

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

LAND REVISION NO. 1 OF 2021

MERICIANA BAPELI.....APPLICANT

VERSUS

TOBIAS TOMAS.....RESPONDENT

**[Application from the Ruling of the District Land and Housing Tribunal for
Maswa.]**

(Hon. J.F Kanyerinyeri.)

**dated the 7th day of Agost,2018
in**

Misc. Land Application No. 110 of 2016

RULING

25th June,2021.

MDEMU, J.:

This revision has been initiated by the Chairman of Maswa District Land and Housing Tribunal through a letter with Ref. No. DLHT/VOL II/01/2020 dated 14th December,2020. The application has found its way through provisions of section 77 of Civil Procedure Code, Cap.33 R.E 2019.

In a nut shell, the facts provide that, Mericiana Bapeli was the Applicant in Land Application No.1 of 2016. She was declared a lawful owner of the disputed land following default judgment entered on 3rd June,2016. Thereafter, the Applicant applied for execution through Misc.

Land Application No. 157 of 2016. The application was granted thus the Decree holder was handed over the disputed land to her.

It is recorded that, the Respondent in the above land application one Tobias Tomas, through Land Application No. 110 of 2016, applied to set aside the default judgment. He was successful through a judgment that was delivered on 7th August, 2018. The default judgment was set aside thus the main application was ordered to be heard interparties.

The chairman requested direction of the court if he can proceed with hearing of the main application inter parties after completion of execution processes. I have gone through the three files brought for revision, of which I refer them as records. In paraphrasing the chairman's issue, it goes; whether completion of execution bars further litigation on the same property by the same litigants.

The answer to me is in the negative. Execution that is complete cannot hinder litigations as per the provisions of Order XXI Rule 27 of the Civil Procedure Code, Cap. 33 R.E 2019 though do not directly cover the instant scenario, but it may be construed to apply so. It is as hereunder:-

"Where a suit is pending in any court against the holder of a decree of such court, on the part of the

*person against whom the decree was passed, **the court may, on such terms as to security or otherwise as it thinks fit, stay execution of the decree until the pending suit has been decided.**" (emphasis supplied)*

The words of the above quoted rule suggest that, the Court may either stop execution or may leave execution to take place, while there is still a pending case on the same object subject for execution. Again, in the case of **The Honourable Attorney General v. Reverend Christopher Mtikila, Civil Appeal No. 45 of 2009** (unreported) the Court of Appeal held that; -

"An appeal does not operate as an automatic stay of execution."

That above holding therefore suggests that, execution may take place while appeal is pending in a Court of law. Both quotations of law, confirm my earlier position that, a complete execution does not bar retrial on the same issue or property.

However, all records brought to me indicate that the default judgment was delivered on 03rd May, 2016. Misc. Land Application No.

110 of 2018 to set aside the default judgment was filed on 18th November, 2016. Was this application filed in time? Order VIII Rule 15 of the Civil Procedure Code has this to say on setting aside a default judgment:

"15. (1) Where a judgment has been entered pursuant to rule 14 the court may, upon application made by the aggrieved party, within sixty days from the date of the judgment, set aside or vary the default judgment upon such terms as may be considered by the court to be just."

With regard to the above cited rule, following default judgment in Land Application No.1 of 2016, Misc. Land Application No. 110 of 2018 was to be filed within 60 days. I have gone through the whole file and have not found any document showing whether he applied for extension of time before. As there is no extension of time granted, then the whole of the proceedings and its ruling in Misc. Land Application No. 110 of 2018 are nullity *abinitio*. I hereby quash and set aside them respectively. On that note, it will not be lawful to bless hearing of the main suit inter parties in Land Application No.1 of 2016. In other words, the Tribunal is not clothed with jurisdiction to entertain that application. The interested party,

in event the need arises should first apply for extension of time to set aside the default judgement. It is so ordered.

Gerson J. Mdemu
JUDGE
25/06/2021

DATED at **SHINYANGA** this 25th day of June, 2021.



Gerson J. Mdemu
JUDGE
25/06/2021