

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 203 OF 2019**

*(Arising from Execution Case No. 27 of 2018 and Misc. Civil  
Application No. 171 of 2019)*

**KIBERITI JEROMINI**

**MASUMBUKO @MASAWE.....APPLICANT**

**VERSUS**

**HOLIDAY WILFRED NGONYA .....1<sup>st</sup> RESPONDENT**

**GIANT FINANCE LIMITED .....2<sup>nd</sup> RESPONDENT**

**JACKOB SAMSON SIMVICHE .....3<sup>rd</sup> RESPONDENT**

**TULVIN INVESTMENT CO. LTD .....4<sup>th</sup> RESPONDENT**

**RULING**

*26/08/2021 & 02/12/2022*

**S.M. KULITA, J.**

This is an application for Stay of Execution pending determination of application for Extension of Time to Set Aside *Ex-Parte* Judgment for the Land Case No. 83 of 2016 delivered by this court on the

27<sup>th</sup> day of April, 2016. The application has been made under Order 21, Rule 24(1), Section 68(e) and Section 95 of the Civil Procedure Code [Cap 33 RE 2002]. The affidavit to the application has been sworn by **KIBERITI JEROMINI MASUMBUKO**, the Applicant on the 4<sup>th</sup> day of April, 2019.

The matter was argued by way of written submissions. While the Applicant was represented by Mr. Joseph Msengezi, Advocate, the 1<sup>st</sup> Respondents enjoyed the legal service of Mr. Thomas Joseph Massawe. As for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, they never filed replies nor appeared before the court for this matter, hence the matter proceeded *ex-parte* against them.

In his written submission the Applicant's Counsel, Mr. Joseph Msengezi submitted that the Applicant was unaware of the Civil Case No. 83 of 2016 which was determined and decided *ex-parte* on that 27<sup>th</sup> day of April, 2016. He said that, soon after the Applicant becoming aware of it, he filed the Misc. Civil Application No. 171 of 2019 seeking for extension of time to set aside the said *ex-parte* judgment of which he said to be still pending before Hon. Masabo, J. He added that the said case was about to be scheduled for ruling in February 2021.

The Applicant's Counsel further averred that if the application won't be granted the Applicant will suffer irreparable loss. Further, the Counsel alleged that the Applicant has overwhelming chances of success in the pending Misc. Civil Application No. 171 of 2019. He added that the original case, Land Case No. 83 of 2016 is tainted with illegalities which is a good ground for this court to grant extension of time.

He concluded by praying the court to grant this application for stay of execution against the Respondent from executing the decree for the Land Case No. 83 of 2016 dated 27<sup>th</sup> April, 2016 which involves eviction of the Respondents from the property located on plot No. 282 Block "C" Part III, Tabata, Dar es Salaam.

In reply thereto, the 1<sup>st</sup> Respondent's Counsel, Mr. Thomas Joseph Massawe resisted Mr. Msengezi's argument that the Applicant will suffer irreparable loss if the application is not granted. He said that the matter does not touch the 1<sup>st</sup> Respondent alone but also the other three Respondents.

Mr. Massawe further argued that there was no illegality in the Land Case No. 83 of 2016 as the records transpire that the summons were dully served to the Applicant but didn't enter appearance, hence the court rightly proceeded *ex-parte* against him.

The Counsel concluded by praying for the application to be dismissed for lack of merit.

Before determining the issue of stay of execution, I find it convenient to start with dealing on the current status of Misc. Civil Application No. 171 of 2019, a case from which this application arises. The High Court records transpire that, in his written submission filed on the 8<sup>th</sup> day of December, 2020, Advocate for the Applicant stated that the Misc. Civil Application No. 171 of 2019 before Hon. Masabo, J. was about to be scheduled for ruling by February, 2021. That led me to make a follow up of the stage at which the said matter had attained. In doing so, I came to note that the said Application had been fully determined since 26<sup>th</sup> February, 2021 in which the application for leave to file the application to set aside *ex-parte* judgment was granted.

The said status in respect of the Misc. Civil Application No. 171 of 2019 is available in the Judiciary website namely ***Tanzlil***, which provides, among the other things, decisions that the High Court and Court of Appeal have delivered. The said website is accessible to the public as a whole.

In the application at hand, Misc. Civil Application No. 203 of 2019, the applicant seeks for **stay of execution pending**

**determination of** the application for extension of time to set aside *ex-parte* Judgment, through **Misc. Civil Application No. 171 of 2019** which was not yet determined by that time.

The fact that the application at hand, Misc. Civil Application No. 203 of 2019, arises from the said Misc. Civil Application No. 171 of 2019 which has already been determined, this application is overtaken by event, hence **dismissed**. No order as to costs.

HL

**S.M. KULITA  
JUDGE  
02/12/2022**

