

**N THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)**

AT ARUSHA

LAND REVISION NO. 3 OF 2020

(Originating from District Land and Housing Tribunal vide Application No. 127 of 2021)

ANDREA NDEWARIO.....APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF THE APOSTLES

OF JESUS.....1ST RESPONDENT

LAMECK JOHN KAAYA2ND RESPONDENT

FIRST WORLD INVESTMENT3RD RESPONDENT

RULING

10/06/2021& 27/08/2021

GWAE, J

In the District Land and Housing Tribunal for Arusha at Arusha (DLHT), the 1st respondent filed execution application vide Application No. 127 of 2011 (seemingly, in the same the original case file) whose ruling was delivered on the 27th May 2020 against the present applicant, **Andrea Ndewario** and another person called **Lameck John Kaaya** who were respondents in the original land dispute and the 1st respondent was the applicant.

The applicant and another person were accordingly ordered to vacate from the disputed land comprised in a Certificate of Title No. NP 329 through ex parte judgment entered on the 29th August 2013 followed by numerous applications for instance, for extension of time to set aside ex parte decree, for stay of execution, for revision by this court and other related applications.

The applicant, on the other hand, filed an application for stay of execution order/eviction order on the 10th June 2020 pending an intended appeal in this court via Miscellaneous Land Application No. 144 of 2020 before DLHT. The applicant eventually filed an appeal to the court on the 10th July 2020 registered as Land Appeal No. 30 of 2020 which was withdrawn on the 17th day of September 2020. However, the applicant was forcibly evicted from the suit land by the 3rd respondent on the 14th June 2020 while his application for stay of the eviction order was not yet heard and determined by the DLHT.

Now, it is allegation by the applicant that, the 3rd respondent duly notified him (applicant) of the intention to demolish the building landed to the 2nd respondent and one **John Obedi**. Hence, the present application for revision in order to prevent the intended demolition of the house by the

3rd respondent, an agent of the 1st respondent and an order declaring that, the eviction order issued by the DLHT was illegal on the ground that, the 1st respondent was aware of the application filed for an order staying eviction order.

When the application was called on for hearing before me, the applicant and 1st and 2nd respondent were represented by advocates namely; **Mr. Alpha Ng'ondya** and **Mr. C. Ngalo** assisted by **Ms. Mariana** respectively. The parties' advocates consensually sought and obtained leave of the court to dispose this application by way of written submission.

According to the counsel for the applicant, the leaned chairperson of the DLHT who delivered the ruling in respect of the 1st respondent's application for execution and the one who duly signed the applicant's application for stay of execution filed pursuant to Regulation 25 (1) of the Land Disputes Courts (The Land and Housing Tribunal) Regulations, 2002) pending an intended appeal to the court. He further argued that, the chairperson was the one who fixed a date for hearing of the application for stay of execution to be on the 21st July 2020 but surprisingly, on the 1st July 2020 he issued an eviction order on the same subject matter.

Mr. Alpha went on arguing that the eviction order is illegal due to the fact that, the 3rd respondent failed to comply with mandatory requirement provided under Rule 21 (2) of the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules, 2017 of serving the judgment debtor now applicant with not less than fourteen (14) working days before eviction. In view of the above alleged illegalities or irregularities, the applicant's counsel sought restoration of the parties as they were before the said eviction.

Responding to the arguments advanced by the applicant's advocate, Mr. Ngalo seriously argued that, there are no irregularities committed by the DLHT to justify this court to revise the eviction order and that the trial tribunal was functus officio on two (2) grounds, namely; **firstly**, that, the applicant, through his Miscellaneous land application for stay of execution (25/2018), prayed for withdrawal of his application on the 15th April 2019 and the same was accordingly marked withdrawn as prayed granted and **secondly**, that, since the DLHT's chairperson vide Application No. 127 of 2011 made it clear that the applicant should hand over the suit land to the 1st respondent within 14 days from date of ruling (27th May 2020).

The applicant's counsel rejoined the respondent's submission by reiteratedly stating that at the time when the eviction was carried out there was already pendency of the application for stay and that since the counsel for the respondent remained silent in respect of the failure by the court broker to issue 14 working days before eviction pursuant to Rule 21 (2) of the Court Brokers and Process and Process Servers (supra), according to him the eviction processed were tainted with serious illegalities.

Having briefly outlined what transpired in the DLHT's Tribunal and this application, I will now determine **two issues**, notably; whether there was any illegality in the issuance of eviction order while there was pendency of the applicant's application for stay and whether the court broker's failure to issue 14 working days' notice before eviction as required under Rule 21 (2) the Rules, 2017 constituted a fatal irregularity.

Court's determination on whether there was any illegality in the issuance of eviction order while there was pendency of the applicant's application for stay.

It is general principle that any person aggrieved by a decision of District Court or that of Resident Magistrate Court or DLHT or any Tribunal

may apply for a stay of execution of decree or order before the prescribed period of appealing lapses and the court or tribunal which passed the decree or order to be appealed from may stay execution upon good cause being shown as rightly provided for under Order xxxix Rule 5 of the Civil Procedure Code, Cap 33 Revised Edition, 2019 which for the purpose of clarity I reproduce it herein under;

"5 (1) **An appeal shall not operate as a stay** of proceedings under a decree or order appealed from except so far as the Court may order, nor **shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree** but the Court may, **for sufficient cause**, order the stay of execution of such decree.

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the court which passed the decree may, on sufficient cause shown, order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the High Court or the court making it is satisfied that-

(a) That, substantial loss may result to the party applying for stay of execution unless the order is made;

(b) That, **the application has been made without unreasonable delay**; and

(c) That, security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the court may make an ex-parte order for stay of execution pending the hearing of the application” (Emphasis supplied).

(See also Regulation 25 (1) of the Regulation, 2002 cited by the applicant’s advocate).

In our present application, basing on the fact that the applicant filed his application for stay on the 10th June 2020 (before expiration of period of appealing or filing an application for revision) and that, the same was fixed for hearing on the 21st July 2020 whereas in between, the learned chairperson issued a direction to the 3rd respondent to execute the order dated 27th May 2020. Without undue regard to the former applicant’s applications for stay and bearing in mind that the Chairperson of the DLHT has already ordered the applicant to vacate and hand over the suit land to the 1st respondent within 14 days from the date of ruling (27th May 2020) in his determination of the 1st respondent’s application for execution vide Application No. 127 of 2011 filed on the 26th February 2014, in the absence of an order staying the ordered execution on the 27th May 2020 the District

Land and Housing Tribunal's chairperson, in my view, was justified to proceed with issuance of an eviction order on the 1st July 201 on the following grounds;

- a. Mere pendency of an application for stay execution of a decree or order does not in itself operate as a stay of the already ordered execution taking into account that the applicant was said to have been evicted on the 14th July 2020 whereas the applicant filed his application for stay on 10th June 2020 but the same was yet to be heard and determined.
- b. That, the execution order issued on the 27th May 2020 directing the applicant to vacate and hand over the suit land to the 1st respondent within 14 days from the date of the ruling was valid since it was not vacated when the eviction order was made and therefore enforceable
- c. The decree holder was entitled to ensure compliance of the order made on 27/5/2020 since was not vacated be it by DLHT or this court.

d. That, if the applicant was serious in pursuing his application for stay, he would have made close follow ups to ensure that his application is heard and determined expeditiously before expiry of 14 days from the date the ruling was delivered and or he would have filed his application under certificate of urgency otherwise the chairperson's hands were tied up by his own order dated 27th May 2020 which was still valid.

Basing on the above reasons, this complaint is dismissed. However, I find apposite to urge litigants and or their advocates to do away with laxity or they should not expect mercy or sympathy from the courts to stay execution of decrees or orders merely because appeals or revisions against the impugned judgments or orders have been preferred or about to be preferred or applications for stay have been filed. I am of the decided view that without orders staying execution of decrees or orders execution may proceed notwithstanding that there is an application for stay that has been filed unless and until a temporary order is sought and granted pending hearing of the same.

Whether the court broker's failure to issue 14 working days' notice before eviction as required under Rule 21 (2) of the Rules, 2017 constituted a fatal irregularity.

Before I start dwelling with the above issue, perhaps it is apposite to have Rule 21 of the Rules, 2017 cited above reproduced herein below,

"The execution officer shall, in case of an eviction order, serve the judgment debtor with a notice of not less than fourteen working days before eviction

According to the wording of the Rules reproduced herein above, in my simple interpretation, it denotes that, the service of notice not less than 14 working days to the judgment debtor is mandatory. In our case, as left unattained or not urged by the respondent's counsel, the 3rd respondent to did not issue the requisite or statutory notice of 14 working days as complained by the applicant's advocate. However, when I cautiously went through the ruling of the DLHT dated 27th may 2020, I had come up with an observation that, the requirement was dispensed with by the order itself as the order was to the effect that, the execution of the decree would be carried ought without any further notice to the applicant and his fellow. For easy for reference relevant parts of the ruling is reproduced;

"In the finality, the application is allowed with costs and Judgment debtors are ordered to provide vacant possession of the suit land on their own and hand to the decree holder within fourteen days from the date of delivery of this order. Short of which the tribunal broker shall be assigned to enforce the order without any further notice and the judgment shall have to bear execution costs"

That being the express wording of the ruling of the DLHT, the tribunal broker was therefore justified to proceed with the eviction without requisite notice as the same was waved by DHLT's order dated 27th day of May 2020 which, in my view, would have been necessitated by numerous applications by the applicant and a need to enjoy the decree on the part of the 1st respondent.

In the upshot, the applicant's application is dismissed as no material error in the impugned eviction order issued on the 1st July 2020 followed by applicant's eviction from the suit land. Given the circumstances of the case, each party shall bear its costs.

It is ordered.




M. GWAE
JUDGE
27/08/2020