

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISC CIVIL APPLICATION NO. 159 OF 2020**

(Original Land Application No. 119/2006 and arising from Misc. Civil Application No. 136 of 2019)

**LILIAN RICHARD** (The Administratrix of  
Estate of the Late Esther Ishengoma)..... **APPLICANT**

**VERSUS**

**IDD HAMIS** ..... **RESPONDENT**

**RULING**

18<sup>th</sup> Febr & 16<sup>th</sup> March, 2012

**RUMANYIKA, J.:**

When, under Section 95 and Order XXXIX rule 5 of the Civil Procedure Code Cap 33 R.E. 2019 (the code) the application for stay of execution of the decree pending determination of application for extension of time within which Lilian Richard (the Administratrix of the estate of late Esther Ishengoma (the applicant)) to file a notice of appeal to the Court of Appeal of Tanzania was called on 18/02/2021 for hearing, first of all I had to hear the parties on a jurisdiction based preliminary point of objection (the p.o) according to records formerly raised on 08/02/2021, and now take by Mr. Kassim Gilla learned counsel for Addi Hamis (the respondent).

Mr. Julius Mushobozi learned counsel appeared for the applicant. Parties were, by way of audio teleconferencing heard through mobile numbers 0767934787 and 0789300718 respectively.

Mr. Kassim Gilla learned counsel submitted that this court lacked jurisdiction much as the applicant had contravened the provisions of Regulation No. 25 (1) (2) and (4) of GN No. 174 of 2003 (the GN) which required that where there was in the District Land and Housing Tribunal (the DLHT) an application for execution of a decree and judgment, any proceedings for stay like similar provisions of Order XXI Rule 24 of the Code, applications for stay of execution also shall be lodged in the executing courts or tribunal for that matter that the case of **NHC** cited is distinguishable because in there, the issue was whether in the application for revision the CAT had inherent powers. We pray that the misplaced application be dismissed with costs the learned counsel further contended.

Mr. Julius Mushobozi, learned counsel submitted that the provisions of Regulation 25 of the GN were not that clear it therefore gave one the room. The provisions of Order XXIV Rule 1 of the Code yes, but the instant application was field only pending determination of an application for extension of time one to lodge a notice of appeal herein pending. We seek

court indulgence to exercise its inherent powers under Section 95 of the Code therefore the matter is properly before the court Mr. Mushobozi learned counsel submitted.

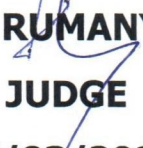
The central issue is as far as stay of execution proceedings is concerned whether a court other than the executing court, in this case the DLHT had jurisdiction. The answer is no. (See the case of **NHC** (supra)). I think it dictates both of logic and common sense that for the purposes of execution of judgments, decrees or drawn orders, against the rest of the world end of the day only the trial courts were custodians of the necessary records. There is no wonder therefore according to paragraph 5 of the respondent's counter affidavit in Misc. Civil Application No. 119B of 2020 for execution it was instituted in the DLHT.

Moreover, with regard to the court inherent powers under Section 95 of the Code, it is trite law that the Provisions of Section 95 of the code only applied as fall back in a situation where there was, with respect to a relief being sought no specific provisions of the law it means therefore that the provisions of Section 95 were no broad spectrum trap that could catch all from Agriculture to Zebra crossing nor was it intended to render the ambiguity free written laws inclusive of the GN and the Code redundant

much as far as stay of execution of the decree is concerned this court had never been reduced into being an agent/assignee of the DLHT.


The p.o is sustained. The application is struck out with costs. It is ordered accordingly.

Right of appeal explained.

  
**S. M. RUMANYIKA**  
**JUDGE**  
**07/03/2021**

The ruling is delivered under my hand and seal of the court in chambers this 16/03/2021 in the absence of the parties.



  
**S. M. RUMANYIKA**  
**JUDGE**  
**16/03/2021**