

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)**

AT ARUSHA

MISC. APPLICATION NO. 46 OF 2020

(Originating from District Land and Housing Tribunal for Arusha at Arusha)

ANDREA NDEWARIO APPLICANT

VERSUS

THE REGISTERED TRUSTEE OF THE APOSTLES OF

JESUS..... 1ST RESPONDENT

LAMECK JOHN KAAYA..... 2ND RESPONDENT

FIRST WORLD INVESTMENT..... 3RD RESPONDENT

RULING OF THE COURT

Last order.....11/08/2020

Ruling delivered..21/08/2020

GWAE, J

In enforcing its decree, the District Land and Housing Tribunal for Arusha at Arusha (DLHT) vide Application No. 127 of 2011 issued an eviction order on the 1st day of July 2020 in favour of and against the 1st respondent, **the Registered Trustee of the Apostles of Jesus** and applicant, **Andrea Ndewario** respectively.

Seemingly, the applicant filed an application before the DLHT for stay of an execution of the decree through Miscellaneous Land Application No. 144 of 2020 pending an intended appeal to this court but while the same



was yet to be heard and determined an eviction order was issued and accordingly accomplished. Hence this application for an order setting aside the eviction order.

Upon service of the applicant of application which is brought under section 2 (3) of the Judicature and Application of Laws Act, Cap 358 Revised Edition, 2002 and section 95 of the Civil Procedure Code (Cap 33 R. E, 2002), the respondents' advocate raised preliminary objection based on two points to wit;

1. That, the applicant filed an application for stay of execution in the DLHT which is still pending
2. That, the eviction order has been carried out

When this matter was called on for hearing of the respondents' preliminary objection, the applicant and respondents named herein above were duly represented by Mr. **Alhpha Ng'ondya** and **Mr. Colman Ngalo** respectively, both the learned advocates.

Supporting the canvassed objections, Mr. Ngalo strongly argued that, this application is barred by the applicant's application for stay filed in the DLHT yet to be determined. He also submitted that this application is overtaken by event for the reason that, the order of eviction had already been carried out on 14.7.2020. Mr. Ngalo also verbally added that the applicant has not properly moved the court since the applicant only cited enabling provisions that is S. 2 (3) Cap 358 and S.95 CPC which confer this court with jurisdiction and inherent power. He finally sought an order dismissing this application with costs.

In his response to the submissions by Mr. Ngalo, the applicant's advocate argued that, the application filed in the DLHT and this one are different since the former is for stay of execution and the latter is for setting aside the eviction order adding that, the eviction order was illegally issued since the former application for stay of the intended execution was to be heard and determined first.

In the 2nd limb of objection, the applicant's counsel submitted that, the eviction order was illegal due to the fact it was to wait for hearing and determination of the application for stay more so no statutory notice that was issued to the applicant as per Rule 21 (1) of the Court Brokers and process server, appointment and Remunerations Rules, 2007.

Responding to the 3rd limb of objection which was orally canvassed by the respondents' advocate, Mr. Alpha argued that, the provisions cited are proper in moving the court since they provide for inherent power of the court.

Reacting to the submissions by the applicant's counsel, Mr. Ngalo focusedly stated that, if the applicant was after challenging propriety or legality of the eviction order, the only remedy available for him was a filing of revisional application.

Having gone through the submissions of the parties' advocates and the preliminary objection raised, I would straight away hold that, this application aimed at setting aside the eviction order issued on 01.07.2020 and that application for stay of execution filed in the DLHT for stay of execution are different as the same are for different prayers with different consequences as explained herein. This limb of objection is therefore overruled.

In the 2nd point of objection, this court has been notified that the eviction order issued on the 1st July 2020 had been carried out since 14th day of July 2020. Thus the order has been fully satisfied as the nature of the execution of the eviction order dictates so. That being the position, in my view, an order setting aside the eviction order sought by the applicant must have been overtaken by event rendering this application meaningless. In Tanzania **Motor Services Agencies Ltd vs. Tantrack Agencies Ltd**, Civil Application No. 86 of 2004 (unreported –CAT) When the Court of Appeal determining on when a completeness of execution of a decree can be properly asserted, it had these to say

“The court can issue an order for stay of the remaining process.

In the instant case, the execution has reached stage of proclamation for sale and the date had been fixed, the court can order the sale be stayed”

Though in the above cited authority, the relief sought is different from the present relief prayed by the applicant but the principle is the same. Hence in the instant application for setting aside the eviction order, in my considered view, would be conveniently granted only if the eviction order was about or on process to be implemented as opposed to the current position where the applicant has already been evicted from the suit land. The assertion that the eviction was illegal due to failure to issue requisite notice is not attainable in this type of application unless this court is moved by a way of revision as alluded by the respondent’s advocate. The 2nd limb of the respondent’s preliminary objection is thus sustained.

Having sustained the 2nd point of objection, I am of the decided opinion that I should not be curtailed by the oral preliminary objection on the alleged improper or incomplete citation of provisions of law as the 2nd limb is sufficient to dispose of this application.

In the light of the reasons above, the 1st and 2nd limb of preliminary objection canvassed by the respondents' advocate are consequently overruled and sustained respectively. This application is thus struck out with costs. As the time for filing an application for revision has not lapsed, the applicant may file revision application if appropriate doing so.

It is so ordered




M.R.GWAE
JUDGE
21/08/2020