

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

CIVIL APPLICATION NO. 246/20 OF 2017

NATIONAL MICROFINANCE BANK, PLC APPLICANT

VERSUS

COMMISSIONER GENERAL, TRA RESPONDENT

(Application for extension of time to file an application for stay of execution
from the judgment of the Tax Revenue Appeals Tribunal
at Dar es Salaam.)

(Hon. H. Mataka, Vice Chairman, Prof. J. Doriye,
Mr. J. K. Bundala, Members)

dated the 17th day of July, 2014
in

Income Tax Appeal No. 19 of 2013

.....

RULING

28th September & 2nd October, 2017

LUANDA, J.A.:

Before me is an application for extension of time to file an application for stay of execution from the decision of the Tax Revenue Appeals Tribunal. It has been made under Rule 10 of the Court of Appeal Rules, 2009 (the Rules).

When the application came on for hearing, the Court, *suo motu*, raised a preliminary point to the parties as to whether the affidavit in reply of one Yusuf Juma Mwenda was taken in compliance with section 8 of the

Notaries Public and Commissioner for Oaths Act, Cap. 12 R.E. 2002 (the Act) in that the affidavit does not contain the date on which it was taken.

Mr. Ndarai Kidaya, learned counsel who represented the respondent readily conceded to the omission and added that as the affidavit of the respondent is of no use, the application may be granted. Mr. Seni Malimi, learned advocate who appeared for the applicant first joined hands to the observation made by the Court. Second, he said as the application stands unopposed, he prayed that the application for extension of time to file an application for stay be granted with no order as to costs.

Section 8 of the Act which is couched in mandatory term demands on the part of the Notary Public and Commissioner for oaths to state in the *jurat* at what place and on what date the affidavit was taken. Failure to do so, renders the affidavit incurably defective. Section 8 of the Act reads as follows:-

*"8. Every Notary Public and Commissioner for Oaths before whom any oath or affidavit is taken or made under this Act, **shall** state truly in the **jurat** of attestation at **what place** and on **what date** the*

oath or affidavit is taken or made." [Emphasis supplied].

In **The Director of Public Prosecution vs Dodoli Kapufi and Another**, Criminal Appeal No. 11 of 2008 (unreported) this Court said as follows:-

*"Total absence of the jurat or omission to show **the date** and place where the oath was administered or affirmation taken or the name of the authority and/or the signature of the deponent against the jurat, renders the affidavit incurably defective".*

(Emphasis mine).

(See also **D. P. Shapriya & Co Ltd vs Bish International BV** (2002) E.A. 47).

Since in this case we have shown the affidavit in reply does not contain the date on which it was taken or made, the same is incurably defective. The purported affidavit is of no use. So, the affidavit of the applicant, under these circumstances, is taken to have not been challenged at all.

As to why the applicant was late to file the application for stay of execution within time, the affidavit of one Lilian Komwihangiro, a Principal Officer of the applicant tells it all as follows:-

5. *That on the 17th July, 2014, the Tax Revenue Appeal Tribunal delivered its judgment on appeal and allowed the appeal in favour of the Respondent herein. Copies of the Proceedings, Judgment and Decree of the Tribunal are annexed herewith and marked **NMB -2 (a), (b) and (c)** respectively, to form part of this Affidavit.*
6. *That being aggrieved with the decision of the Tribunal, on the 5th August, 2014 the Applicant lodged a Notice of Appeal intending to appeal to the Court of Appeal of Tanzania. Attached hereto and marked **NMB-3** is a copy of the said Notice of Appeal.*
7. *That, consequently to paragraph 6 hereinabove, on the 3^d October, 2014, the Applicant filed her Memorandum and Record of Appeal same being Civil Appeal No. 86 of 2014. A copy of Memorandum of Appeal is attached hereto and marked **NMB-4**. Leave of the Court is craved that it forms part hereof.*
8. *That on the 17th February, 2016 when the Civil Appeal No. 86 of 2014 was called for hearing at the Court of Appeal of Tanzania, the*

same was struck out for discovery of defects in the Decree availed to the Applicant by the Tribunal. Attached herewith and marked **NMB - 5** is a copy of the Order of the Court, to form part of the Affidavit.

9. That following the order of the Court of Appeal in Civil Appeal No. 86 of 2014, the Notice of Appeal dated 5th August, 2014 was also struck out.
10. That the Applicant, through Tax Application No. 7 of 2016, applied for extension of time to lodge a notice of Appeal out of time and the same was granted on the 14th March, 2016. The Applicant filed its Notice of Appeal on the 22nd March, 2016. Attached hereto and marked Annexure **NMB-6 (a), (b) and (c)** are copies of the Proceedings, Drawn Order and the Notice of Appeal, to form part of the Affidavit.
11. That following the lodging of the Notice of Appeal on 22nd March, 2016, the Applicant applied for certified copies of the Decree signed by all members of the Tribunal. A copy of the said latter is annexed herewith and marked Annexure **NMB-7**, to form part of the Affidavit.

12. *That sequel to paragraph 11 hereinabove, on the 23^d February, 2017, the Applicant was notified of the availability of the Decree applied for, and on the same date the Applicant was availed with the same. Attached herewith and marked Annexure **NMB-8 (a)** and **(b)** are copies of the notification and the said Decree respectively, to form part of this Affidavit.*
13. *That to enable the Applicant file its Memorandum and Record of Appeal, the Applicant on the 1st March, 2017 applied for the endorsed copied of all documents which were put in evidence and tendered as Exhibits A-1 to A-4 and the certificate of delay which todate have not been availed to it. Annexed herewith and marked Annexure **NMB-9** is a copy of the said letter, to form part of the Affidavit.*
14. *That the Applicant has not filed its intended appeal against the decision of the Tribunal dated the 17th July, 2014 in that the Applicant is still awaits to be availed the documents stated in paragraph 12 hereinabove to enable her to file the appeal in the Court of Appeal of Tanzania. The intended appeal raises, **interalia**, pertinent important points of law as contained in the draft*

*memorandum of appeal annexed hereto and marked as Annexature **NMB-10.***

15. *That while the Applicant is still making follow-ups of these necessary documents at the Tribunal, the Respondent has initiated an execution of the Decree of the Tax Revenue Appeals Tribunal in Tax Appeal No. 19 of 2013. Through its Demand Notice dated 11th May, 2017, the Respondent has threatened stern measures against the Applicant if the said notice is not heeded. A copy of the said Demand Notice is annexed hereto and marked Annexature **NMB-11.** Leave is craved it form part hereof.*
16. *That the delay in filing of the application for stay of execution of the decree of the Tax Revenue Appeals Tribunal has been caused by the reasons beyond the Applicant's control in that:*
 - (a) *A proper decree of the Tax Revenue Appeals Tribunal was not supplied to the Applicant until 23rd February, 2017. The earlier decree supplied was defective and led to the striking out of Civil Appeal No. 86 of 2014.*

I have gone through the affidavit in support of the application. I am satisfied that the reasons contained therein are good cause for the grant of


the application for extension of time to file an application for stay of execution. I accordingly allow the application. The applicant to file the application for stay of execution within 30 days from the date of delivery of this ruling. For obvious reason, each party to bear its own costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 29th day of September, 2017.

B. M. LUANDA
JUSTICE OF APPEAL

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



P.W. BAMPIKYA
SENIOR DEPUTY REGISTRAR
COURT OF APPEAL

