IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

CIVIL APPLICATION NO. 11 OF 2025

TANZANIA HEALTH PROMOTION SUPPORT..... APPLICANT
VERSUS
COMMISSIONER GENERAL TRA..... RESPONDENT

(Application for stay of execution of the Decree of the Tax Revenue Appeal Tribunal at Dar es Salaam)

(Ngimilanga, Chairperson)

dated the 14th day of March, 2025

in

Tax Appeal No. 68 of 2024

RULING

15th & 25th July, 2025

ISSA, J.A.:

The respondent is the chief executive officer of the taxing authority in Tanzania which in 2022 conducted a tax audit on the business affairs of the respondent, a non-government organization established with the mission of promoting and supporting equitable, high quality, accessible health services to the public. The findings of the audit were that, the applicant was not complying with tax laws as she failed to pay skills and development levy (SDL) for the year 2015 to 2019. The respondent issued a certificate to the appellant for the year of income 2019 which established a total tax liability

of TZS. 1,639,977,319.22 comprising of principal tax of TZS. 1,088,615,750.00 and interest thereon amounting to TZS. 551,361,569.00.

Dissatisfied with the assessment, the applicant filed a notice of objection to the respondent, but the final outcome was that the respondent maintained the initial decision of imposition of SDL on the ground that the applicant was not exempted from paying SDL under the law.

Still aggrieved, the applicant filed Tax Appeal No. 239 of 2023 at the Tax Revenue Appeals Board which delivered its decision on 27th March, 2024 in favour of the applicant. It found the applicant has qualified to be a charitable organization, hence exempted from paying SDL under the law.

The respondent was not happy with the decision; it appealed to the Tax Revenue Appeal Tribunal (the Tribunal) vide Tax Appeal No. 68 of 2024. The Tribunal delivered its decision on 14th March, 2025 in favour of the respondent and ordered the applicant to pay the assessed SDL as she did not qualify for SDL exemption.

Undeterred, the applicant on 24th March,2025 filed in the Court a notice of intention to appeal to challenge the decision of the Tribunal. The respondent, on the other hand, was not passive; on 22nd May, 2025 wrote a letter to the applicant titled "Outstanding Tax Liability of TZS. 1,660,021,987.88/=" in which she reminded the applicant of the outstanding

tax liability and that the payment should be made within 5 days. Failure of which recovery proceedings will be instituted without further notice.

The said letter from the respondent was received by the applicant on 29th May, 2025 and without much ado the applicant filed the instant application for stay of execution on 6th June, 2025 by a Notice of Motion filed under rule 4(2)(b) and (c), 11(3), 11(4), 11(5)(a),(b), 11(6), 11(7)(a),(b),(c), (d) of the Tanzania Court of Appeal Rules, 2009 (the Rules). The applicant had sought to move this Court to order a stay of execution pending hearing and determination of the intended appeal. The application is supported by an affidavit sworn by George Anatory, the principal officer of the applicant. In the instant application, the applicant was represented by Mr. Reginald Martin, learned advocate. The application was resisted by the respondent who filed an affidavit in reply sworn by Achileus Charles Kalumuna, the legal counsel for the respondent. The respondent had the services of Ms. Juliana Ezekiel, Mr. Achileus Charles Kalumuna and Mr. Samwel Kaaya, learned State Attorneys.

The hearing of the application was through video teleconferencing link. Mr. Martin adopted the affidavit in support of the application and submitted that the applicant has complied with rule 11 of the Rules. He elaborated that, there are three conditions to be satisfied in rule 11 of the Rules: **One**, application has to be filed within 14 days of service of the notice

of execution on the applicant or from the date he was made aware of the existence of an application (rule 11(4) of the Rules). He submitted that, this rule was complied as the applicant received a letter initiating execution on 29th May, 2025 and the application was filed on 6th June, 2025. **Two**, the applicant must establish substantial loss (rule 11(5)(a)). He submitted that the applicant on paragraph 9 of the affidavit has shown how he will suffer substantial loss if the order of stay is not granted. The payment of assessed amount will cause financial burden on the applicant which ultimately would lead to the closure of the organization. **Three**, the applicant should furnish security for the due performance of the decree (rule 11(5)(b)). He submitted that the applicant has provided an undertaking to provide security as ordered by the Court.

Further, Mr. Martin submitted that the applicant has also complied with rule 11(7) of the Rules as the application was accompanied with the notice of appeal, the decree of the Tribunal , the judgment of the Tribunal and the notice of the intended execution which is the letter from the respondent. He argued that the said letter fits in the category of notice of execution and bolstered his argument by citing the Court's decision in **Aarif Yussuf Shariff v. Sabri Mwadini Haji**, [2025] TZCA 90, TANZLII where eviction letter was considered sufficient to be a notice of execution. He prayed for the application for stay to be granted.

Ms. Ezekiel strongly opposed the application; she adopted the affidavit in reply filed earlier on and submitted that the applicant has not complied with rule 11 of the Rules. **First**, she submitted that there was no execution which was commenced by the respondent. The letter relied by the applicant and attached as annexture THRS 4 is not a notice of execution, she said. Rather, it was a Tax Demand Notice which is a reminder that the applicant has an outstanding tax liability to be paid to the respondent. It did not make a reference to the case and it invited the applicant to appear for reconciliation. This being the case, she concluded that the requirement of filing an application within 14 days was not complied with. In fact, the application was filed prematurely. Hence, the case of **Aarif Yussuf** (supra) is distinguishable as the notice of eviction was there while in the instant case there is no such notice.

Secondly, Ms. Ezekiel submitted that substantial loss was also not established by the applicant who failed to demonstrate how she will suffer loss if the tax liability is collected. There was no documentary evidence to support the substantial loss. The claim for closure of business had no legal basis.

Thirdly, she argued that rule 11(5) states that the applicant has to provide security and not undertaking. Hence, the applicant has failed to satisfy this rule. She added that if the tax is not collected immediately there

is no guarantee that the applicant will be able to pay it unless security is provided. She prayed for the dismissal of this application.

In the alternative, Ms. Ezekiel argued that if the Court finds the application is meritorious, it should order the applicant to furnish security to the tune of TZS. 1.6 billion. To support her argument, she relied on the Court's decision in **Dr. Luis B. Shija v. Kellu Komo Lucas** [2024] TZCA 675, TANZLII.

In the rejoinder, Mr. Martin reiterated his earlier averments. He added that, the letter written by the respondent was not a mere reminder as that is how the respondent executes the decision of the court and thereafter it will recover from the applicant by accessing the applicant's bank account. Further, he submitted that based on that fact the instant application was not filed prematurely, the Court has to intervene. On the issue of security, he submitted that the undertaking to provide security is sufficient and the applicant will comply with the Court order.

In the instant application, the Court has been called to determine the grant of stay of execution in general and there are three issues to be determined: **one**, whether the letter from respondent suffices to be a notice of execution, **two**, whether the applicant established substantial loss and **three**, whether the undertaking to provide security is sufficient.

Before embarking on that task, it is prudent to state the law with respect to the application for stay of execution. Rule 11 of the Rules deals specifically with the stay of execution and the applicant is required to comply with sub-rule (3), (4), (5) and (7). Rule 11(3) of the Rules provides:

> *(3) 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 nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Single Justice may upon good cause shown, order stay execution of such decree or order"*

In numerous decisions of the Court, it has been held that for the Court to exercise its powers under rule 11 (3) there must be a valid notice of appeal which clothes the Court with jurisdiction to entertain the application. Further, rule 11(7) also provides that in the application for stay the application must be accompanied by a notice of appeal, a decree or order appealed from, a judgment or ruling appealed from, and a notice of the intended execution. In the absence of a valid notice of appeal and the decree or order sought to be appealed against, the application becomes incompetent and liable to be struck out. (See - **Awinia Mushi v. Tropical Pesticides Research Institute,** Civil Application No. 2 of 2006 and

National Housing Corporation v. Ettienes Hotel, Civil Application No. 175 of 2004 (both unreported).

In the present application, the applicant has complied with the above sub-rules. The application was accompanied by a notice of appeal, a decree, and a judgment appealed from. The only glitch is on the notice of the intended execution. It has been argued by Ms. Ezekiel that the letter from the respondent was a reminder letter and not a notice of execution. It is worth here to reproduce the content of the said letter, which provides:

> *"RE: OUTSTANDING TAX LIABILITY OF TZS 1,660,021,987.88/=*
>
> *Your tax account shows that, to the date of issuing this notice there is an outstanding liability amounting TZS 1,660,021,987.88*
>
> ***Payment of the amount owing should be made within Five (5) days from the date of receiving letter, failure of which recovery proceedings will be instituted upon you without further notice.*** *If you disagree with the above figure(s) you are advised to contact the under-signed officer immediately for reconciliation."*
> *(*Emphasis supplied*)*

The Court does not agree with Ms. Ezekiel that the letter is merely a reminder. The letter has got an ultimatum that the payment should be made

within 5 days and failure of which recovery proceedings will be instituted without further notice. I am of the view that this letter qualifies to be a notice of execution as recovery will be carried out by the respondent without further notice. Further, from the reading of rule 11 of the Rules it is clear that execution was not restricted to court execution, it could take different forms and the notice of execution also could be in different forms. Taking this letter as the notice of intended execution, it was served on the applicant on 29th May, 2025 and the instant application was filed on 6th June, 2025 within 14 days as required by rule 11(4) of the Rules. Hence, rules 11 (3), (4) and (7) of the Rules were complied.

On the issue of whether the instant application was filed prematurely or not, the position of law as to when the application for stay of execution can be made was settled by a Single Justice in **Athanas Albert and Four Others v. Tumaini University College, Iringa** [2001] T.L.R. 63 where he held:

> *"It seems to me that a stay of execution can properly be asked for where there is a court order granting a right to the respondent or commanding or directing him to do something that affects the applicant. In such a situation, the applicant can meaningfully ask the court for a stay and to restrain the respondent*

from executing that order pending the results of an intended appeal."

The above decision was followed by the Court in numerous decisions such as **Hamisi Mohamed (as the administrator of the Estate of Risasi Ngawe, Deceased) v. Mtumwa Moshi (as Administrator of the Estate of Moshi Abdallah, Deceased)**, [2019] TZCA 249, TANZLII and **Dimon Tanzania Limited v. The Commissioner General Tanzania Revenue Authority and 2 Others**, Civil Application No. 89 of 2005 (unreported).

Therefore, it is my considered view that as long as the respondent has powers to execute the orders of the Tribunal without going back to the Tribunal, the said letter sufficed to be a notice of execution.

Lastly, the applicant was required to comply with rule 11(5) which provides:

"No order for stay of execution shall be made under this rule unless the Court is satisfied that

(a) substantial loss may result to the party applying for stay of execution unless the order is made;

(b) security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him."

The Court in **Joseph Antony Soares @ Goha v. Hussein Omary** [2013] TZCA 328 , TANZLII) and **Mantrac Tanzania Limited v. Raymond Costa** [2011] TZCA 519, TANZLII has stressed that these conditions must be complied with cumulatively. In the present application, the applicant has demonstrated that she stands to suffer substantial loss if the order for stay of execution will not be granted because the amount demanded by the respondent is huge and may lead the applicant to close her office. This is understandable taking into consideration that the applicant is the charitable organization which does not make profit. Hence, substantial loss was established.

The last contentious matter concerns the security for performance of the decree. The applicant undertook to provide security as ordered by the Court, but the respondent's counsel argued that the undertaking was not provided by rule 11(7) of the Rules. She added that, the applicant was required to keep security and urged the Court to order the applicant to deposit the decretal amount. This issue need not detain me as the law is very well settled. The Court in **Mantrac Tanzania Limited** (supra) stated:

> *"To meet this condition, the law does not strictly demand that the said security must be given prior to the grant of the stay order. To us, a firm undertaking by the applicant to provide security might prove sufficient to move the Court, all things be equal, to*

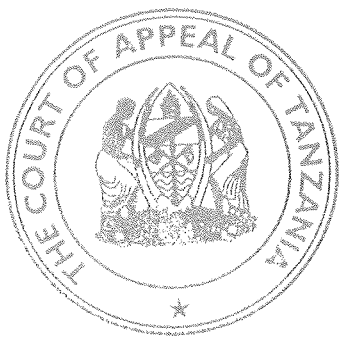
grant stay order provided the Court sets a reasonable time limit within which the applicant should give the same."

All said and done, I order that the stay of execution is granted on the condition that the applicant should provide a bank guarantee constituting the decretal sum which is TZS 1,660,021,987.88 and that, the same be furnished to the Court within 60 days from the date hereof. Costs to be in the cause.

DATED at **ARUSHA** this 25th day of July, 2025.

A. A. ISSA
JUSTICE OF APPEAL

The Ruling delivered this 25th day of July, 2025 in the presence of Mr. Reginald Martin, learned Counsel for the Applicant and Ms. Juliana Ezekiel Principal State Attorney for the Respondent, vide video link from Dar es Salaam is hereby certified as a true copy of the original.



R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL