

**IN THE COURT OF APPEAL OF TANZANIA**

**AT ZANZIBAR**

**(CORAM: KIMARO, J.A., MBAROUK J.A., And MWARIJA, J.A.)**

**CIVIL APPLICATION NO. 3 OF 2016**

**KIJAKAZI AME HAJI .....APPLICANT**

**VERSUS**

**MEMBERS CULTURE MUSICAL CLUB ZANZIBAR..... RESPONDENT**

**( Application for stay of execution of a decree from the Judgment of  
the High of Zanzibar at Vuga)**

**(Abdulhakim, J.)**

**dated 3<sup>rd</sup> day of October, 2012**

**in**

**Civil Appeal No. 19 of 2012**

**-----**

**RULING OF THE COURT**

**5<sup>th</sup> & 7<sup>th</sup> December, 2016**

**MBAROUK, J.A.:**

Before us is an application for stay of execution filed by way of notice of motion made under Rule 11(2)(b) and (c) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The application is supported by the affidavit of Kijakazi Ame Haji, the applicant in this application.

At the hearing of the application, the applicant appeared in person unrepresented, whereas the respondent was represented by Mr. Omar Mmad Mwarab, learned advocate.

When the application was called on for hearing, the Court wanted to satisfy itself as to whether the application is properly before it. This was for the reason that, the decree sought to be stayed was not attached with the notice of motion in this application.

It is now a trite law that, in an application for stay of execution, a valid notice of appeal has to be attached with a notice of motion together with a decree sought to be stayed. Failure to attach those two documents in an application for stay of execution renders such an application incompetent and liable to be struck out.

In this application, the applicant claimed at the hearing that as the issue raised by the Court is legal and technical, she cannot

comment being a lay person, hence she left it to the Court to reach to a just decision.

On his part, the learned advocate for the respondent agreed to the issue raised by the Court. He added that, the applicant had already vacated the said premises, hence her application has already been overtaken by events.

Rule 11 (2) (b) of the Rules provides as follows:-

"(2) .....

(a) .....

*(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with Rule 83 an appeal shall not operate as a stay of execution of the decree or order appealed from except so far as the High Court or tribunal may order nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the court*

*may upon good cause shown order stay of execution of such decree or order.”*

This Court in the case of **Mathias Charles Kaselele V. The Registered Trustees of Archdiocese of Tanzania**, MZA Civil Application No. 2 of 2012 (unreported) held as follows in connection with the requirements in an application for stay of execution:-

***"It has been held that for the Court to exercise its powers under Rules 11(2)(b) there must be a valid Notice of Appeal which clothes the Court with jurisdiction to entertain the application ..... But it has also been held that in such applications, the notice of motion must also be accompanied by the decree or order sought to be stayed."*** (Emphasis added).

Also see, **National Housing Corporation V. Entiennes Hotel**, Civil Application No. 175 of 2004 and **Permanent Secretary of Works and Another V. Twiga Paper Products Ltd.**, Civil Application No. 18 of 2007, (Both unreported) to name a few.

In the instant application, there is no doubt and it is not disputed that the decree sought to be stayed is not attached with the notice of motion. The inevitable consequences of such an omission is to render this application for stay of execution incompetent and leading it to be struck out. In the event, we strike out the application with no order as to costs as the matter was raised by the Court *Suo motu*. It is so ordered.

DATED at ZANZIBAR this 6<sup>th</sup> day of December, 2016.


N. P. KIMARO  
**JUSTICE OF APPEAL**

M. S. MBAROUK  
**JUSTICE OF APPEAL**

A.G. MWARIJA  
**JUSTICE OF APPEAL**

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



  
E. Y. MKWIZU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**