

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**HC CIVIL APPEAL NO. 49 OF 2020**

*(Originating from Misc. Application No. 10/2020 at Magu District Court, Original Civil Case No. 14/2014)*

**NILA JOSHUA MAJOLA ..... APPELLANT**

**VERSUS**

**ELIZABETH MAGINA .....1<sup>ST</sup> RESPONDENT**

**JOEL KASONGI MALANDO ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

11/02/2020 & 09/03/2021

**W. R. MASHAURI, J;**

The appellant Nila Joshua Majola was aggrieved with the decision of Magu district court in Miscellaneous Application No. 10 of 2020. He has now come to this court to challenge the said ruling of the appellate court. He has filed three grounds of appeal as follows: -

1. That, the trial court erred in law and fact to grant stay of execution where respondents have no locus standi to file Miscellaneous Application No. 10 of 2020.

2. That, the trial court erred in law and fact to grant stay of execution to the respondents where they failed to prove ownership of the attached properties.

When the matter was called in court for hearing the appellant submitted that, he was not satisfied with the decision of Magu district court in Miscellaneous Application No. 10 of 2020. Which was filed by respondents. In which the Magu district court ordered a stay of execution in Miscellaneous Application No. 10 of 2020 which was filed by respondents.

That, by its order for stay of execution in Misc. Application No. 10 of 2020 which had originated from Civil Case No. 14 of 2015, the Magu district court failed to do justice on his part, because the respondents in this matter were not supposed to file in court miscellaneous.

Application No. 10 of 2020 without joining one Benjamin Mason who would tell the court that, the properties he had put as security were not his property and by hearing and determine Misc. Application No. 10 of 2020 which he called it a small case, the Magu district court failed to a justice on his part when the district court failed to join one Benjamin Mason in Civil Case No. 14 of 2015 of which Miscellaneous Application No. 10 of 2020 had

originates. On that regard, the trial court failed to determine Miscellaneous Application No. 10 of 2020 which was an application for stay of execution and granted it.

Having carefully gone through the records in respect of this matter I must confess and put it clear/that, this matter is confusing. As seen on top of the main case file, this is a High Court Appeal No. 49 of 2020. It is originating from Misc. Application No. 10 of 2020 determined by Magu district court. district court at Magu in original Civil Case No. 14 of 2014. On top of that case file, Nila Majola is the applicant and sometimes is referred to as appellant. The respondents are Elizabeth Magina and Joel Kasongi are respondents.

In the same case file there is another case file titled Misc. Application No. 8 of 2020 originating from Criminal Case No. 8 of 2020 original Criminal Case No. 14 of 2015. In which Elizabeth Magina and Another are Applicants. Nila Majola is respondent.

According to the chamber summons, the applicants Elizabeth Magina and Joel Kasongi Malando are seeking for an order of this court of restraining the



respondent from selling one house, 7 acres of land and 3 herds cattle interested by the family members.

On my part, having carefully considered the applicant's prayers in the chamber summons which is sometimes tamed as petition of appeal, this matter is not properly before this court for want of clarity. The same is struck out. The appellant is refraining from selling the house, 7 acres of land and 3 herds of cattle pending determination of the intended appeal. No order as to costs is made.



  
**W. R. MASHAURI**

**JUDGE**

**09/03/2021**

Date: 09/03/2021

Coram: Hon. W. R. Mashauri, J

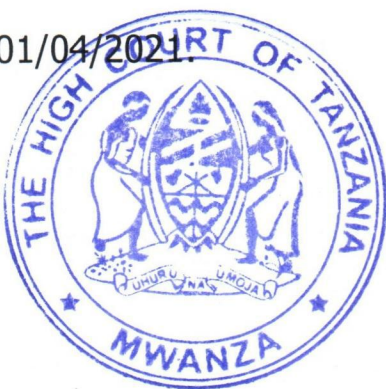
Appellant: Present

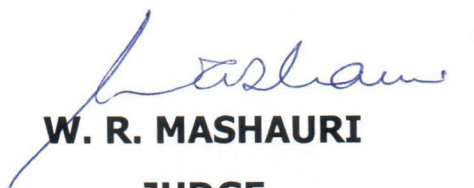
Respondent: 1<sup>st</sup> and 2<sup>nd</sup> Present

B/c: Elizabeth Kayamba

**Court:** Because of presence of the judgment will be complete on

01/04/2021.



  
**W. R. MASHAURI**  
**JUDGE**  
**09/03/2021**