

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB - REGISTRY OF MWANZA**

**AT MWANZA**

**MISC. LABOUR APPLICATION NO. 40 OF 2022**

*(Arising from Labour Execution No. 20 of 2021 in the High Court of Tanzania Mwanza)*

**SAHARA MEDIA GROUP LTD..... APPLICANT**

**VERSUS**

**BIDYA JOHN .....1<sup>ST</sup> RESPONDENT**

**SEIF HASAN NASORO ..... 2<sup>ND</sup> RESPONDENT**

**BECADIA HENRICH .....3<sup>RD</sup> RESPONDENT**

**SISTER IMELDA MAJALIWA .....4<sup>TH</sup> RESPONDENT**

**KHADIJA ATHUMAN..... 5<sup>TH</sup> RESPONDENT**

**UMMY SULEIMAN ..... 6<sup>TH</sup> RESPONDENT**

**BOYO MUSHIBO ..... 7<sup>TH</sup> RESPONDENT**

**SHAKIRA HABIBU ..... 8<sup>TH</sup> RESPONDENT**

**IBRAHIM KATI KIRO .....9<sup>TH</sup> RESPONDENT**

**MARIAM KHALFA ..... 10<sup>TH</sup> RESPONDENT**

**RULING**

*5<sup>th</sup> & 13<sup>th</sup> May, 2022*

***Kahyoza, J.:***

**Sahara Media Group Ltd**, the applicant lost the matter before this Court. She intends to appeal to the Court of appeal. She instituted a notice of his intention to appeal to the Court of Appeal of Tanzania. Immediately

lodging a notice of appeal, **Sahara Media Group Ltd** filed an application seeking this Court to stay the execution of the decree pending the determination of the appeal by the Court of Appeal. The respondents did not object to the application as they never filed counter affidavit(s).

On the date the Court set down the application for hearing, **Sahara Media Group Ltd** defaulted to enter appearance. This court had discretion to dismiss the application for want of prosecution or to adjourn it to another date. I did neither of the two, as I decided to consider the evidence on oath the applicant presented through his affidavit and decided the application on merit in her absence.

It is axiomatic that courts determine applications on the strength of the averments in the affidavits and not upon submissions. Submissions by advocates or parties are not evidence. They are arguments based on the available evidence and the governing law. The Court of Appeal has persistently held that submissions are not evidence in so many cases, I will mention a few, **Dr. A Nkini & Associates Limited V National Housing Corporation**, Civil Appeal No 75/2015, **Republic vs. Donatus Dominic @ Ishengoma & 6 Others**, Criminal Appeal No. 262 of 2018, **Morandi Rutakyamirwa vs. Petro Joseph** [1990] T.L.R 49] and **Registered Trustees of the Archdiocese of Dar es Salaam vs. The Chairman Bunju Village Government**, Civil Appeal No. 147 of 2006. In **Registered Trustees of the Archdiocese of Dar es Salaam's** case the Court of Appeal stated the following in relation to submissions: -

*"With respect however, submissions are not evidence. Submissions are generally meant to reflect the general features of a party's case. They are elaborations or explanations on evidence already*

*tendered. They are expected to contain arguments on the applicable law. They are not intended to be a substitute for evidence."*

The applicant prayed to stay the decree of this Court after he lodged a notice of appeal to the Court of Appeal. Had the applicant attended, I would have requested her to address me if this Court has jurisdiction to entertain an application for stay of execution after a notice of appeal is lodged to the Court of Appeal. I resolved to consider that issue in the absence of the applicant.

It is settled that once a notice of appeal to the Court of Appeal is lodged, the High Court ceases to have jurisdiction on several issues. It retains jurisdiction on a few matters like applications for extension of time to lodge a notice of appeal, for leave to appeal and for certificate that there is a point of law for the Court of Appeal to consider. The Court of Appeal took that stance in **Matsushita Electric Co. Ltd V Charles George t/a C.G. Travers**, Civil Appl.No.71 of 2001 (unreported), where it held as follows: -

*"Once a Notice of Appeal is filed under Rule 76 (now Rule 83 (1) of the Rules) then this Court is seized of the matter in exclusion of the High Court except for applications specifically provided for, such as leave to appeal or provision of a certificate of law".*

The applicant's application is for stay of execution pending the Court of Appeal to determine the intended appeal. Thus, it is not one of the applications this Court retained jurisdiction after a notice of appeal is lodged. In **Aero Helicopter Limited V. F.N. Jensen** [1990] TLR 142 the

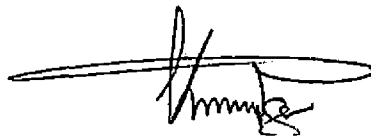
Court of Appeal pronounced itself concerning the issue of the powers of the High Court to entertain an application for stay of execution after the institution of a notice of appeal. It held: -

*"Once appeal proceedings to this Court have been commenced by filing notice of appeal, the High Court has no inherent jurisdiction under section 95 of the Civil Procedure Code to order stay of execution pending appeal to this Court".*

Given the position of the law stated in the case of **Aero Helicopter Limited V. F.N. Jensen**, I find that this Court lacks jurisdiction to entertain an application for stay after **Sahara Media Group Ltd** lodges a notice of appeal intending to appeal the Court of Appeal is lodged. Consequently, I dismiss the application want of jurisdiction and make no order to costs.

It is ordered accordingly.

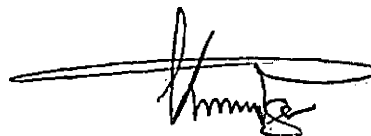
**DATED** at **Mwanza** this 13<sup>th</sup> day of **May**, 2022.



**J. R. Kahyoza**

**JUDGE**

**Court:** Ruling delivered in the absence of the parties at 08:45 am.



**J. R. Kahyoza**

**JUDGE**

**13/5/2022**