

TANZANIA / JUDGMENT

CIVIL APPLICATION NO 86 5 OF 2024 VASSO AGROVENTURES LIMITED VS MAPATO B

COURT
TANZLIIDECIDED
1 January 2024

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IN THE COURT OF APPEAL OF TANZANIA AT MOSHI CIVIL APPLICATION NO. 86/5 OF 2024
VASSO AGROVENTURES LIMITED..... APPELLANT VERSUS MAPATO B.

VRESPONDENT (Application for stay of execution of the decree
of the High Court of Tanzania at Moshi) (Kilimi, J.V dated 22nd day of February, 2024 in Misc.
Civil Cause No. 03 of 2023

RULING

12th & 22nd August, 2024 ISMAIL 3.A.: In this application, the applicant seeks an order for stay of execution of the decree of the High Court, pending the determination of the impending appeal. The decree was derived from proceedings in Miscellaneous Civil Cause No. 3 of 2023 in which the respondent's prayer for a winding up order against the applicant was granted. Consequent thereto, the affairs of the applicant were placed under the stewardship of Mr. Kester Lyaruu, the Liquidator. The decision by the High Court has drawn an ire from the applicant who has signaled her intention to institute an appeal through a notice of appeal filed in this Court on 23rd February, 2024. In the pendency of the notice of appeal, the applicant filed the instant application, predicated on 10 grounds enumerated in the Notice of Motion, supported by a sworn deposition of Alphonsus Nijenhuis, a co-shareholder and director of the applicant. The affidavit informs, among other things, that, one, subsequent to the winding up order, the liquidator has begun the winding up process by directing a freeze of the applicant's bank accounts that are essential for daily operations; two, that the liquidator's actions are likely to adversely affect the applicant's investment and operations and causing substantial loss; and three, that, the applicant undertakes to furnish security for the due performance of the decree sought to be executed by the respondent, in the form of a bank guarantee or as the Court may direct. The respondent filed an affidavit in reply whose details I will not give out owing to the fact, as we shall find out shortly, that the application was ultimately unopposed. It is also instructive to note, that the instant application carried with it a prayer for an ex-parte stay order which was granted on 8th March, 2024. At the hearing of the application Messrs. George Njooka, assisted by Elius Ngereza, both learned counsel, represented the applicant, while Messrs. Moses Mmbando and Shabani Mwaita,

both learned advocates, appeared for the respondent. Mr. Njooka submitted, at the outset that, having read the respondent's affidavit in reply, there was an indication that the respondent did not oppose the application, except the question of issuance of security for the due performance of the decree. On that, Mr. Njooka contended that, since the decree does not state any quantified amount as the decretal sum, the applicant was willing and ready to issue a bank guarantee, to the tune of TZS. 200,000,000.00, which sum he considered to be sufficient and affordable. He argued that, any sum in excess of the proposed quantum would cripple the applicant's business operations. Besides, Mr. Njooka submitted, the applicant would also issue an insurance bond of the same amount to beef up the security. In terms of the time frame for furnishing security, the learned counsel's proposal was that the applicant should be given 60 days within which to comply with the order. Mr. Mwaita confirmed that the respondent did not intend to oppose the application, save for the aspect of security. On this, the learned counsel was of the contention that the sum constituting the security must be pegged on the sum that the respondent is owed by the applicant, which is Euros 1,000,000.00. This, he contended, was the principal loan amount which was lent out and that the same remains due and unsatisfied. He stressed that the form of security must be that which is stated in the supporting affidavit and not an insurance bond that came up in the course of his counterpart's 3 submission. Mr. Mwaita urged the Court to order that furnishing of the security be within 30 days from the date of the order. In reply, Mr. Njooka maintained that 60 days would give the applicant sufficient time to organize the guarantee arrangement with the bankers. As unanimously submitted by the learned counsel, there is no dispute on whether the application should be granted, if conditions for so doing have been met. This unanimity has narrowed down the contest to the form of security to be furnished and the value. The conditions for granting the stay order are enshrined in rule 11 of the Tanzania Court of Appeal Rules, 2009, specifically sub-rules 4, 5 and 7. My review of the application tells me that these conditions are prevalent and cumulatively fulfilled, making the application meritorious and grantable. Accordingly, an order for stay of execution of the decree is hereby issued pending determination of the appeal to be instituted in this Court. Regarding security, the question that I am called to address is, how much should be the sum constituting the security for the due performance of the decree? Ordinarily, the sum to be ordered as security is the decretal sum/where the decree is a money decree which is not the case in the instant matter. In such a case, all is left in the discretion of the Court to decide, especially where, as is the case here, the parties are tussling over the quantum. Whereas the applicant has chosen the sum that will not strain her financial position, the respondent has proposed the sum that would insulate her from possible loss of the sum that allegedly changed hands between them. It is clear that what we are dealing with at this stage of court proceedings is not an actual deposit of the cash sum off the applicant's funds. It is merely a firm undertaking and, in this case, in the form of a bank guarantee, consistent with what we guided in *Mantrac Tanzania Limited*

- v. *Raymond Costa*, Civil Application No. 11 of 2010 (unreported) wherein we held 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, to grant a stay order, provided the Court sets a reasonable limit within which the applicant should give the same/' The firm undertaking to provide the security must, as a matter of logic and law, be that which is able to fully cover the respondent and give her an all-important, assurance that the decree will be fully satisfied in case the applicant loses his bid to reverse the decision on appeal. In my considered view, such assurance can only be obtained if the security is to the tune of the sum owed. It is in view thereof, that I find the sum proposed by the applicant falling far short of what the security would do. This then brings me to a convergence with the proposal made by the respondent. Consequently, I order that the stay of execution of the decree be conditioned on the furnishing, by the applicant, of a bank guarantee amounting to Euros 1,000,000.00. The bank guarantee should be furnished to the Court within sixty days from the date hereof. The applicant is further ordered to ensure that nothing dissipates the value of the bank guarantee for the entirety of the period of validity of the guarantee. I make no order as to costs. Order accordingly. DATED at MOSHI this 22nd day of August, 2024. M. K. ISMAIL JUSTICE OF APPEAL The Ruling delivered this 22nd day of August, 2024 in the presence of Mr. Godfrey Saro, learned Counsel holding brief for Mr. George Njooka, learned Counsel for the Applicant also for Mr. Moses Mmbando, learned Counsel for the Respondent is hereby certified as a true copy of the original. OR__ D. R. LYIMO DEPUTY REGISTRAR COURT OF APPEAL 6

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Prepared on 13 October 2026 · Esheria