

IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
CIVIL APPLICATION NO. 449/20 OF 2019
PANAFRICAN ENERGY TANZANIA LTD..... APPLICANT
VERSUS

COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY RESPONDENT

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

(Twaib, Chairman, Bundala and Mwaibula, Memmbers)

dated the 2nd day of May, 2017

in

Tax Appeal No. 19 of 2015

EX PARTE ORDER

31st October & 1st November, 2019

LEVIRA, J.A.:

This is an *ex-parte* application for stay of execution pending hearing inter parties before the Court. The Notice of Motion is made under Rule 4(2), 11(4), (4A), (5), (7) and 48(1) of the Tanzania Court of Appeal Rules, 2009 as amended, (the Rules). It is supported by the affidavit affirmed by Mwinshehe Said Kibao, the Finance Director of the applicant.

This being an *ex-parte* application, only Mr. Gaudiosus Ishengoma, learned counsel for the applicant appeared on the date fixed for hearing.

In his brief submission in support of the application, Mr. Ishengoma stated that the application is for *ex-parte* stay of execution order of the Decree of the Tax Revenue Appeals Tribunal of 2/5/2017 in Income Tax Appeal No. 19 of 2015. According to him, the reasons for *ex-parte* order are stated under paragraph 19 of the supporting affidavit. For ease of reference the said paragraph reads:

*"I state that despite being fully aware of the existence of the Applicant's pending Application for Review, the Respondent, on 7 October 2019, issued a Demand Notice against the Applicant with reference Number TRA/LTD/101-181-316/MDM/176 (served upon the Applicant on 9 October 2019) claiming, among others, payment of TZS 645,612,560.60 on or before 14 October 2019. Attached and marked as **Annexure FB3** is a copy of the above mentioned Demand Notice from the Respondent to form part of this affidavit."*

Mr. Ishengoma submitted further that, the applicant has complied with all the requirements under Rule 11 of the Rules. She undertook to furnish security in case the application for review does not succeed. Thus, the learned counsel prayed for *ex-parte* order without

which the respondent will at any time enforce her demand notice (Annexure F83) which has been issued to the applicant.

On my part, having gone through the notice of motion, the supporting affidavit, all the annexed documents, and after hearing the submission by the applicant's counsel, I am of the considered view that the application is worthy of consideration by the Full Court than the Single Justice of the Court. I will explain.

The applicant is seeking for an order for stay of execution pending hearing and determination of an application for review (Civil Application No. 339/20 of 2019) pending before this Court. The said application was filed as the applicant was aggrieved by the decision of the Court (Juma, CJ., Mwarija, JA., and Mziray, JA.) in Civil Appeal No. 192 of 2018 of 4th July, 2018. The question that follows is, whether an order for stay of execution can be made pending an application for review as the provision of Rule 11 (3) and (7) of the Rules presupposes that an order for stay of execution is intended to be granted pending appeal.

Having considered all the circumstances of this application, I refrain from making an ex-parte order for stay of execution. In terms of

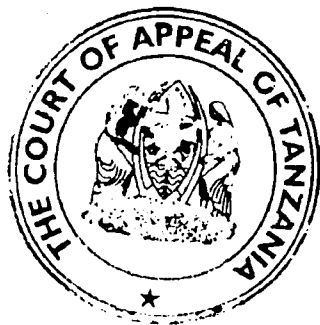
Rule 60(1) of the Rules I hereby adjourn hearing of the application for determination by the Court on a date to be fixed by the Registrar.

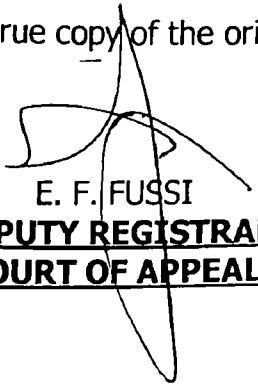
Order accordingly.

DATED at DAR ES SALAAM this 31st day of October, 2019.

M. C. LEVIRA
JUSTICE OF APPEAL

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




E. F. FUSSI
DEPUTY REGISTRAR
COURT OF APPEAL