

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 273 OF 2022
(Originating from Civil Revision No 16 of 2022)

TAHERA SEIFUDDIN DAWOODBHAI *as administrator of the*
***Estate of the late SEIUFUDDIN DAWAOODBHAI*.....APPLICANT**

VERSUS

SADOCK D. MAGAI.....1ST RESPONDENT

CHARLES KAJALA SANGO

T/A CDJ CLASSIC GROUP LIMITED.....2ND RESPONDENT

RULING

Date of Last Order: 20/07/2022

Date of Ruling: 29/07/2022

E.E. KAKOLAKI, J.

This ruling is in respect of the application for stay of execution against the decree of the Resident Magistrate Court of Dar es Salaam at Kisutu in RM Civil Case No. 72 of 2000, in its decision handed down on 2nd of October, 2000. The same was brought under certificate of urgency and by way of chamber summons under Order XXI Rule 24 (1), section 68 (e) and 95 all of the Civil Procedure Code [Cap 33 R.E 2019] (the CPC) supported by the

applicant's affidavit, stating the reasons as to why this application should be granted.

Gathered from the affidavit, the applicant herein is the daughter and administratrix of the estate of the late Seifuddini Dawoodbhai, who was also the plaintiff in RM Civil Case No. 72 of 2000 before the Resident Magistrate Court of Dar es Salaam at Kisutu, seeking to prevent the defendant from evicting him from the suit premises namely Upper Floor on plot No 1459/94, Market (Indira Gandhi) street Dar es Salaam under C.T No.2585. The applicant avers that, at all material time since her child hood, she was residing in the suit premises together with his parent the late Seifuddin Dawoodbhai, the premises she is occupying todate. It was further stated that, to the applicant's knowledge, applicants father purchased the suit premise on 12th August, 1974 from Amin Habib Walijiji Kanji, at the consideration of Tshs. 90,000, but he did not take legal steps to transfer the same in his name thus, Mr. Amin Habib Walijiji Kanji fraudulently sold the suit premise to one Mr. Abdulhamid Noor Mohamed Khatari who quickly effected the transfer of the suit premise in his name. It is the applicant's further contention that, his father instituted a case at the Resident Magistrate Court of Dar es Salaam at Kisutu to wit RM Civil Case No. 72 of 2000 against

the respondent herein and two others, seeking to defend his ownership, but the same was dismissed and the eviction order issued against his father. Aggrieved by that decision applicant's father unsuccessful appealed to the High Court as the filed Notice of Appeal was struck out at the instances of Sadock D. Magai's prayer since by then his father and the advocate were already dead. The applicant contends that, through the notice to show cause dated 27th Day of August 2020 addressed to him as administrator seeking to execute the drawn order dated 2nd October 2000, he discovered that the same does not bear the name of the disputed premises and that, the execution was time barred since the order was dated 2nd October 2000, thus filed an objection to the intended execution, but to his surprise the ruling delivered bore the name of the suit premises. According to the applicant, he has been staying in the suit premise believing that it is the family property and he has nowhere else to go. The applicant adds that, she has already filed Civil Revision No. 16 of 2022 for revision against the orders intended to be executed which is pending for determination before this court. She avers further that, if the prayer sought will not be granted pending determination of Civil Revision No. 16 of 2022, she will suffer irreparable loss as she is on the verge of being forceful evicted from the disputed house and is already

served with the 14 days' notice by the 2nd respondent. And that, if she will be evicted, she will lose her residence and the pending application for revision will be rendered nugatory. She added that, there are overwhelming chances of success over the application for revision because the decree intended to be executed is time barred and tainted with several irregularities. It is from that basis the applicant through her advocate Mr. Hamis Katundu is inviting this Court to grant the application pending determination of the Revision application before the Court.

When this application was called on for hearing, the 1st respondent, who is represented by Mr. John Kamugisha, learned advocate, informed the court that, he does not oppose the application and that is why he did not file the counter affidavit to that effect. On the above account, Mr. Katundu for the applicant prayed that for the interest of justice and on the basis of the contents of the affidavit in support of this application, the sought prayers be granted pending determination of Civil Revision No 16 of 2022 as the same does not prejudice the respondents. The 2nd respondent on her party could not enter appearance to defend the application despite of avoiding service and being served summons through affixation at his office premises, hence an order to proceed with hearing ex-parte against her was issued.

I have carefully considered the prayers in the chamber summons and the accompanied affidavit together with both parties' submissions in support of the application. As stated earlier this application is uncontested. Though not contested grant of stay of execution is not automatic as the same can only be granted upon sufficient cause being shown by the applicant as rightly stated under Order XXI Rule 24 (1) of the CPC. What amounts to sufficient cause there is no fast and hard rule as it depends on the circumstances of each case, but should be convincing grounds warranting the Court exercise its discretion judiciously whether to grant the application or not.

In this application the applicant has averred in his affidavit that, she has been living in the suit property with his family since her childhood where she has been enjoying peaceful stay even after her father's death in October 2013. So if stay is withheld before determination of the pending revision application in this Court, she stands to suffer irreparable loss for losing her home. It is also in her affidavital evidence that, being dissatisfied with decision of the Resident Magistrate Court of Dar es Salaam at Kisutu in its ruling dated 11/05/2022 in Execution application No. 71 of 2020, grating the eviction order against her, she promptly filed Civil Revision No. 16 of 2022, followed by this application filed on 24th June 2022. On that note, I am

convinced and satisfied that, she did not sleep over her right. With such factual evidence, I am satisfied and therefore of the considered view that, the applicant has successfully established sufficient cause for the grant of her prayers. I am alive to the fact that under Order XXI Rule 24 (3) of the CPC, this Court has discretion to require the applicant to give security or impose such conditions as it thinks fit. Order XXI Rule 24(3) of the CPC reads:

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment debtor, the court may require such security from, or impose such conditions upon, the judgment debtor as it thinks fit.

The manner of furnishing security was well stated by the Court of Appeal in the case of **Mantrac Tanzania Ltd V. Raymond Costa**, Civil Application No 11 of 2010 (CAT Unreported) where the Court had this to say:

"That, the other condition is that the applicant for stay order must give security for due performance of the decree against him. To meet this condition, the law does not strictly demand the said security must be given prior to the grant of stay order. To us, a firm undertaking by the applicant to provide security might prove sufficient to move the court, all things being equal, to grant a stay order, provided the court sets."

The law under Order XXI Rule 24(3) of the CPC does not make it mandatory that security shall be provided before order of stay is granted to the applicant as was also rightly held by the Court of Appeal in **Mantrac Tanzania Ltd** (supra). What is more important is for the applicant to undertake to provide the same. The object of providing security for the purposes of the above section in my opinion is to make sure that the subject matter of execution be it movable or immovable will not be disposed of or affected anyhow upon grant of stay order. In this case it is in evidence that, even the title deed of the suit premises is not in the applicant's possession hence minimizing the risk of the suit property being tampered with. On that reason, I see no reason to impose any condition to the applicant before the order for stay of execution is issued.

In the upshot, I hereby grant the application and proceed to make an order for stay of execution of the decree in RM Civil case No. 72 of 2000, before the Resident Magistrates Court of Dar es Salaam at Kisumu, pending hearing and determination of Civil Revision No. 16 of 2022 before this Court.

I make no order as to costs.

It is so ordered

DATED at DAR ES SALAAM this 29th day of July 2022.



E. E. KAKOLAKI

JUDGE

29/07/2022.

The Ruling has been delivered at Dar es Salaam today 29th day of July, 2022 in the presence of Mr. Hamis Katundu for the Applicant, Mr. Jihn Kamugisha for the 1st Respondent and Ms. Asha Livanga, Court clerk.

Right of Appeal explained.



E. E. KAKOLAKI

JUDGE

29/07/2022.