

**IN THE UNITED REPUBLIC OF TANZANIA
THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISC. CIVIL APPLICATION No. 58 OF 2020

(Arising from the Civil Case No. 299 of 2005 from the District Court of Ilala, Misc. Application No.7 of 2008 at Morogoro, Civil Case No.199 of 2015 of Kisutu Resident Magistrate Court and Misc. Civil Application No. 45 of 2019 of Morogoro RM'S Court)

MAINES KIPUTA.....APPLICANT

ERNEST T. MALLYA.....RESPONDENT

RULING

23th July, - 1st September, 2020

J. A. DE - MELLO J;

The Applicant, **Maines Kiputa**, has moved this Court under **section 95** and, **Order XLIII Rule 2** of the **Civil Procedure Code, Cap. 33, R.E 2002**. His attorney one, **Eva Adson Kiputa** has, in her sworn Affidavit deponing to facts which this application is all about, that is '**Stay of Eviction**' on **Plot No. 504/BB/CT 24895** in Morogoro, is seeking.

In order to understand the background gist of this Application, it is worth noting how it traversed through various Courts, commencing with **Civil Case No. 299 of 2005** at **Kisutu Resident Court** in **Dar Es Salaam**, in which the Plaintiff, **Boni General Supplies** obtained Judgment and Decree against **Kanamaines Electronics & Electric Contractors, John**

Thomson Nseke and, **Christopher Ngitu**. The decree was then transferred to **Morogoro Resident Magistrate Court of Morogoro vide Misc. No. 7 of 2008**, for attachment and, sale the Appellant's property by auction, of property located on Plot No. 504/BB/CT 2489, Morogoro. However and, what was the case then, on the **24th February, 2016** the **Resident Magistrate Court of Kisutu vide Civil Case No. 199 of 2015** issued a Judgment and Decree, setting aside the sale of the applicant's property. In turn, the Respondent filed another case in the **Resident Magistrate Court of Morogoro at Morogoro in Misc. Civil Application No. 45 of 2019**, which was granted in his favour on **20th January, 2020**, in which this current application of stay of execution, originates. On a higher gear, there is however, yet another **Civil Revision No. 7 of 2020** currently pending before **Hon. Mlacha, J**., sitting in this same Court. As practice and, the demands of the law, the Respondent has filed his Counter Affidavit, resisting the prayers sought, whereby this Court ordered for written submissions to which by the Applicant files on the **25th June, 2020**, reply by the Respondent on the **16th July, 2020** and, Rejoinder if any, on **23rd July, 2020**. Unexpectedly, no submissions from the Respondent has been complied to, other than the ones from the Applicant alone. Consequences for non compliance of Court orders can not be overstated and, in such vacuum, the Application is heard Ex-parte. It is therefore his submissions that, in such prayers, three principles needs to be looked into prior to grant as follows; pending proceedings, overwhelming chances of success, serious points of law to be addressed by the court, irreparably loss or injury and, whether or not, if granted, prejudice to other party may be occasioned. The

case of **Nicholas Nere Lekule vs. Independent Power (T) Limited**[1997] TLR 58, was cited. It is the Applicant's further submissions of the presence of **Revision No. 7 of 2020** before **Hon. Mlacha J**; with relative prayers sought, for removal of the Applicant from her house. It is her fear that, in the event Stay is not granted, she is the one to suffer great loss and, injury, not to be atoned by way of damages, given the old age of the applicant as opposed to the Respondent.

As stated, it is this same existence of the **Revision No. 7 of 2020** which raised my eyebrows as to the powers bestowed on me to address and determine this Application. It is the cardinal principle of law that no Application can be entertained in a stand alone nature, without the supportive substantive suit. As rightly observed by the Applicant it is the Revision Application that this Application emanates from and, hence proper to be heard by the substantive Judge. I therefore 'Suo Mottu' revert the Application whose submissions are already on record, be placed before **Hon. Mlacha J**; for his determination in relation to the Revision currently in his docket.

It is so ordered.



J. A. DE-MELLO

JUDGE

1st September, 2020

