

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISCELLANEOUS LAND APPLICATION NO. 42 OF 2022

(Arising from the Land Application No. 37 of 2022 and Misc. Land application No. 57/2021 both of this Honourable High Court and Misc. Land application No. 143/2020 and original Land application No. 40/2019 in the District Land and Housing Tribunal for Kahama at Kahama)

JOYCE LEONARD.....APPLICANT

VERSUS

ALEXANDER MASUMBUKO.....1ST RESPONDENT

DEOGRATUS MWANGOKA.....2ND RESPONDENT

(Administrators of the Estate of the late Joshua Nyalili)

MKASSIWA AUCTION MART &

COURT BROKER CO. LTD.....3RD RESPONDENT

RULING

In this application the applicant is seeking stay of execution pending hearing and determination of Misc. Land Application no. 37 of 2022 for leave to appeal against the ruling of this Court, (Kulita, J.) in Misc. Land Application no. 57/2021 which denied her extension of time to appeal against the ruling of the trial tribunal.

At the hearing of this application the applicant who was present in person was represented by M/S Joyce Raphael learned advocate.

The respondents had the representation of Mr. Bakari Chubwa Muheza learned advocate.

The learned advocate for the applicant adopted their affidavit and added that since they intend to appeal to the Court of appeal and there

is a pending application for leave, the interest of Justice requires that this application be granted.

On his party Mr. Bakari Chubwa Muheza learned advocate argued that this application has been overtaken by event because the execution which is sought to be stayed has already been executed way back before this application was filed.

He submitted, that the execution was made on 10/08/2022 and this application filed on 15/08/2022.

M/S Joyce learned advocate in rejoinder argued that the execution was not fully executed as some of the rooms were not opened.

Having heard the parties for and against this application, I am of the firm view that this application must fail.

I have seen the execution report by Mkasswa Auction Mart and Court Broker which was filed in the Executing Tribunal on 10/08/2022 to the effect that the execution has already been made. To quote part thereof;

"Leo tarehe 10/08/2022 nimemtoa rasmi ndani ya nyumba pamoja na vitu vyake vyote nikiviweka nje ya nyumba na yeye mwenyewe nikamtoa ndani ya nyumba ndugu Joyce Leonard...nimemkabidhi nyumba Mshinda Tuzo ndugu Alexander Masumbuko na Deogratus Mwangoka.....na akafunga makufuri katika nyumba yake...."

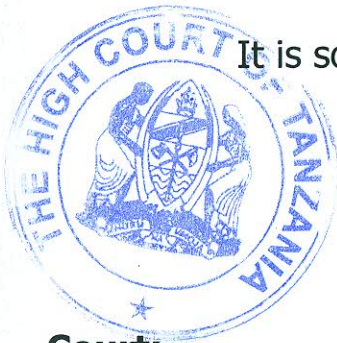
In the circumstances I agree with Mr. Chubwa that indeed I have nothing to stay. Any order purporting to stay the execution as purported would bring disharmony.

It is upon the decree holder now the respondents to use the suit premises under precautions that the intended appeal if allowed they will have to make good any loss to be incurred as a result of misuse or bad use of the premises. But currently they are the owners of the same and no decree has set aside such ownership. I cannot issue an order which is going to dispose the decree holder the premises which has already come into his possession.

That will only be done upon the Applicant's success in her intended appeal to the Court of appeal.

That being said, this application is hereby dismissed in its entirety.

Given the circumstances I order no costs to either party.



It is so ordered.


A. MATUMA
JUDGE
31/08/2022

Court:

Ruling delivered in the presence of the applicant in person and her advocate Joyce Raphael and in the presence of advocate Bakari Chubwa Muheza for the Respondents.

Right of appeal explained.


A. MATUMA
JUDGE
31/08/2022