

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

CIVIL APPLICATION NO. 21 OF 2025

ZANZIBAR TELECOM LIMITEDAPPLICANT

VERSUS

THE COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY.....RESPONDENTApplication for Stay of Execution of the Judgment and Decree of the
of Zanzibar Tax Appeals Tribunal at Zanzibar)
(Issa, J.)dated the 26th day of February, 2021

in

Tax Appeal No. 1 of 2019

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RULING*13th October & 12th December, 2025***KITUSI, J.A.:**

This is an application for stay of execution of the judgment and decree in Tax Appeal No. 1 of 2019 dated 26th February, 2021, Tax Appeals Tribunal, Zanzibar. In essence the respondent is bent at executing the decree worth Tshs. 11,467,534,236 while the applicant has lodged a notice of appeal seeking to challenge it.

The application is supported by the affidavit of the applicant's Principal Officer one Francis Isdory Temba. Fatma Abdallah Hassan also a Principal Officer of the respondent took an affidavit in reply challenging the application.

Mr. Temba's affidavit details circumstances which, in the applicant's view, warrant the grant of the order of stay of execution. In his address during the hearing, Mr. Luka Elingaya, learned advocate for the applicant, submitted that the applicant has fulfilled the conditions stipulated under rule 11 of the Court of Appeal Rules, 2009 (the Rules). First, he referred to the undisputed fact that the application has been filed within 14 days of the notice of intended execution being served on the applicant, thus complying with rule 11 (4) of the Rules. The learned counsel also submitted on compliance with rule 11 (7) of the Rules regarding the documents to be attached to the application. This fact is also not disputed.

The only point on which the parties disagree is on the alleged substantial loss and security, factors to be established under rule 11 (5) of the Rules. The respondent featured through Ms. Fatma Abdallah Hassan, learned Principal State Attorney, Ms. Jane Mgaya, learned Senior State Attorney and Mr. Baraka Mwakyalabwe, learned State Attorney. It was Mr. Mwakyalabwe who addressed the Court. He submitted that the applicant has not demonstrated substantial loss and he referred to the case of **Aidan George Nyongo v. Magessa Machenja**, Civil Application No. 237/17 of 2016 [2020] TZCA 1832 which gives guidance as to what it means by substantial loss. He charged that the applicant has not successfully demonstrated substantial loss,

because mere mention of loss is not sufficient. After all, Mr. Mwakalyabwe submitted, according to paragraph 15 of the affidavit, the applicant is a giant company and that means it cannot be affected by getting the decretal sum collected by the respondent.

Earlier on Mr. Elingaya had submitted that the applicant will suffer substantial loss because if the amount of Tshs. 11, 467,534,236 is collected by the respondent from the applicant's accounts, that action will render the applicant incapable of discharging its functions. He cited the case of **Health Promotion Support v. Commissioner General Tanzania Revenue Authority**, Civil Application No. 11 of 2025 [2025] TZCA 751. He also cited the case of **MIC Tanzania Ltd v. Cxc Africa Ltd**, Civil Application No. 172/1 of 2019 [2019] TZCA 447 for the principle that, it is sufficient to show that the money may never be recovered.

On the issue of security, Mr. Mwakalyabwe submitted, referring to paragraph 16 of the applicant's affidavit, that all the applicant has done is just stating that she is ready and willing to furnish security. The learned State Attorney has submitted that security has to be given, therefore the applicant has not complied with rule 11 (5) (b) of the Rules. He also cited the case of **Aidan George Nyongo** (supra) to support his submissions. According to the

respondent, the decretal sum ought to have been deposited in the bank as security.

In the applicant's rejoinder he submitted that the respondent has not challenged the fact that the decree involves a colossal sum. He submitted also that it has never been the case that one has to deposit the sum in the decree. He cited the case of **Mantrac Tanzania Limited v. Raymond Costa** Civil Application No. 11 of 2010 [2011] TZCA 519.

The issue of security and the mode of furnishing it is settled and I will begin with it and I readily agree with Mr. Hengaya on this. In the case of **Registered Trustees of Bethel World Wide Church v. Israel Lyanga** (Civil Application No. 21 of 2015 [2018] TZCA 382, for instance, the Court had this to say after following the position in **Mantrac** (supra);

"The security, we should add, may be furnished in a variety of ways, the most common being paying money into court or by providing a bank guarantee".

Going by that position, I do not endorse Mr. Mwakyalabwe's contention that what the applicant stated in paragraph 16 of the affidavit is not sufficient for the purpose of an undertaking to furnish security. In that paragraph, the applicant undertakes to provide security as may be ordered by the Court.

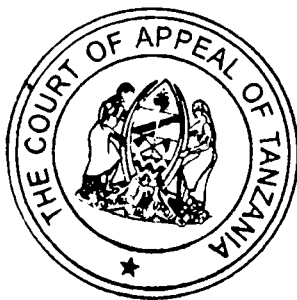
It is finally my judgment therefore that the applicant has made a case for an order of stay of execution under rule 11 (6) of the Rules because he has complied with sub rules (4), (5) and (7) of that rule. I order stay of execution of the judgment and decree of the Tax Appeals Tribunal sitting at Zanzibar, in Tax Appeal No. 1 of 2019 pending hearing and determination of the intended appeal by the Court. This order is subject to the applicant taking a banker's guarantee for the decretal sum within 60 days of the date of the delivery of this ruling.


Costs of this application to abide the result of the main cause.

DATED at DAR ES SALAAM this 11th day of December, 2025.

I. P. KITUSI
JUSTICE OF APPEAL

Order delivered this 12th day of December, 2025 in the presence of Mr. Luka Elingaya, learned counsel for the Applicant and Mr. Moses Kinabo, holding brief for Ms. Fatma Hassan, learned counsel for the Respondent and Ms. Anna Utou, Court clerk, is hereby ~~certified as~~ a true copy of the original.




J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL