(supra), cited by Mr. Mtobesya. As I wind down, I feel obliged to address the argument by Mr. Rutaihwa, who held the contention that the order sought to be stayed is composed of mere declaratory reliefs which cannot be executed. His argument was bolstered by his reliance on the decision in Yasmine Haji (supra). It is true that a decree or an order that grants no right to a party or is non-executable, cannot be a subject of any stay of execution. We emphasized that in Yasmine Haji (supra) when we borrowed a wisdom from our earlier decision in which we held; "It seems to me that a stay of execution can properly be asked for where there is a court order granting a right to the respondent or 27 commanding or directing him to do something that affects the applicant. In such a situation, the applicant can meaningfully ask the court for a stay and to restrain the respondent from executing that order pending the results of an intended appeal, "[Emphasis added]. Looking at Annex C, it is clearly discernible that the orders given therein grant rights to the respondents. There are also orders that command or direct the respondents to do something that affects the applicants, and the case in point is the resolutions which were passed on 19th December, 2023 (See Annex. E). They are, as stated earlier on, designedly an effectuation of what the High Court ordered. Implementation of these orders by the respondents has the potential of changing the entire ownership architecture and management of the 2nd applicant in a manner that affects the 1st applicant. This reality starkly distinguishes the circumstances of this case from what obtained in Yasmin Haji (supra) in which the decree whose execution was to be stayed was an appointment of an executor of a will. In sum, I grant the application and order that the execution of the decision of the High Court be stayed pending determination of the 28 impending appeal to this Court. The grant of the stay order is conditioned on the applicants executing a commitment bond to undertake to conserve the state of affairs (assets and financial status) of the 2nd applicant as they were as at the date of pronouncement of the decision of the High Court. This includes conservation of the rights that the respondents may have in the said establishment. The commitment bond must be executed and filed into the Court within 30 days from the date hereof. Costs to be in the cause. It is so ordered. DATED at DAR ES SALAAM this 23rd day of September, 2024. M. K. ISMAIL JUSTICE OF APPEAL Ruling delivered this 23rd day of September, 2024, in the presence of Mr. Sisty Bernard, learned counsel for the Applicants and Mr. Protace Kato Zake, learned counsel for Respondents is hereby certified as a true copy 29

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