

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DAR ES SALAAM**

**CIVIL APPLICATION NO. 242 OF 2015**

**LUPEMBE FARMERS CO- OPERATIVES JOINT  
ENTERPRISES LTD (MUVYLU) .....APPLICANT  
VERSUS**

- 1. DHOW MERCANTILE (EA) LIMITED.....1<sup>ST</sup> RESPONDENT**
- 2. LUPEMBE TEA ESTATES LIMITED.....2<sup>ND</sup> RESPONDENT**
- 3. CONSOLIDATED HOLDING CORPORATION.....,3<sup>RD</sup> RESPONDENT**

**(Application for extension of time to the Applicant for leave to file an application for stay of execution of the Judgment and Decree of the High Court of Tanzania of the Land Division)**

**dated the 31<sup>st</sup> day of December, 2014**

**in**

**Land Case No. 193 of 2008**

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**RULING**

24<sup>th</sup> April & 8<sup>th</sup> June, 2017

**MUSSA, J.A.:**

The applicant is aggrieved by the decision of the High Court (Land Division) which was handed down on the 31<sup>st</sup> December, 2014 (Mgeta, J.). On the 7<sup>th</sup> January 2015, she contemporaneously lodged a Notice of Appeal to this Court and applied, to the trial Court, to be supplied with copies of the judgment and decree which he seeks to impugn. It is noteworthy that,

according to the applicant, the requested judgment and decree of the High Court were supplied to her on the 6<sup>th</sup> May, 2015.

Upon being supplied with the documents, the applicant filed Civil Application No. 119 of 2015 seeking on order of this Court for stay of the execution of the impugned decree of the High Court. The application was, however, struck out by the Court (Kimaro, Massati and Juma JJJA) on the 9<sup>th</sup> November, 2015 for being lodged out of time. Thereafter, the applicant preferred the present application through which she seeks extension of time within which to refresh her quest for a stay of the execution of the impugned decree of the High Court.

The application is by way of a Notice of Motion which is taken out under Rule 10 of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is accompanied by an affidavit, duly sworn by a Principal Officer of the applicant, namely, Mr. Medeck Paulos Mhomisoli. In addition, the applicant has enjoined written submissions in support of his quest. As it turns out, the application is being resisted, more particularly, by the first and second respondents in an affidavit in reply, duly affirmed by Mr. Yusuf Mulla who happens to be the Director as well as the Chief Executive Officer

of, respectively, the first and second respondents. On her part the third respondent did not lodge any document in opposition.

At the hearing before me, the applicant was represented by Dr. Rugemeleza Nshala, learned Advocate, whereas the first and second respondents had the services of Mr. Michael Ngalo, also learned Advocate. The third respondent entered appearance through Mr. Kile Mwitasi, learned Senior State Attorney.

The learned counsel for the applicant commenced his address by fully adopting the applicant's written submissions as well as the Notice of Motion and the supporting affidavit. He conceded that the decree which is desired to be stayed has been partly executed in that the first and second respondents have been put back in the disputed property. Dr. Nshala, however, quickly rejoined that the execution process is yet to be concluded, the more so as there has been no change in the names of the title holders in the property and the payments of the decretal sums have not been effected. To that end, he submitted, the quest for extension of time within which to seek a stay of time within which to seek a stay of execution is not an exercise in futility.

In the written submissions, the learned counsel for the applicant argues that the delay was caused by the fact that the decree and judgment of the High Court were supplied belatedly at a time when the sixty days required for filing a stay of execution had expired. Dr. Nshala then painstakingly sought to impress how the decision of the High Court is fraught by illegality which is, in itself, a point of law of sufficient importance to constitute good cause for granting an extension. In this regard, he referred me to the case of **The Principal Secretary, Ministry of Defence and National Service Vs Devram Valambia** [1992] TLR 185.

In response, Mr. Ngalo for the first and second respondent sought to resist the application, in the main, on the strength of the affidavit in reply which he also fully adopted. As it were, the first and second respondents did not file any reply to the applicant's written submissions as required by Rule 106 (8) of the Rules. On account of the non-compliance, Mr. Ngalo sought the indulgence of the Court to waive the requirement under Rule.106 (19) of Rules and allow him to make an oral rejoinder. The prayer was resisted by Dr. Nsala but, having heard them, I granted the prayer in

the interests of justice, and allowed Mr. Ngalo to make an oral rejoinder so long as he restricts his arguments within the four corners of the applicant's written submissions. In a nutshell, the learned counsel for the first and second respondents countered that the applicant has not demonstrated good cause to entitle herself to the requested extension. In addition, Mr. Ngalo discounted the contention that the decision of the High Court is fraught by several illegalities. To him, the alleged illegalities are neither here nor there.

On his part, Mr. Mwitasi for the third respondent went along with the submissions of the learned counsel for the applicant. Thus, the learned Senior State Attorney fully supported the application without more.

Dealing with the learned rival contentions, I propose to first address the alleged illegality of the decision desired to be impugned. Granted that in **Valambia** (supra) it was held thus:-

*"In our view, when the point at issue is one alleging illegality of the decision being challenged the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if the alleged*

*illegality be established, to take appropriate measures to put the matter and the record straight."*

The foregoing statement of principle certainly presupposes that the applicant would avail the impugned decision to the court so that, all things being equal, the alleged illegality is clearly visible on the face of the record. In *Valambia*, for instance, the illegality was constituted in the fact that the High Court had issued a garnishee order against the Government without affording it a hearing which was contrary to the rules of justice.

In the matter at hand, the applicant boldly stated in the supporting affidavit that she had attached copies of the impugned decision and decree of the High Court. In reality, however, what is comprised upon record is an undated as well as an unsigned purported decree of the High Court, whereas the impugned decision is completely no show. That being the situation, there is a complete dearth of material with which to decide whether or not the impugned decision was fraught by illegalities.

As hinted upon, Dr. Nshala additionally sought to be granted an extension on account of the fact that the copies of the impugned decision

and decree were belatedly availed. I should suppose, the learned Counsel for the applicant had a valid point in that contention. It is, indeed, undisputed that the impugned decision of the High Court was handed down on the 31<sup>st</sup> December, 2014. On the 7<sup>th</sup> January, 2015 the applicant applied to be supplied with copies of the judgment and decree but, the same were availed a good deal later on the 6<sup>th</sup> May, 2015. By that time, the sixty days required to file an application for a stay of execution had expired. In the premises, I am satisfied that the applicant has demonstrated good cause and, accordingly, I grant the extension with an order that the applicant should file the application for a stay of execution within twenty one (21) days from the date of the delivery of this Ruling. I give no order as to costs.

DATED at DAR ES SALAAM this 6<sup>th</sup> day of June, 2017.

K.M.MUSSA  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.



A.H.MSUMI  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**

