

**IN THE HIGH COURT FOR ZANZIBAR  
AT TUNGUU  
CIVIL APPLICATION NO. 130 OF 2023**

<b>NARENDRA KANJI JIWA</b>	.....	<b>1<sup>ST</sup> APPLICANT</b>
<b>REKHA KANJI JIWA</b>	.....	<b>2<sup>ND</sup> APPLICANT</b>

**VS**

<b>RAZA HASSANALI KASSAM BACHOO</b>	.....	<b>1<sup>ST</sup> RESPONDENT</b>
<b>MUSTAFA HASSANALI KASSAM CHANDOO</b>	.....	<b>2<sup>ND</sup> RESPONDENT</b>

**RULING OF THE COURT**

26/03/2024 & 26/03/2024

**KAZI, J.:**

The applicants herein filed this application for a stay of execution of the decree passed by this Court on 07<sup>th</sup> February 2023. The application was filed through a chamber summons made under Section 129 and Orders XXIV Rule 22 (1) and (2) of **the Civil Procedure Decree**, Cap 8 of the Laws of Zanzibar (Cap 8), and Section 32 of the **Legal Aid Act**, No. 13 of 2018.

The applicants in this application had the service of Mr. David Sinduki, a learned advocate, and Mr. Rajab Abdalla, a learned advocate, represent the respondents.

Today, the matter was called for mention and issuance of necessary orders, including hearing scheduling. Before proceeded, however, since the applicants cited Order XXIV Rule 22 (1) (2) of Cap 8 to move this Court to hear this matter, I invited the learned counsels from both sides to address the Court on the competency of the application.

In addressing the Court, Mr. Sinduki, for the applicants, was confident that this Court had been appropriately moved and maintained that O. XXIV R. 22 (1) & (2) of Cap 8 is the only provision which provides for the remedy for judgment debtors. He admitted, however, that this is the Court which passed the decree and not the Court to which a decree has been sent for execution. He stressed that they had applied for the stay according to what was prayed in the Chamber summons, which reflects the provision of the law in question.

On the other hand, Mr. Abdalla, learned advocate for the respondent, briefly argued that according to O. XXIV (2) of Cap 8, it is the Court to which a decree has been sent for execution that has jurisdiction to stay the execution of decree under such provision to enable the judgement debtor to apply for a stay of execution to the appellate Court. His stance

was that this Court had not been moved properly, and thus, this application is incompetent.

After considering the parties' submission, it is important to state that it is a settled law that wrong citation and the non-citation of the enabling provisions of the law render the application incompetent. See **Almas Iddie Mwinyi v. National Bank of Commerce and Another** [2002] TLR on page 83.

In this application, the applicants cited in their Chamber summons O. XXIV (1) & (2) of Cap 8 as the enabler provision in moving the Court to grant an order of stay of the execution of the decree passed by this Court pending their intended application for the Review of the judgement which is subject of the decree they intend to stay its execution. O. XXIV R. 22 (1) & (2) of Cap 8 provides 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 judgement debtor to apply to the court by which the decree was passed, or to any***

*court having appellant 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."*

**[emphasis added]**

The above-quoted provision gave powers for the Court to which a decree has been sent for execution to stay the execution of a decree for a reasonable time to enable the judgment-debtor to apply to the Court which has passed the decree or to the appellate Court for an order to stay the execution.

This Court passed the decree with which the applicant prayed to stay its execution; therefore, as rightly submitted by Mr. Rajab, this Court has no jurisdiction to grant an order for a stay of execution through the enabler provision cited by the applicants. The only Court vested with such jurisdiction is the one to which a decree has been sent for the execution, which unfortunately, is not the case here. It is clear that the

applicants cited a wrong provision of the law in moving this Court to grant the prayers sought.

In the event, since the applicant cited the wrong provision of the law, the matter becomes incompetent, and I am compelled to strike out this application with costs.

Dated at Tunguu, Zanzibar this 26<sup>th</sup> day of March 2024.

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by 'J. Kazi' in a cursive script.

**G. J. KAZI**  
**JUDGE**  
**26/03/2024**