

**IN THE HIGH COURT OF TANZANIA
TABORA DISTRICT REGISTRY
AT TABORA**

MISC. CIVIL APPLICATION NO. 4 OF 2020

[Arising from Execution Case No. 1 of 2020 and Original Land Case No. 2 of
2018 of the High Court of Tanzania at Tabora.]

KASULU TOWN COUNCIL.....APPLICANT / JUDGEMENT DEBTOR

VERSUS

**IBRAHIM NTAGALUGWA
DANIEL MPULILA
JUSTINE KAYOYO
DEOGRATIUS DODWE
NOAH GERVAS
ASHA ALEX
FENIAS WILSON
SELEMA BILOHE
MAGWILA PIUS
HABIBA ATHUMAN
JOHN MEMBA
MATHIAS KAJINYIKA
KILOLO SALUM ALLY
HARUNA NAKO
GIDION YAKOBO
SALEHE TOYI
JEROME MBUMBULI
PIUS KATULUMULA
HERBERT GWITABA**

.....**RESPONDENTS / DECREE HOLDERS**

.....
RULING
.....

Date of Last Order: 30/09/2022

Date of Delivery: 11/11/2022

AMOUR S. KHAMIS, J.

Kasulu Town Council filed this application for an order to stay the execution of a Decree given out by this Court in Land Case No. 2 of 2018 which marked the suit to have been settled by a Deed of Settlement.

The application was made by way of Chamber Summons under XXI Rule 24(1) and Section 95 of the Civil Procedure Code, Cap 33 R.E 2019, and any other enabling provision of the law. Fatina H. Laay, the applicant's Town Director affirmed an affidavit that supported the application.

In the said affidavit, the deponent stated that Land Case No.3 of 2018 instituted by the respondents was settled after signing a Deed of Settlement and that the agreed terms were communicated to the higher authority of the Local Government in order to give a way forward for execution.

The affiant added that while awaiting the response from the higher authority, the applicant herein was secretly informed by some of the respondents herein had no actual contracts to entitle them to any benefit from the Deed of settlement and that some of them were involved in the suit without their consent while others lied about their true identity.

Ms. Fatina further deposed that some of the decree holders (respondents herein) withdrew themselves from the suit in order to be given stalls under the new terms set by the applicant.

Therefore, the deponent pointed out that this Court's Decree cannot be executed but rather need to be stayed in order to sort out the discrepancies stated in the affidavit.

The respondents did not file any counter affidavits and neither did they seek leave of Court to do so despite the fact that they had a legal representative.

The application was preferred by way of written submissions after both parties sought leave of the Court to do so. The applicant was represented by Mr. Edwin Rwekaza, learned advocate and all the respondents enjoyed the services of Mr. Amosi Gaise, learned advocate.

Mr. Edwin Rwekaza adopted the contents of the affidavit affirmed by Ms. Fatina H. Laay which supported the applicant's application. He also averred that the discrepancies pointed out in the affidavit were sufficient enough to warrant stay of execution of this Court's Decree in Land Case No. 3 of 2018.

This was however contended strongly by Mr. Amosi Gaise who asserted that the applicant was misleading the Court. he argued that Land Case No. 3 of 2018 was heard on merit and a final judgment was delivered contrary to what Mr. Rwekaza asserted that it ended by settlement by a Deed of settlement.

Mr. Amosi Gaise further opposed that the decree holders never withdrew themselves from the suit as it was alleged by the applicant.

After going through the rival submissions from both learned advocates. The remaining issue is to determine whether the applicant raised sufficient reasons for stay of execution.

It is the provision of Order XXI Rule 24(1) of **THE CIVIL PROCEDURE CODE CAP 33, R.E 2019** that:

“The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution or for any other order relating to the decree or execution which might have been made by such court of first instance or appellate court if execution had been issued thereby, or if application for execution had been made thereto.”

In this present case, the applicant did not reveal the presence of any filed appeal or intention to file an appeal, revision, or review that would examine the discrepancies raised by the applicant in this application.

The provisions of Order XXI Rule (24) (1) of **THE CIVIL PROCEDURE CODE** (supra) have been well explained in many Court decisions including the case of **NATIONAL HOUSING CORPORATION V ETIENNES HOTEL, CIVIL APPLICATION No.175 OF 2004** (unreported) where the Court of Appeal held that:

“Stay of execution is not an end in itself but it serves a purpose where there is an appeal pending. Here, as I have demonstrated above, there is no pending appeal. So, what is the relevancy of stay of execution? Why allow an appeal which is for all intents and purpose, is academic?.....”

In **JOAKIM KALEMBWE V M.N MWAMLIMA, CIVIL APPLICATION NO. 76 OF 1998** (unreported), the Court of Appeal also held that:

“It is common knowledge that the purpose of an order for stay of execution is to maintain a status quo position in a particular case pending further steps being taken thereafter, eg: pending determination of an appeal....”

In such circumstances as stated in the above cited cases and provision of the law, I find that the absence of any pending case before any Court cannot warrant this Court to grant an order for stay of execution.

In the upshot, this application lacks merit and is hereby dismissed with no orders to costs.

It is so ordered.




AMOUR S. KHAMIS

JUDGE

11/11/2022

