

IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY OF MWANZA)
AT MWANZA

MISC. LAND APPLICATION NO. 112 OF 2021

(Arising from Misc. Land appeal No. 27/2021, Originating from application No. 74 of 2019 in the District Land and Housing Tribunal for Mwanza at Mwanza original land case No. 08 of 2017 Magu ward tribunal)

DOTTO SALUM.....APPELLANT

VERSUS

JOHN M. LUFEGA.....RESPONDENT

RULING

Date of Last order 30/9/2022

Date of Ruling 04/10/2022

R. B. MASSAM, J.

This is a ruling in respect of the preliminary point of objection raised by the respondent objecting to the appeal on the reason that the execution which was uncontested by the appellant has been completed, so he prays for the application to be dismissed. In brief, the facts are as follows the respondent sued the appellant before the Ward Tribunal and the respondent emerged successful. Appellant did not appeal on time against the decision of the Ward Tribunal, respondent applied for execution from the order passed by the ward Tribunal vide Land Case No. 8/2017. The appellant raised



a preliminary objection that the application is incompetent. The chairman dismissed the preliminary objection as it was time-barred. The appellant appealed to this court before Kahyoza, J and on 16/2/2022 the appeal was dismissed for want of merit. Again on 23/12/2021, the appellant brought an application praying for an exparte interim order restraining the defendants, his agents or servant from developing the suit premises pending the hearing and determination of the Misc. Land Appeal No. 27/2021. Before hearing of this Misc. Land Application No. 112/2021, the respondent John M. Lufiga raised a preliminary point of law that the appellant's application and supporting affidavit are incurable and defective for offending the mandatory legal rule of res judicata, as the Misc. Land appeal No. 27 of 2021 is already determined, so that application hinders the respondent's enjoyment of court judgment and decree to use his suit.

In the hearing of this application which was urged orally, both parties appeared in person unrepresented. Submitting in support of the preliminary point of objection respondent submitted that he is objecting applicant's objection because it has no merit, he said he filled Execution No. 74/2019 before District and Land Housing Tribunal, and the appellant objected it but he did not succeed.



So, the appellant was aggrieved and appealed to this court on Misc. Land appeal No. 27/2021 before Kahyoza, J, later on, he received a summon in the new case Misc. Land application No. 112/2021 while the original case Misc. Land appeal No. 27/2021 was still in court. It is his opinion that, if the appellant had anything to address the court, he could address it on Misc. Land appeal No. 27/2021 before Kahyoza, J so it is his prayer that, this application to be dismissed as no case is pending in this court the one which was before Kahyoza J was already delivered on 16/2/2022.

Opposing the preliminary objection, the appellant submitted that, he is objecting to the preliminary objection of the respondent as it has no merit, as he filed this application before Kahyoza, J delivered his judgment.

He added that, he received an order from the respondent to vacate his land and hand it over to the respondent thus why he filed this application. He prayed this court to hear his application first and stay the appeal but the appeal was before Kahyoza, J and this application was before Dyansobera, J. so that was not done. He went on to submit that he already filed a notice of appeal, so he is on the process to file an application for leave to appeal the Court of Appeal.



Lastly, he submitted that, the preliminary objection has no merit, so he prays to be heard and granted his prayer as prayed.

In a rejoinder, the respondent submitted that, the appellant's submission is against the law as if he had anything to address the court, he could raise it before Kahyoza, J. He added that the appeal to the Court of Appeal is 60 days, and from now is 8 months, so he pray the dismissal of this Misc. Land application No. 112/2021 for it has no merit.

I have gone through the submission of both parties and considering the submission by the respondent as well as the appellant on the preliminary hearing point of law so raised, this court finds the central issue for determination is **whether the preliminary objection is meritorious**.

This court after looking at the Preliminary Objection raised by the respondent, it noticed that, the respondent is alleging that, the application before this court has been overtaken by event as the said Misc. Land Appeal No. 27/2021 is no longer in court and it's ruling was delivered on 16/2/2022. This court is in support of the respondents' submission as its true that there is no pending appeal before this court so the stay will not be necessary, this is supported by the case of **Project Manager of Noremco vs. Joseph**

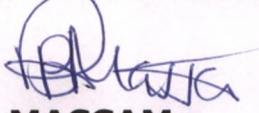


Urio and Nakara Auction Mart, Civil Application No. 72 of 1998, in which Lubuva, JA stated that, stay of execution on a matter which has been executed cannot serve any useful purposes because the matter has been overtaken by event. in this present application, the appellant prayed this court to stay execution from Land Application No. 27/2021 pending the determination of Misc. Land Appeal No. 27/2021 in perusing to the court record Misc. Land appeal No. 27/2021 was already determined on 16/2/2021, so there is nothing that can be stayed by the court at this stage as the appeal has already been determined.

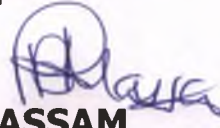
Guided by the above decision, as it was rightly argued by the respondent, am satisfied that the application is misconceived because it is overtaken by the event in Misc. Land Appeal No. 27/2021 which is the subject matter of the instant application was already been determined. Consequently, I sustain the preliminary objection raised by the respondent and proceed to struck out this application with costs. It is so ordered.

DATED at **MWANZA** this 4th day of October 2022.




R.B. MASSAM
JUDGE
04/10/2022

Court: Judgment delivered on 04 October, 2022 in the presence of the applicant and in the absent of the respondent.



R.B. MASSAM

JUDGE

04/10/2022