

TANZANIA / JUDGMENT

attorney general vs electrics international company limited another 2023 tzca 17758 16 october 2023

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16 October 2023

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IN THE COURT OF APPEAL OF TANZANIA AT PAR ES SALAAM (CORAM: KOROSSO. J.A..
RUMANYIKA. J.A. And MGONYA. J.A. CIVIL APPLICATION NO. 489/16 OF 2022 THE HON.
ATTORNEY GENERAL..... APPLICANT VERSUS ELECTRICS INTERNATIONAL
COMPANY LIMITED..... 1st RESPONDENT PUBLIC SERVICE SOCIAL SECURITY
FUND..... 2nd RESPONDENT (Application for stay of execution of the Decree of the High
Court of Tanzania, Commercial Division at Dar es Salaam) (Philip, 3.1 dated on 1st day of
October, 2020 in Miscellaneous Commercial Cause No. 15 of 2018 RULING OF THE COURT 27th
September & 16th October, 2023 RUMANYIKA. J.A.: The applicant, The Attorney General, seeks
an order for stay of execution pending the hearing and determination of an application for
extension of time to file revision. The application is by notice of motion made under rules 4(2)
(b), 11(3), 11(4), 11(5)(a) and (c), 11(6) and (7)(b)(c)(d) and 48 of the Tanzania Court of Appeal Rules,
2009 as i amended, herein after referred to as "the Rules". It is supported with an affidavit sworn
by George N. Mandepo, a Principal State Attorney. The factual background of the matter is fairly
long as it is gathered from the supporting affidavit. However, we will summarize it as follows: The
applicant is the chief legal advisor of the Government. The 2nd respondent, the successor of the
then PPF is a public institution, established under the Public Service Social Security Fund Act No.
2 of

2018. On 6th November, 2008, the defunct PPF contracted the 1st respondent for the construction
of some buildings for the Coliege of Informatics and Virtual Sciences of the University of
Dodoma. However, during the implementation of the two contracts, there arose some
variations resulting into additional costs, for steel structure elements and the construction
of the parking lot. This gave rise to a dispute which the parties referred to an Arbitrator.
Upon hearing of the matter, the Arbitrator ruled in favour of the 1st respondent and
awarded it TZS 2,466,925,071 which comprised of TZS 1,593,256,912 being additional costs
for the Food Court (Canteen), TZS 683,206,450 as additional costs for the IT Laboratory and
TZS 461,709 being additional costs for the construction of the parking lot. 2 The 1st
Respondent referred the Arbitral Award to the High Court Commercial Division vide
Miscellaneous Commercial Cause No. 15 of 2018 for registration. PPF unsuccessfully filed a

petition to set aside the said Arbitral Award vide Miscellaneous Commercial Cause No. 38 of

2018. That application was struck out, thus, giving rise to the Arbitral Award, being registered as a court Decree. Upon registration of the Award, the 1st Respondent filed Miscellaneous Commercial Cause No. 15 of 2018 for execution. On the other hand, the 2nd Respondent being the successor of the PPF filed Civil Appeal No. 249 of 2018 in the Court to challenge the decision of the High Court registering the Arbitral Award. The appeal involved the 1st and 2nd respondents. However, on 25th October, 2021, the said appeal was struck out for being incompetent. On 6th June, 2022 the 1st respondent filed an amended application for execution also involving the applicant and attached the 2nd respondent's Bank Account No. 01J1042998100 with CRDB Bank. From there, the applicant filed an application for extension of time within which to file revision, vide Civil Application No. 479/16 of 2022. The applicant further averred that, the bank account sought to be attached is the government's property which is not liable to be attached. It is also averred that, if the intended execution is not stayed, then the said 3 application for extension of time will be rendered nugatory causing the 2nd respondent to encounter hardships in paying the beneficiaries of the Fund thus, and the applicant and the 2nd respondent to suffer great loss. On the prospects of the application for extension of time, the applicant avers that it has overwhelming chances of success. At the hearing of the application on 27th September, 2023, Mr. Edwin Joshua Webiro learned Senior State Attorney appeared being assisted by Ms. Rehema Mtulya and Mr. Ayoub Sanga both learned state attorneys. Mr. Samson Mbamba and Ms. Anna Shayo learned counsel appeared for the 1st and 2nd respondents respectively. Onset, we invited Mr. Webiro to address the Court whether the application was filed within time prescribed under rule 11(4) of the Rules. The learned Senior State Attorney was quick to state that, the Court rules do not provide for time limit within which applications of this nature to be filed, as is the case, it was pending determination of an application for extension of time to file revision. He urged us to invoke rule 4(2) (b) of the Rules asserting that, the sixty days' rule applies in the circumstances, as the fall-back position. Therefore, he beseeched us to find and hold that, this application was lodged within time. Since, the applicant became aware of the existence of the application for execution 4 on 27th July, 2022 and filed the instant application on 19th August, 2022 which is within sixty days required. Responding to Mr. Webiro's proposition, Mr. Mbamba contended that, the 14 day's rule on a limitation period prescribed under rule 11(4) of the Rules is cross cutting. Since, it applies in all cases and situations, irrespective of whether an application is for stay of execution of a decree pending determination of an application for extension of time to file revision, as is here, or to file an appeal. Additionally, Mr. Mbamba asserted that, in any case, the requisite conditions for issuing an order for stay of execution are the same, including a firm undertaking by the applicant to give security for due performance of the respective decree, from which an appeal may arise. He cited our unreported decision in *Mekefason Mandali And 8 Others v. The Registered Trustees of The Archdiocese of Dar es Salaam*, Civil Application No. 491/17 of 2019 to reinforce his proposition. Upon hearing the submissions of the parties' learned counseil and authorities

cited, we wish, at the very outset to address Mr. Webiro's noble point, whether, in considering to grant an order staying execution of the decree, in this case, pending determination of an application for extension of time to file revision, in terms of rule 4(2) (a) and (b) of the Rules, the Court has to do away with the requisite conditions stipulated under rule 11(4) and (5) of the Rules for granting an order for stay of execution of a decree, pending determination of appeal. With respect, Mr. Webiro's point cannot be more incorrect. Much as, we appreciate both the fact and law that, rule 4(2) (a) of the Rules applies to matters where no provision is made by the Rules or any other written law. Respectfully, we accept Mr. Mbamba's proposition that, in all cases, the requisite conditions inclusive of the limitation period for the grant of an order of stay of execution of decree remain the same. That, the said granting is irrespective of whether or not the stay of execution being sought is pending determination of an appeal, a review, or reference. The foregoing apart, the central issue for our determination is whether the instant application is time barred. Very clearly, Rule 11(4) of the Rules sets a limitation period of fourteen days, within which to file applications of this nature as follows: 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. (Emphasis added). From the above quoted text, it is clear to us that, the applicant had fourteen days to file the instant application. At least, there are two main facts which are not disputed, for the determination of this application. One, that, the 1st respondent filed the respective amended application for execution on 6th June, 2022, as averred in paragraph 16 of the affidavit supporting this application and two, that, the instant application was filed on 19th August, 2022. The accrual of fourteen days set under rule 11(4) of the Rules for the filing of an application for an order to stay execution is free of any ambiguity as noted above. Very unfortunately, the applicant herein did not tell when the respondent served him with the respective application for execution, or when he became aware of the existence of the intended execution. However, the record is clear to us that, the 1st respondent had applied for execution, vide Misc. Application No. 15 of 2018, on 24th May, 2022, as averred in paragraph 16 of the supporting affidavit. Now that, as observed above, the applicant did not tell when the respective notice of execution was served on him, we are forced to draw an adverse inference, which we hereby do. We take the notification date to be 6th June, 2022. Therefore, the applicant filed the application forty three days later, which is about twenty nine days late. In conclusion, we strike out the application for being time barred. Costs in the course. DATED at DAR ES SALAAM this 13th day of October, 2023. W. B. KOROSSO JUSTICE OF APPEAL S. M. RUMANYIKA JUSTICE OF APPEAL L. E. MGONYA JUSTICE OF APPEAL The ruling delivered this 16th day of October, 2023 in the presence of Ms. Rehema Mtulya, learned State Attorney for the Applicant and Mr. Steven Biko, Principal State Attorney for 2nd Respondent, also holding brief for Mr. Samson Mbamba for the 1st Respondent, is hereby certified as a true copy of the original.

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