

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

MISC. LAND APPLICATION NO. 32 OF 2022

(Originating from Misc. Land Application No 24 of 2022 High Court of Tanzania at Tanga)

USHIRIKA WA MAFUNDI UJENZI MUHEZA.....APPLICANT

-VERSUS-

IBRAHIM SHABANI as administrator of
the estate of the late SHABANI ALLY.....**RESPONDENT**

RULING

Date of last order: 04/11/2022

Date of ruling: 11/11/2022

AGATHO, J:

This is an application for stay of execution of execution order granted in execution No. 112/2021 against the judgment and decree in an Application No 69 of 2009 of the trial tribunal intended to be executed by the Respondent and there is a pending application no. 24 of 2022 before this Court in which the Applicant has applied for extension of time to Appeal to the Court of Appeal (CAT). The Applicant also prays that the costs of this application abide to the main cause, and any other reliefs as the Court deems fit and just to grant.

It suffices to mention that the ex parte interim application for an order of stay of execution was granted on 06/07/2022 pending inter partes determination of the application.

The Applicant filed his application supported by an affidavit of Ramadhani Ally Kazavi as a chairperson of the Applicant. The Respondent protested the application by filing his counter affidavit deposed by Ibrahim Shabani (the Respondent).

The Applicant was represented by Christopher Wantora, advocate and the Respondent was under representation of advocate Wilfred Wenceslaus Mramba. On 27/09/2022 the court directed the parties to dispose the application by way of written submissions. The schedule was drawn, and the Applicant filed her submission on 11/10/2022. The Respondent filed hers on 21/10/2022. The rejoinder was filed on 25/10/202. And the ruling was set to be delivered on 04/11/2022. The ruling could not be delivered as scheduled because the presiding judge was transferred to another duty station. Nevertheless, he managed to compose the ruling.

Before proceeding to determine the merit or otherwise of the present application I should set the records clear. There was a decision in an application No.96 of 2009 by the District Land and Housing Tribunal (DLHT) for Tanga in 2012. The decision was in favour of the Respondent.

leaving out co-applicants? Is it fatal to apply alone as the Applicant did in the case at hand? Should the names of disinterested parties be impleaded as Applicants? In my view, it is not fatal to leave out the names of other persons who were Applicants to the original application at the DLHT if at all they do not want to do so. Therefore, removing their names in application at hand could not lead to miscarriage of justice or anyhow prejudice the Respondent. As rightly pointed out by the Applicant in his rejoinder these persons are not decree holders. Therefore, if they do not want to pursue the matter further, they cannot be forced to do so.

Turning to the thrust of the application at hand, that the Applicant is seeking stay of execution pending determination of her application for extension of time to appeal to the CAT. I have noted that the Applicant in his submission in chief he has been submitting on temporary injunction orders. Even the cases cited were on injunctive orders, for instance the case of **Kibo Match Group Ltd v H.S. Impex Ltd [2001] TLR 162**. This is not only misleading but also a misconception.

I have also noted that the Respondent has levelled an allegation against the Applicant that he is playing delaying tactics. But this allegation is new and is unfounded in the Respondent's counter affidavit. This is against the usual practice. It is trite that parties are bound by their pleadings. That

The Applicant sought extension of time to appeal to the Hight Court of Tanzania (HCT) in Application No. 133 of 2017 at the HCT, Tanga. The application was dismissed for failing to adduce good cause and accounting for each day of the delay. In 2022 the Applicant filed an application No. 24 before this Court seeking extension of time to file an appeal to the Court of Appeal (CAT).

The Respondent has contested the application by filing his counter affidavit which was very brief. Surprisingly, in his reply to the Applicant's written submission the Respondent alleged that the Applicant is playing delaying tactics. He is delaying the execution. That issue was not raised in the counter affidavit of the Respondent. That cannot be entertained because the law of procedure does not allow one to raise new points in the submissions. The practice is that the issues or evidence should be in the affidavits.

Another point worth clarifying is the allegation by the Respondent that the Applicant has decided to file an application for stay of execution and application for extension of time alone while the Respondents in the original application No. 96 before DLHT for Tanga and Misc. Land Application No. 133 of 2017 before the HCT were four. We ask whether it was proper to leave out other Applicants? Or what is the consequence of

was held in **Makoni Wassga v Joshua Mwaikambo [1987] TLR 88** (CAT). The pleadings are intended to avoid taking other party by surprise as it was stated in **James Fonke Gwagilo v A.G. [2004] TLR 161**.

At this juncture, although the Applicant may seem to be sloppy in acting or in making his application and he seems to be playing delaying tactics, justice will demand that the order for staying the execution be granted because there is a pending application for extension of time. Moreover, since the interim order for stay of execution was granted by this Court, and as there is still the pending application for extension of time, it is just to grant the stay of execution pending determination of that application for extension of time to appeal to the CAT. But it is important to note that if the application for extension of time is refused, then the stay of execution will automatically be terminated. In lieu of the foregoing the order for stay of execution is granted pending determination of the application for extension of time which is pending in this Court.

Given the nature of this application no order as to costs is given.

It is so ordered.

DATED at **TANGA** this 11th Day of November 2022.



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U. J. AGATHO

JUDGE

11/11/2022

Court: Ruling to be delivered by the Hon. Aloyce Masua, Senior Resident Magistrate and Acting Deputy Registrar, on this 11th day of November 2022 in the presence of the parties.



A handwritten signature in blue ink, appearing to read "U. J. Agatho", followed by two vertical lines.

U. J. AGATHO

JUDGE

11/11/2022