

IN THE HIGH COURT OF ZANZIBAR

HELD AT TUNGUU

CIVIL APPLICATION NO. 04 OF 2024

[FROM CIVIL APPLICATION NO. 5 OF 2021]

BETWEEN

SALMA MANSOUR NASSOR APPLICANT

V.

SULEIMAN AMOUR ALLY 1st RESPONDENT

FADHIL MUSSA SALIMA 2nd RESPONDENT

EL MANSOUR GENERAL TRADERS 3rd RESPONDENT

MWENYEKITI UHSIRIKA MNADA KUMEKUCHA 4th RESPONDENT

RULING

Dated: 05th SEPTEMBER, 2024

S. HASSAN (J)

This Application was filed under the certificate of urgency by way of chamber summons supported by the affidavit of **Mr SLIM SAID ABDALLA** an Advocate of the High Court and is made under **Section 129 and Order XXIV Rule 22 (1)** of the Civil Procedure Decree Cap 8 of the Laws of Zanzibar, seeking:

EX – PARTE:

1. That, this court to issue the notice to the respondents and determining the matter to proceed Ex parte.
2. That, this court be pleased to issue an order postpone the attachment and sale of the lime industries situated at Pete, the property of the applicant's family by which Chairman of Kumekucha Auction Mart noticed the applicant and public at large that on 18th May, 2024.
3. That, this court be pleased to postpone the execution because there is intended appeal which has very good chances of success to applicant since the decision is problematic and illegal.
4. Any other order (s) which this court deems just and reasonable to applicant.

INTER PARTIES:

1. That, this court be pleased to issue an order postpone the attachment and sale of the lime industries situated at Pete, by which the respondents want to execute the same as though the property was wrongful attached.
2. That, this court be pleased to postpone an intended auction of the attached property to be conducted by agent of 1st and 2nd respondents on 18th May, 2024.
3. Any other orders which this court deems just and reasonable to Applicant.

On the **17th May, 2024** this court granted ex – parte prayers and postponed the auction and sale of the lime industries pending the hearing of this application inter parties.

On the **2nd September, 2024** when the matter was fixed for hearing Mr Slim Abdalla appeared for the Applicant, while Mr Ishaq Shariff appeared for the respondents.

In his submission Mr Slim adopted his affidavit in support of this chamber application and went to state that, there is substantial loss and that the property which is subject to auction is a family property and therefore the execution if allowed to proceed will result the applicant and the family be rendered homeless, he further stated that, the execution if allowed to proceed will led to significant financial setback to relocate the applicant and family to a new place while dealing with legal battle which will impose unjustifiable financial burden to the applicant.

Mr Slim further submitted that, if the applicant and the family were to loss the property it will be profound and irreversible, the attachment and execution of the property will disrupt applicant life and her family members in a manner which may lead to permanent damage to their well being and stability.

With respect to balance of convenient, Mr Slim submitted that, it heavily favor the applicant suspending the execution pending the appeal will insure justice is served without causing undue harm to either party. He further submitted that, if the execution will proceed without final determination of the appeal will be premature and unjust resolution of the matter causing unnecessary hardship to the applicant. Mr Slim went on to submit that, the applicant has already filed the application seeking for extension of time to file appeal out of time. He went on to submit that, if allowed to file their appeal out of time there is a high likely hood of success of their appeal, Mr Slim submitted that if allowed to file appeal out of time they will present evidence to substantiate the procedural irregularity, to support his submission he cited the case of ***Geriod Francis Tairo v. Jummane S. Kitila and Hamisi Iddi, Civil Application No. 254/01/2019*** and in the end he prayed for this court to grant continuation of stay of execution Order and all of their prayers be granted by this court.

It was the reply for Mr Ishaq that, he opposed this application and reminded this court not to be blinded by the fact that, the Decree of the court was issued in 1997 it is almost 25 years since the court gave judgment and decree but the decree holder has not enjoyed his decree. He further submitted that, the applicant is causing delay to execute the decree and there have been several attempt to stop the execution of the

decree. With respect to the principle set by the court in granting the stay of execution, he submitted that, the applicant has not lodge the appeal which is the essential element of causing stay of execution. The applicant is claiming only to have lodged the application for extension of time to file appeal out of court. He went on to distinguished the authority cited by the applicant and stated that, the procedures for stay of execution applicable to the Court of Appeal are different to the procedures applied to the High court. In the end it was his submission that, the applicant is only trying to cause delay of the execution of the decree and prayed for this application to be dismissed and court to vacate its ex parte order and allow the execution to proceed.

In his rejoinder, Mr Slim rejected that the applicant is only playing around to cause delay but submitted that the applicant is only seeking for justice to prevail. On appeal he agree that, the time of appeal has lapsed and based on that, they filed their application seeking for extension of time to file appeal out of time in May, 2024. He further stated that, after the Ruling of Objection Proceeding went against them, they decided to file appeal but realized they were time barred hence they opted to file application for extension of time to file appeal out of time. Mr Slim went on to provide series of reasons which cause the applicant to delay to file appeal on time including that, on 2001 they applied for proceedings of the court but they were not served with, another notice lodge on 23rd November, 2020 again they were not served with proceedings of the court and subsequent notice were lodge in 2024 still no proceeding were served hence they were not in position to file appeal on time. With respect to the procedures of stay of execution applicable between the Court of Appeal and High court he submitted that, the different is only on the provisions but the procedure are the same.

Having heard the submission of both sides, the only question for determination before this court is, ***whether the applicant has shown sufficient cause to persuade and move this court to grant stay of execution.***

To start with, let me make reference to the case of **Parmanent Secretary Ministry of Water and Irrigation and Another v. Overseas Infrastructure Alliance**

(India) Pvt, Ltd, Misc Application No. 26 of 2020 High Court, where the court had this to say in terms of deciding whether stay of execution be granted or not:

“ In deciding whether stay of execution be granted or otherwise, the court is purely exercising discretionary powers. In exercising that discretion, the trial judge or magistrate use, reasonability, logic and common sense”

This application is preferred under **Order XXIV Rule 22 (1)** of the Civil Procedure Decree Cap 8 of the Laws of Zanzibar, which reads as follows:

“ The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or appellate court if execution had been issued thereby, or if application for execution had been made thereto”

According to the above provision, the judgment debtor may either have applied for stay of execution of a decree to the court which a decree has been sent for execution, in this matter that court is a lower court, but the applicant has preferred to apply for a stay of execution at this court for a reason that, is this is a court having appellate jurisdiction in respect of the decree or the execution thereof. Therefore according to the above provision of the law this court has jurisdiction to hear and determine this application.

With respect to the powers of the court accorded under **Order XXIV Rule 22 (1)**, the law has given powers to the court to issue stay of execution for a **reasonable time** only upon provided with **sufficient cause** for such execution to be stayed. Henceforth, for the applicant to move this court to grant stay of execution for a reasonable time, the applicant must show and provide sufficient cause to be granted a stay of execution.

Civil Procedure Decree Cap 8 has not defined what is meant by **sufficient cause**, but there are many authorities which gave interpretation of the word sufficient cause. For example in the Court of Appeal case of **Ramadhani v. Geita Mining, misc Application No.29 of 2013 at page 2 and 3**, the Court of Appeal had this to say:

“What constitutes sufficient reasons cannot be laid down by any hard or fast rules. This must be determined by reference to all the circumstances of each particular case. This means the applicant must place before the court material which will move the court to exercise judicial discretion in order to extend time limited by rules”

From the above cited authority, this court is of the firm view that the word **“sufficient or good cause”** depend on the circumstances of the case including reasons and explanations advanced by the applicant.

In this present matter, the applicant is seeking for stay of execution based on the principles of special circumstances which were laid down in the case **of Atilio v. Mbowe [1969] HCD 284**, which laid down 3 principles which constitute special circumstances which are:

1. High chance of success on the main case,
2. Balance of convenience and,
3. Irreparable loss

In his submission, Mr Slim has expressed himself very well in terms of the balance of convenience, irreparable loss and hardship which may be caused to his client and the entire family if the stay of execution is not granted. On his side, Mr Ishaq had no issues with what has been stated by Mr Slim, in relation to hardship and suffering which may occur to the applicant, but he made a point and reminded this court not to be blinded by the fact that the main case is an old case which was determined since 1997, from there on, the decree holder has not been successfully to enjoy the decree awarded to him by the court, the applicant has been delayed the execution of the decree for unjustifiable reasons and no appeal was lodged by the applicant, in that regard it was his submission that the stay of execution cannot be granted. He also prayed for this court to look at the respondent side as well and the suffering he encounter since 1997.

In his rejoinder Mr Slim submitted on the reasons which led to his client's failure to institute appeal on time, his main reason was that they have not been served with the proceedings of the court after several unsuccessful attempt to demand the proceedings of the trial court. He went on to submit that, they have already lodge application for extension of time to file appeal out of time.

Having gone through the records of the court, I have discovered that, no such application for extension of time to file appeal out of time was received in this court, neither this court was assigned to handle such application, therefore the submission of Mr Slim has no justification and not sufficient cause to warrant this court to grant and extend stay of execution. The reasons advanced by Mr Slim which cause the delay to lodge their intended appeal on time are not for this court to make findings, those arguments are useful when the court hear the application for extension of time to file appeal out of time. Furthermore, as stated in the case of **Parmanent Secretary Ministry of Water and Irrigation and Another v. Overseas Infrastructure Alliance (India) Pvt, ltd, Misc Application No. 26 of 2020**, that



'In deciding whether stay of execution be granted or otherwise, the court is purely exercising discretionary

powers. In exercising that discretion, the trial judge or magistrate use, reasonability, logic and common sense”,

This court has look at all reasons provided by the applicant, as much as this court has a duty to look at hardship and suffering that may occur to the applicant as stated by Mr. Slim if stay of execution is not granted, we also have the same duty to look at the respondent side if execution of decree is stayed. Logically, the respondent has suffer enough and this court has no reason to keep him suffer more than what he has already done. The reasons provided for stay of execution are not sufficient enough to warrant this court grant prayers of the applicant.

With all that being said, the applicant has failed to show this court sufficient cause to warrant this court to grant stay of execution. As stated by Mr Ishaq, the litigation must come to an end, this court can no longer delay the execution of the decree which was granted years back.

Subsequently, this application is hereby dismissed, the ex – parte Order of this court dated **17th May, 2024** is hereby vacated. The execution of the decree is to proceed as ordered by the trial court.


S. HASSAN (J)


Ordered accordingly.

Dated: 5th September, 2024