

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISC. LAND APPLICATION NO. 41 OF 2019
*(Arising from Misc. Land Application No. 98 of 2018,
High Court of Tanzania at Mbeya)*

ASWILE S/O MWAMPASWIKE.....APPLICANT
VERSUS
JOHN JOHNSON SUMMER.....RESPONDENT

R U L I N G

Date of last order: 24/06/2020
Date of Ruling: 14/08/2020

NDUNGURU, J.

Before me is an application in which the applicant, one Aswile Mwampaswike is seeking an order of stay of execution of the decision of the District Land and Housing Tribunal of Mbeya in Land Application No. 16 of 2017, pending the final determination of the Misc. Land Application No. 98 of 2018 which was pending in this Court.

Under the certificate of urgency, the applicant has filed this application under Order XXXIX Rule 5 (1), (3) (a), (4) and Rule 8 of the Civil Procedure Code (Cap 33 R.E. 2019). The application is supported by an affidavit duly sworn by the applicant himself.

The application has been strongly resisted by the respondent through counter affidavit duly sworn by the respondent himself.

When the application was called for hearing, Mr. Roger Aswile Mwampaswike through the Special Power of Attorney appeared for the applicant whereas Ms. Jenifa Joely Silomba, learned advocate appeared for the respondent. The application was argued by way of written submissions as per scheduling order. That was done.

In his submission in support of the application, the applicant argued that, the respondent is aware that he filed an application for extension of time before this Court in order to get an opportunity to appeal against the decision of the District Land and Housing Tribunal for Mbeya in Land Application No. 16 of 2017.

He went on to submit that the respondent has started to demolish a part of the suit property while there is pending application for extension of time in order to pursue the intended appeal. He added that if this application is not granted he will suffer the substantial loss when it happens the application for extension of time to appeal out of time will be granted.

He therefore prayed for the Court to grant an order for stay of execution of the decision of the District Land and Housing Tribunal for Mbeya in Land Application No. 16 of 2017.

In rebuttal, Ms. Silomba commenced her submission by adopting the contents of the counter affidavit. She added that the applicant was required to file the application for stay of execution at the District Land and Housing Tribunal for Mbeya and not before this Court. She cited Regulation 25 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 G.N. No. 174 of 2003.

She continued to submit that the respondent being aware of the existence of the application for extension of time before this Court is not sufficient ground to forbid the respondent to proceed with the execution. She referred this Court to the Regulation 24 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 G.N. No. 174 of 2003 to the effect that an appeal shall not in any case be a bar to the execution of decree or order of the tribunal.

She went on to contend that the applicant failed to comply with the requirement of the law regarding the conditions to be considered by the Court in granting order of stay of execution. She cited the case of **Tanzania Bureau of Standards vs. Anita Kaveva Maro**, Revision No. 35 of 2016 Court of Appeal of Tanzania (unreported) to bolster her submission.

She further submitted that the applicant will not suffer than the respondent because even the application for extension of time which is

the base of this application cannot be sustained since the applicant has no good cause to convince the Court. In conclusion, she prayed for the Court that this application be dismissed.

In his rejoinder, the applicant reiterated his submission in chief. He also submitted that he filed the application for stay of execution before this Court because the original file was already transferred before this Court. He added that the trial tribunal cannot hear the said application for stay of execution without the original file.

He went on to submit that, the case of **Tanzania Bureau of Standard (supra)** and all provisions of the law relied by the counsel for the respondent are irrelevant and distinguishable to the application at hand. Finally, he reiterated his prayer in chief.

Having gone through the submissions made by the both parties and chamber application filed before the Court, the issue calling for determination is whether this application is proper before this Court or not.

The applicant has moved the Court through Order XXXIX Rule 5 (1) of the Civil Procedure Code (Cap 33 R.E. 2019) which provides that:

"An appeal shall not operate as stay of proceedings under a decree or order appealed from except so far as the Court may order nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the

decree but the Court may, for sufficient cause, order the stay of execution of such decree”.

From the wording of the provision cited above, the law is clear that the application for stay of execution can be filed before this Court only if there is pending appeal before this Court. The applicant in his submission, contended that, there is pending application for extension of time to appeal out of time against the decision of the District Land and Housing Tribunal for Mbeya in Land Application No. 16 of 2017 before this Court.

It is clear that the basis of this application emanates from the application for extension of time which is pending before this Court. To my considered view the application for extension of time is not an appeal. Therefore, I subscribe to the submission advanced by the counsel for the respondent that the applicant has filed this application in wrong forum.

Moreover, I feel profoundly to put clear that when a person intends to appeal to the High Court against the decision of the District Land and Housing Tribunal may apply to the tribunal for stay of execution where the decree or order executed.

The same position is well stipulated under Regulation 25 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 G.N No. 174 of 2003 which provides that:

"Notwithstanding Regulation 24, a judgment debtor who intends to appeal to the High Court may at any time before the decree or order of the Tribunal is executed, apply to the tribunal for stay of execution".

As already stated earlier that the application for extension of time is not an appeal, the applicant when filed an application for extension of time before this Court shows that he intends to challenge the decision of the District Land and Housing Tribunal for Mbeya to the High Court. Therefore, I advise the applicant to lodge this application for stay of execution to the District Land and Housing Tribunal for Mbeya, if he still wishes to pursue his right.

In the view of what I have observed above, I am satisfied that this application must fail. Further, I hereby dismiss this application without costs.

It is so ordered.




D. B. NDUNGURU
JUDGE
14/08/2020

Date: 14/08/2020

Coram: D. B. Ndunguru, J

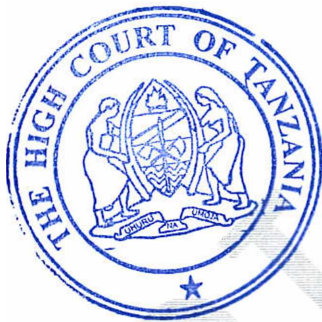
Applicant: Present

Respondent: Absent

For the Respondent: Absent

B/C: M. Mihayo

Court: Ruling delivered in the presence of the applicant and in the absence of the respondent.



D. B. Ndunguru
D. B. NDUNGURU
JUDGE

14/08/2020