

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KWARIKO, J.A., MWANDAMBO, J.A., And KENTE, J.A.)

CIVIL APPLICATION NO. 60/01 OF 2021

NURDIN MOHAMED CHINGO.....APPLICANT

VERSUS

SALUM SAID MTIWE.....1ST RESPONDENT

HADIJA SAID MTIWE.....2ND RESPONDENT

[Application for stay of execution of the Decree of the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam]

(Mlacha, J.)

dated 21st day of December, 2020

in

(PC) Civil Appeal No. 129 of 2019

.....

RULING OF THE COURT

16th & 25th August, 2022

KWARIKO, J.A.:

In its decision dated 21st December, 2020 in (PC) Civil Appeal No. 129 of 2019, the High Court of Tanzania, Dar es Salaam District Registry at Dar es Salaam, the respondents herein were declared lawful owners of a House No. 49 Plot No. 11 Block 18, Aggrey Street, Kariakoo Area Dar es Salaam having inherited it from their aunt, the late Mariam Salum Mtiwe. The applicant who was the respondent in that appeal and an administrator of the estate of the late Mariam, was aggrieved by that

decision and thus lodged a notice of appeal to this Court on 21st December, 2020.

Subsequently, the applicant filed an application for stay of execution of the decree pending the hearing and determination of the intended appeal. On 18th March, 2021, before a single Justice of the Court, the applicant was granted an *ex parte* order for stay of execution of the decree pending the hearing and determination of this application *inter partes*. On the other hand, the respondents filed a joint affidavit in reply opposing the application.

On the day the application was called on for hearing, Messrs. Richard Rweyongeza and Thadey Hyera, learned counsel teamed up to represent the applicant, whilst the respondents had the services of Mr. Wilson Ogunde, also learned advocate.

Before the hearing could commence, Mr. Rweyongeza addressed us on the events which occurred following the grant of the *ex parte* order of stay of execution by the Court. He informed the Court that, despite the said order, the respondents had applied for execution of the decree in Execution No. 7 of 2021 of the High Court which was granted on 19th April, 2021 whereby a court broker was appointed to evict the applicant from the suit premises, which order was accordingly executed on 10th June, 2022. Thereafter, the applicant wrote to the Registrar

complaining against the execution of the decree amidst an *ex parte* order of this Court for stay of execution. Upon hearing the parties, the Registrar ruled out that she was *functus officio* having granted the application for execution. However, she ordered for the parties to maintain a *status quo* by barring any party from entering into the suit premises pending the determination of this application *inter partes*.

Mr. Rweyongeza submitted further that, having been aggrieved by that order, the applicant has filed an application for revision in this Court to rectify the errors which is yet to be determined. In the circumstances, the learned counsel prayed for adjournment pending the outcome of the said application for revision.

Mr. Ogunde opposed the prayer by the applicant's advocate on the ground that this application has been overtaken by events as the execution has already taken place.

Having heard the learned counsel, it is our considered view that this application has not been overtaken by events because what happened in the High Court did not affect the *ex parte* order of this Court which was issued pending the determination of the application *inter partes*. Further, in order to avert confusion, and since the applicant has taken steps to rectify what happened in the High Court, the prayer

for adjournment is meritorious to pave way for appropriate remedies by the applicant.

In the event, hearing of the application is adjourned to the next convenient sessions of the Court as may be fixed by the Registrar subject to the determination of the application for revision pending in this Court between the parties. We make no order as to costs.

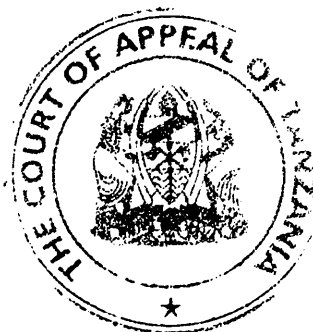
DATED at DAR ES SALAAM this 22nd day of August, 2022.


M. A. KWARIKO
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

The ruling delivered this 25th day of August, 2022 in the presence of Ms. Pendo Charles holding brief of Mr. Thadey Hyera, learned counsel for the Applicant and Mr. Wilson Ogunde, learned counsel for the Respondents, is hereby certified as a true copy of the original.




D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL