

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**MISC LAND APPLICATIONNO 13 OF 2020**

**1.DAUDI ZAKARIA**

**2.ESTER BONIFACE.....APPLICANTS**

**VERSUS**

**1.VERAN MWALUKO**

**2.ABA-JAJA AUCTION MART & COURT BROKER.... ..RESPONDENT**

**RULING**

*Date of last order: 8.04.2020*

*Date of Judgment: 28.04.2020*

**MKWIZU, J**

By way of a Chamber Summons under **Order XXX1X Rule 5 (1) of the Civil Procedure Code** (Cap 33 RE 2002), the applicants, Daudi Zakaria and Ester Boniface filed an application for stay of execution of the order of the District Land and Housing Tribunal in Land application No 38 of 2019. The application was apportioned into two parts, ex parte prayers and inter part prayers. On 3/4/2020, I granted the ex-parte order essentially, restraining the respondents, from digging trench, building a wall, and evicting the applicants from their house Plot No. 14 Block "Z" pending final determination of this application inter parties.

On 8/4/2020 parties through their counsel were all heard on the same matter. The applicant had the services of Mr. Vicent Masalu Advocate while respondents were being assisted by Mr. Augustino Ijani also advocate.

Submitting in support of the application Mr. Masalu stated that their application is in respect of a stay of execution of the District Land and Housing Tribunal's order in application No 38 of 2019 pending hearing and final determination of civil appeal No 11 of 2020. He said, respondents are building a wall which will block the applicant's entrance and toilet and will ultimately lead to the demolition of the applicant's house causing irreparable loss to the applicants.

On his part Mr. Ijan resisted the application. He said, respondents are not in execution of the DLHT order but they are executing the order of Ibinzamata Ward Tribunal in Land Case No 6 of 2016 which was executed through an exparte order of the DLHT in Misc. Land Application No.129 of 2017. The respondent's counsel submitted further that, at the Ibizamata Ward Tribunal, they were ordered to fix boundaries in two plots that is No 14 and 12 Block Z. After the Ward Tribunal's decision, the applicant stayed calm meaning that they were satisfied with that decision and thereafter,

the DLHT assigned the Court broker the task of execution. Instead of filing an application to set aside ex-parte order given in Misc Land Application No. 129 of 2017, applicants filed another application No 11 of 2019 which was between the 2<sup>nd</sup> applicant who was the applicant and 1<sup>st</sup> applicant and the respondent, were the respondents. The application was withdrawn on the applicant's instance. She then filed Land application No. 38 of 2019 which is now before the court on appeal.

Mr. Ijan, insisted that the execution on process are in respect of the order of the tribunal in Land application No. 129 of 2017 and not application No. 38 of 2019. He prayed to have the application dismissed.

In his rejoinder, Mr Masalu stated that applicants have no problem with the execution of the order given by the Ibinzamata Ward Tribunal because the Ward tribunal had ordered the parties to fix boundaries in accordance with the original offer.

I have consciously and carefully gone through the affidavits for and against this application plus the submission by the counsels for both parties. It should be noted here that, applicants are desirous to have the execution of the decree in Land Application No. 38 of 2019 be stayed believing that the

execution processes taking place on the suit plots arose from that order. On the other hand the respondents refute the application and state that the execution processes which are taking place on the suits plots emanated from Land case No. 6 of 2016 of the Ibinzamata Ward Tribunal and Application for execution No. 129 of 2017 of the District Land and Housing Tribunal.

In Land Application No 38 of 2019, the present applicant had applied among other things for declaration that respondent is a trespasser on the suit land, part of Plot No. 14 Block Z(HD) and for a permanent restraint from trespassing on the suit plot. The Tribunal found that the matter was res-judicata, the same claim was heard and conclusively determined by the Ibinzamata Ward Tribunal in Land Case No. 6 of 2016 and execution in respect of that decision has been ordered to proceed in Land Application No. 129 of 2017. I have perused the order subject of the present application. It reads:-

*"I therefore agree that the present suit is res-judicata on the ambit of section 9 of the CPC.I proceed to dismiss the suit with costs.**The parties are directed to heard (sic) what was decided by ward tribunal and ordered to by this***

***Tribunal by fixing permanent boundaries to separate their plots as per the demarcations.”(Emphasis added)***

Reading the above order with a sober mind, one would reveal that, there was nothing new decided after the tribunal had dismissed the application for being res judicata. What the tribunal did was to direct the parties on the way forward. That, they should go back and execute the order given in Land case No. 6 of 2016 by the Ward Tribunal.

In his rejoinder submission, Mr. Masalu for the applicant said specifically that applicants have no query with the decision of the Ward tribunal in Land Case No. 6 of 2016. To quote his words, he said:-

*“My client are not in dispute with the execution of the order of Ibinzamata Ward tribunal because the ward directed the parties to fix the demarcation in accordance with their original offer.”*

The question is, if the applicants have no dispute with the decision of the ward tribunal then what is wrong with the District Land and Housing tribunal's order? As alluded to above, the DLHT directed the parties to proceed with the execution of the order by the Ward tribunal.

Curiously, however, either by design or out of confusion, applicants are now praying to stay what they are contented with. The applicants seem to have misconceived the tribunal's order. And in case they feel that the execution on the ground are carried out in the manner not in conformity with the trial tribunal's order, then appropriate action was to lodge the complaints to the executing court and not otherwise.

Basing on the above deliberations, I find the prayers in this application unmerited. The application is therefore dismissed with costs.

It is so ordered.

**Dated at Shinyanga this 28<sup>th</sup> day of April, 2020.**



*E.Y. Mkwizu*  
**E.Y MKWIZU**  
**JUDGE**  
**28/4/2020**