

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

MISCELLANEOUS LAND APPLICATION NO.26 OF 2022

*(Originating from Land Application No.75 of 2020 in the District Land and Housing Tribunal
and Miscellaneous Land Application No. 14 of 2022 in the District Land and Housing
Tribunal)*

GASHEL GAKUNE..... APPELLANT

VERSUS

MBUKE SHIMBA..... RESPONDENT

RULING

27th September,2022 at 11:00 am

27th September,2022 at 11:30 am

L.HEMED, J

GASHELI GAKUNE, the Applicant in this application for stay of execution lost the case at the District Land and Housing Tribunal for Maswa in Land Application No. 75 of 2020 which was delivered on 18th day of November,2020 in favor of the Respondent one **MBUKE SHIMBA**. The



Applicant is asking this Court to stay execution of the trial Tribunal decree pending final determination of Land Appeal No. 85 of 2021.

When the matter was called for hearing, the Applicant who appeared in person, told the Court that he was aggrieved by the decision of the District Land and Housing Tribunal and that he has already lodged an Appeal in this Court which has been registered as Appeal No.85 of 2021.

On the part of the Respondent who also appeared in person reported that the Decree of the District Land and Housing Tribunal for Maswa in Land Application No. 75 of 202 has already been executed by SHASHINHALE AUCTION MART AND TRIBUNAL BROKERS LTD. She showed the hand over note of the Shamba to the Respondent.

When he was given chance to rejoin, the Applicant told the Court that when the Tribunal Brokers went to execute the decree of the trial Tribunal he was away. According to the Applicant all his houses in the suit property/land have been pulled down.

Having heard from the parties, the question that arises is whether this Court has the requisite Jurisdiction to grant the Application. Upon perusal of



the annexures to the Application, I found an Eviction and Demolition Order directed to SHASHINHALE Auction Mart to evict one **Gasheli Gakune** from the suit premises, which were the subject matter in Land Application 75/2020.

According to the record of the trial Tribunal, it appears that the eviction and demolition order was made out of execution proceedings in Miscellaneous Land Application No.14 of 2022, where the present Respondent, Mbuke Shimba applied for execution of the Decree in Land Application No. 75/2020 against the Applicant herein, **Gasheli Gakune**. Since the said Decree has already been executed by the Court which passed it, there is nothing remaining which this Court can intervene through an order of stay. This Court falls short of Jurisdiction to stay execution of the Decree which has already been executed.

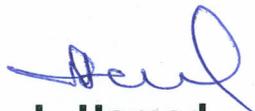
I have asked a question if it was proper for the Applicant to lodge his application for stay of execution in this Court instead of filing it in the District Land and Housing Tribunal. Order XXI rule 24 of the Civil Procedure Code [Cap 33 RE 2019] requires Application for stay of execution to be lodged in the Court to which a decree has been sent for execution. According to section 32 and order XXI rule 9 of the Civil Procedure Code executing Court is the Court which passed the Decree. In the present case, the Decree which the Applicant is



seeking to stay, was passed by the District Land and Housing Tribunal for Maswa, thus it is the only competent court to execute it.

In the final analysis, I find that, the fact that this Court is not the executing Court of decree passed by District Land and Housing Tribunal, neither was it sent to this court for execution; and the fact that the said Decree has already been executed by the District Land and Housing Tribunal for Maswa, this Court has no jurisdiction to grant the order sought in the Application for stay of execution. I thus proceed to dismiss the entire Application with no orders as to costs. It is so ordered.

DATED at **SHINYANGA** this 27th day of September, 2022.


L. Hemed
JUDGE
27/9/2022

At 11:30 am

Coram: HON. L. HEMED, J

Applicant: Present in person

Respondent: Present in person

B/C: Ogenga, RMA

COURT:

Ruling delivered.

Right of appeal fully explained.



A handwritten signature in blue ink, appearing to read "L. Hemed", is written over the printed name.

L. Hemed
JUDGE
27/9/2022