

IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA

(CORAM: MASSATI, J.A., ORIYO, J.A. And MUSSA, J.A.)

CIVIL APPLICATION NO. 1 OF 2015

PANONE & CO. LIMITED.....APPLICANT

VERSUS

ROBERT MNGOWOLE.....RESPONDENT

**(Application for stay of execution from the decision of the
High Court of Tanzania at Mbeya)**

(Karua, J.)

dated the 10th day of February, 2015

in

Misc. Civil Application No. 33 of 2011

RULING OF THE COURT

14th & 18th August, 2015

MUSSA, J.A.:

The applicant seeks to move the Court to stay an order of the High Court (Karua, J.), pending the final determination of an appeal. The application is by Notice of Motion taken out under the provisions of Rule 11(2) (b) (c) and (d) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The same is accompanied by an affidavit duly affirmed by a certain Hamdani Mandia who held himself as the principal officer of the applicant.

The application has been resisted and, in particular, the second respondent greets it with a Notice of preliminary objection to the effect that the application is incompetent for not being accompanied by a copy of the drawn order desired to be stayed.

At the hearing before us, the applicant entered appearance through Ms. Mary Mgaya, learned Advocate. On the adversary side, Mr. Victor Mkumbe, learned Advocate, was holding brief for Mr. Edson Mbogoro, counsel for the first respondent, whereas the second respondent had the services of Mr. Sinare Zaharani, also learned Advocate.

When prompted to comment on the propriety of the preliminary point of objection, Ms. Mgaya readily conceded that the applicant has not attached to the Notice of Motion a copy of the drawn order desired to be stayed. Nonetheless, the learned counsel promptly rejoined that the non-attachment did not result from the applicant's fault who requested for the order from the High Court to no avail. As regards the effect of the omission, Ms. Mgaya hesitated long before grudgingly conceding that the application is thereby rendered incompetent, and that the same should be struck out. The learned counsel, however, prayed that the applicant should not be condemned to

pay costs. Incidentally, both Messrs Mkumbe and Zaharani did not press for costs.

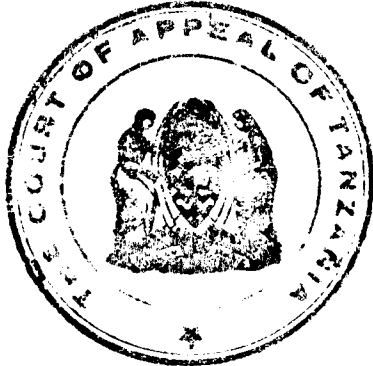
For our part, we need only reiterate that, upon numerous decisions, it is now settled that in applications for stay of execution, a decree or drawn order sought to be stayed must be annexed to the Notice of Motion. In, for instance, the unreported Civil Application No. 68 of 2003 – **TANZANIA ZAMBIA RAILWAY AUTHORITY VS AYUB L. O. RITTI**, the Court observed: -

"...logic requires that such decree must be annexed to notice of motion. It has to be so because the Court cannot stay the execution of a decree it has not seen... Nor should a copy of the judgment replace the decree because section 28 of the Civil Procedure Code, Act No. 49 of 1966, clearly distinguishes a judgment from a decree."

In the matter at hand, the applicant has annexed the Ruling of the High Court but the drawn order is no show. In the circumstances, as rightly conceded by counsel for the applicant, the effect is to render the application incompetent and the same is, accordingly, hereby struck out. Since both

counsels for the respondents did not press for costs, we give no order as to costs.

DATED at **MBEYA** this 17th day of August, 2015.



S. A. MASSATI
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

K. M. MUSSA
JUSTICE OF APPEAL

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


P. W. Bampikya
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL