

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

AT BUKOBA

MISC. LAND APPLICATION No.1 OF 2020

(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Application for Execution No. 238 of 2016 & Application No. 239 of 2012)

RAMADHAN HUSSEIN ----- APPLICANT

Versus

**IMELDA ABDALLAH ----- }
LEONARD LUBAGO ----- } RESPONDENTS**

Ruling

06/10/2020 & 06/10/2020

Mtulya, J.:

Mr. Ramadhan Hussein (the Applicant) approached this court on 16th January 2018 and filed Land Case Revision No. 1 of 2018 (the Revision) praying for inspection of the records of the District Land and Housing Tribunal for Kagera at Bukoba (the Tribunal) in Application for Execution No. 238 of 2016 & Application No. 239 of 2012.

Mrs. Imelda Abdallah (the First Respondent) knowing that filing of the prayer in the Revision is not bar to execution of the decision of the Tribunal, she proceeded with the execution which prompted the Applicant to rush to this court again carrying a certificate of urgency complaining that the First Respondent is executing decision of the Tribunal in presence of the Revision registered in this court.

In this court, the Applicant filed Misc. Land Application No. 1 of 2020 (the Application) requesting this court to issue an order of stay of execution as against the First Respondent pending determination of the Revision. The hearing of the complaint was scheduled today and parties were invited to argue the Application. As the parties were lay persons and appeared without any legal representation, their submissions were brief, but assisted this court in determining the Application.

The Applicant submitted that the Application concerns stay of execution of the decision of the Tribunal and as there is pending Revision in this court, the execution may be stayed. The Applicant submitted further that he was not given opportunity to be heard in two applications decided by the Tribunal and the execution is done from the same decisions which he protested in the Revision. To the Applicant's opinion, the execution may stay so that he is given an opportunity to be heard in the Tribunal according to the law.

The submission of the Applicant was disputed by the Respondent contending that the Applicant was given that opportunity to be heard, but declined to exercise and therefore cannot complain on the same. To her opinion, as the proceedings in the Tribunal ended in her favour, execution may be allowed to proceed as per law.

On my side I think filing of the Revision in this court is not an automatic bar to execution of the decision of the Tribunal. If there is unreasonable delay of execution or substantial loss to the decree holder, this court may not grant the Application (see: Order XXI Rule 24 (1) of the **Civil Procedure Code** [Cap. 33 R.E 2019]; **Jawinga Co. Ltd v. Aristepro Investment Co. Ltd**, Commercial Case No. 103 of 2012; **Ahmed Abdallah v. Maulid Athuman**, Civil Application No. 16 of 2012; and **Tanzania Bureau of Standards v. Anitha Kavera Maro**, Civil Application 54/18 of 2017).

However, in the circumstances where the Applicant is complaining of the right to be heard in both Applications, namely: Application for Execution No. 238 of 2016 & Application No. 239 of 2012, this court may grant the Application to afford the Applicant an opportunity to be heard in the Revision. As of current, the right to be heard is not only a human right issue but constitutional right enshrined under article 13 (6) (a) of **the Constitution of the United Republic of Tanzania**. [Cap. 2. R. E. 2002] and precedents in **Mbeya Rukwa Auto Parts and Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002, **TANELEC Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil

Appeal No. 20 of 2018 and **Judge In Charge, High Court At Arusha & The Attorney General v. Nin Munuo Ng'uni** [2004] TLR 44).

Again, there is new enactment of section 3A of the Civil Procedure Code [Cap. 20 R.E. 2019] via Written Laws (Miscellaneous Amendment) Act, No. 3 of 2018 which introduced a principle of Overriding Objective that requires courts to deal with cases justly and to consider substantive justice. The principle has already received judicial practice and it is generally accepted that parties in disputes brought before our courts to focus on substantive justice (see: **Yakobo Magoiga Gichere v. Peninah Yusuph**, Civil Appeal No. 55 of 2017; **Gaspar Peter v. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017; **Mandorosi Village Council & Others v. Tuzama Breweries Limited & Others**, Civil Appeal No. 66 of 2017; and **Njoka Enterprises Limited v. Blue Rock Limited & Another**, Civil Appeal No. 69 of 2017).

Having said so and considering: the First Respondent has not complained on unreasonable delay or substantial loss on her part; Article 13 (6) (a) of the Constitution; section 3A of the Code; precedent in **Ahmed Mbarak v. Mwananchi Engineering and Construction Co. Ltd**, Civil Application No. 229 of 2014 and **Razia Jaffer Ali v. Ahmed Mohamed Ali Sewji & Five Others** [2006] TLR

433, I am inclined to grant the Application and hereby restrain the Respondents from executing the decision in Application for Execution No. 238 of 2016 emanated from Application No. 239 of 2012 of the District Land and Housing Tribunal for Kagera at Bukoba until when the Revision No. 1 registered in this court is determined to the finality.

Costs of the Application in due course.

It is accordingly ordered.





F. H. Mtulya

Judge

06/10/2020

This Ruling was delivered in Chambers under the seal of this court in the presence of the Applicant, Mr. Ramadhan Hussein and in the presence of the First Respondent Mrs. Imelda Abdallah.




F. H. Mtulya

Judge

06/10/2020