

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISCELLANEOUS CIVIL APPLICATION NO 96 OF 2021

(Original Probate No. 01 of 2021 in the High Court of Tanzania Mwanza Sub-registry at Mwanza)

OLUWA MKANDO.....APPLICANT

Versus

HUSSEIN KASSIM OMARY..... RESPONDENT

RULING

15th March & 12th April 2022

Kahyoza, J:.

Having petitioned for grant of probate and lost, **Oluwa Mkando** contemplates to appeal to the Court of Appeal. He however, defaulted to lodge a notice of appeal within the prescribed time. He applied for extension of time to file a notice of appeal vide Misc. Civil Application No. 46/2021. He also applied to this Court seeking for an order to restrain **Hussein Kassim Omary**, the respondent and his agent from disposing the suit land locate at Plot No. 250 Block "T" Kenyatta Road in anyway including renting. He also prayed rent from the existing tenants to be remitted to the Court.

Oluwa Mkando is represented by Mr. John Paul Nicholaus Kaunara while **Hussein Kassim Omary**, the respondent appeared in person. At the hearing, Mr. Joseph learned advocate entered appearance on behalf of

the applicant. He submitted that the applicant is praying for an injunction under sections 68 and 93 read together with rules 1(a) and (b) of Order XXXVII of the Civil Procedure Code Act, [Cap. 33 R.E. 2019] (the **CPC**). He argued that the applicant had filed an application for extension of time to file a notice of appeal. He prays to this Court to restrain the respondent from disposing the suit property until the application for extension of time to lodge a notice of appeal is granted. He prayed to adopt the applicant's affidavit to support the application.

Hussein Kassim Omary opposed the application by filing a counter affidavit. He submitted also that the application is meritless. He submitted that the deceased's family depends on rent accrued suit premises.

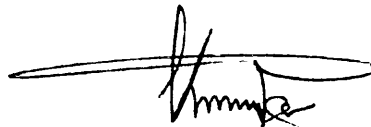
After the parties concluded their submissions, I requested them to address me if the application for injunction is tenable after a judgment has been delivered.

The applicant's advocate submitted that an application for injunction cannot be granted after the case is decided. He went on to submit that although the judgment had been entered the application for injunction can be granted as the present case was exception. He contended that the Court may grant the application for injunction in the present case as the conditions stated in the case of **Attilio v Mbowe**, do exist. He argued that one of such conditions is that before a court grants an injunction, there

must be a pending case. He argued that the pending case is Misc. Civil Application No. 46/2021.


It is evident that **Oluwa Mkando** filed an application for injunction pending this Court's order granting an application for extension of time to lodge a notice of appeal. Regardless of the merit or demerits of this application, it is obvious that it is dependent on the outcome of an application for extension of time to file a notice of appeal. Knowing that the application for extension of time to lodge a notice of appeal has been struck out for being incompetent, it becomes an academic exercise to determine the instant application on merit. I find the application overtaken by events. I accordingly strike it out with costs.

I order accordingly.



J. R. Kahyoza
JUDGE
12/04/2022

Court: Ruling delivered in presence of Ms. Bitunu advocate for the appellant and in the absence of the appellants. B/C Ms. Martina (RMA) present.



J. R. Kahyoza
JUDGE
12/04/2022