

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 91 OF 2021

*(Arising from Execution No. 76 of 2020, originating from Land
Case No. 92 of 2017)*

GEORGE ABEL RWIZA --- APPLICANT/JUDGMENT DEBTOR

VERSUS

YUSUPH SHABANI

MATIMBWA ----- RESPONDENT/JUDGMENT CREDITOR

Date of Last Order: 09/07/2021

Date of Ruling: 05/08/2021

R U L I N G

MGONYA, J.

The Applicant herein made this Application under **Order XXI Rule 21 (2), Section 48 (1) (e) of the Civil Procedure Code, Cap. 33 [R.E 2019]** for orders that:

- 1. This Honorable Court may be pleased to raise attachment and sale of the Applicant/Judgment Debtor's property Plot No. 8 Block "22" Bunju Area***

Kinondoni Municipality as the same is not liable for attachment and or sale in execution of a court decree.

- 2. The Applicant/Judgment Debtor should be given more time to repay the remaining balance within six month from the date of the order or other period to be fixed by the court.***
- 3. Costs to follow event.***
- 4. Any or further relief(s) this Honorable Court shall deem fit equitable to grant.***

The Application is supported by an Affidavit sworn by the **George Abel Rwiza** the Applicant herein whereas the Respondent, **Yusuph Shabani Matimbwa** filed a Counter Affidavit strongly challenging the Application.

When the Application came up for hearing on 14/4/2021, this Hon. Court granted the prayer that the Application be disposed off by way of Written Submissions. The court's order in that respect was adhered to hence this Ruling. However, in the cause of determining this Application I don't intend to reproduce Parties' respective submissions and instead, I will straight determine the matter to the decision.

As I was examining this Application, it came to my knowledge that this matter originates from **Execution No. 76 of**

2020 arising from Land Case No. 92 of 2017. It is from this history that **the matter at hand was heard on merit and determined to its finality.** Further, the same went through the Execution process whereby necessary prayers have been granted. However, on the other hand, the Applicant seems not to be pleased with the said Court's Order, hence this Application where the Applicant made some prayers before the court to be granted some reliefs. If I may reproduce the said prayers are for:

- i. This Honorable Court to raise attachment and sale of the Applicant/Judgment Debtor's property Plot No. 8 Block "22" Bunju Area Kinondoni Municipality as the same is not liable for attachment and or sale in execution of a court decree.***
- ii. That the Applicant/Judgment Debtor should be given more time to repay the remaining balance within six month from the date of the order or other period to be fixed by the court.***

It is from the above prayers that the Applicant herein does not dispute at least the following:

1st, that the property mentioned in the prayer is the subject to execution after the final determination of the Main Land Case.

2nd, that it is time now for him to fulfil the Decree in respect of the said Suit.

For the Applicant to lodge the above prayers before the court at this time or rather stage with the above mentioned prayers, makes the court processes useless and that the court is forced to entertain the **endless litigation**; something that is undesirable in the eyes of law. On this, I have to remind the Applicant that the case has two faces that of the Plaintiff and the other one is that of the Defendant. These two parties are before the court for their matter to be determined in merits to reach to the ends of justice judicious and timely.

It has to be noted that, finality of judgments is a concept or, a legal principle according to which the decision taken by the court at some point becomes **permanent, immutable, binding and open to enforcement**. It cannot be disputed again. The parties are not supposed to lodge similar claims and give another interpretation to the established facts in subsequent proceedings on an interrelated matter. The reason for such adherence to finality is that **justice has been performed**, whereas a court established relations between parties, settled their dispute and gave its opinion on their rights and duties. Certainly, one or even both of the parties may be dissatisfied with the result, but allowing them subsequent forum for quarrels and altercation is

not the best factor the court and society can do for them. It involves additional time and money, the waste of judicial resources and, presumably, lack of justice for other people seeking relief.

Furthermore, Courts are not one's pocket army as some people thinks. Their aim is to resolve conflicts and not to maintain them **indefinitely**. In that regard, they shall have a high status, as their decisions bring stability and order. If, however, they are not respected and easily **changed or overturned**, courts are likely to lose faith and support among people. In other words, the Courts' decisions must come to its **finality**.

To some degree, duplicate proceedings or persisting appeals may be seen as an abuse of rights. This is exactly the Applicant to this Application is trying to do. It is my view that at this point after the Decree is out, nothing can be negotiated in the absence of an Appeal. What I can see is the Applicant's abuse of court processes and bring before the court endless litigation.

Thus, the Applicant's prayers before the court are unmanageable under the circumstances, since it is not fair to the Respondent herein as the matter has already reached its finality and need not to be re-opened but rather the same is now ready for execution as it is supposed to.

It is from the above explanation, the Application before the court has highly been misconceived and indeed it is hereby **dismissed with costs.**

Ordered accordingly.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

05/08/2021

Court: Ruling delivered in my chambers in the presence of Mr. George Mshumba, Advocate for the Applicant, Ms. Jajines Jason Advocate for Respondent and Mr. Richard RMA, this 5th day of August, 2021.



A handwritten signature in blue ink, identical to the one above.

L. E. MGONYA

JUDGE

05/08/2021