

**IN THE HIGH COURT OF TANZANIA**

**(MOROGORO SUB-REGISTRY)**

**AT MOROGORO**

**MISC LAND APPLICATION NO. 63 OF 2022**

*(Arising from the District Land and Housing Tribunal for Kilombero in Application  
No 35 of 2020)*

**IBRAHIM MHAKU ..... APPLICANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF..... RESPONDENT**

**IFAKARA HEALTH INSTITUTE**

**RULING**

30<sup>th</sup> June, 2023

**CHABA, J.**

Before me is an application for stay of execution filed by way of chamber summons made under Order 39, Rule 5 (1), (2), (3) and (4) of the Civil Procedure Code [CAP. 33 R. E, 2019]. The application was filed by Mascot Attorneys and is supported by an affidavit sworn by the applicant, Ibrahim Mhaku. The grounds for filing the application are: -

1. That, the respondent is about to execute the decree in the District Land and Housing Tribunal for Kilombero/Malinyi, at Ifakara.
2. That, the applicant shall stand to suffer irreparable loss if this Honourable Court will not grant an order for stay of the



execution pending hearing of the Land Appeal No. 59 of 2022 in this Honourable Court on the basis that the property in dispute is the property under the administration of estate.

When the application was called on for hearing on 16<sup>th</sup> March, 2023, Mr. Othman Kalulu, learned counsel represented the applicant whereas the respondent had the services of Mr. Fred Sanga, learned counsel who held brief for Mr. Bagen Elijah, also learned counsel with instruction to proceed.

Before the hearing could proceed, Mr. Sanga orally raised an objection to the effect that, the instant application has been overtaken by events because the execution process was conducted through Misc. Application No. 5 of 2022 at the DLHT for Kilombero, at Ifakara.

He submitted that, the present application was filed pending determination of appeal No. 5 of 2022 which is before this Court and the matter was dismissed on the 13<sup>th</sup> March, 2023 for want of prosecution, which means that there is no any matter which is pending before the Court. He therefore prayed the Court to dismiss the matter the way it thinks fit.

On the other hand, Mr. Sanga's proposition was challenged by Mr. Kalulu who submitted that, he was unable to concede that the matter has been overtaken by events and that it has been dismissed for want of

prosecution. According to him, he believed that the appeal is still pending before this Court and what has been stated by the learned counsel for the respondent is a mere statement from the bar.

Upon being asked and ordered by the Court to bring correct information about his submission so as to pave way for this Court to move forward, on 29<sup>th</sup> March, 2023, the respondent through the learned advocate, Mr. Sanga informed the Court that execution in respect of Misc. Application No. 5 of 2022 was before the DLHT at Kilombero and that the execution process took place on the 1<sup>st</sup> December, 2022 and the main case already has been closed. He stressed that, currently there is nothing to stay before this Court.

On the other hand, Mr. Kalulu contended that though the execution process has been done, but the same was conducted on the basis of illegality.

Upon hearing both parties, it was agreed by the parties that this appeal be argued and disposed of by way of written submission. Respectfully, both parties adhered to the Court's scheduled orders.

I appreciate the parties' submissions which for avoidance of repetition, I won't reproduce the same; instead, I have decided to go straight to determine the points of objection.



Now the first question for determination is whether the present application has been overtaken by events or otherwise. After Painstakingly going through the parties' submissions and the Court records, I would straight away agree with the learned counsel for the respondent and hold that, the instant application has been overtaken by events. This is evident from the order of the DLHT for Kilombero, at Ifakara dated 2/11/2022 and Tribunal Broker's report dated 1/12/2022 collectively marked as Annexure 1 from which it is crystal clearly shown that the land which the applicant wishes this Court to protect has already been handed over to the respondent. It is therefore, my considered view that, to grant the present application would serve no practical purposes as there is nothing that the Court could do at this stage to reverse the action which has already been carried out. There are abundant precedents supporting the proposition. For instance, in the case of **Juto Ally vs. Lukas Komba & Another (Civil Appeal No. 84 of 2017) [2020] TZCA 1829 (2 November 2020)**, the Court of Appeal of Tanzania held:

*"We revert to the question we raised earlier, whether the order of stay will serve any practical purpose. We **are firmly of the view that since execution has been carried out, we cannot make an order to stay it and that if it caused substantial loss to the applicant,***



*there is no order that can undo that" [Emphasis added].*

See also the cases of **Seleman Zahoro and 2 Others vs. Faisal Ahmed Abdul, as Legal Representative of the deceased Ahmed S. Abdul**, (BK) Civil Application No.1 of 2008, and **Felix Emmanuel Mkongwa vs. Andrew Kimwaga**, Civil Application No. 249 of 2016 (both unreported).

In the light of the above authorities, I am settled in my mind that the present application has been hopelessly overtaken by events as the decree upon which the orders are sought to be granted has already been executed.

From the above scenario, the next question is, what is the remedy where it is shown and evidenced that such an application has been overtaken by the event? In my opinion, the answer is not far-fetched. I had ample time to revisit different decisions of our Apex Court and found the way forward. For instance, in the cases of **Joachim Kalembe vs. M. K. Mwamlima**, Civil Application No. 76 of 1998; **Shell and BP Tanzania Limited vs. The University of Dar es Salaam**, Civil Application No. 68 of 1999; **Ebrahim Shamjei vs. AL Noor Shariff Jamal and Three Others**, Civil Appeal No. 129 of 2006; and **Shabir Ebrahim Bhaijee**,

**Faza Shabir Bhaijee, Huzaira Shabir Bhaljee vs. Selemani Rajabu Mizino and Another**, Civil Appeal No. 40 of 2007 (All unreported), all these applications for stay of execution of decree pending appeal were dismissed for being overtaken by events because the respective decrees were already executed.

Having observed the legal position from authorities above, I am satisfied that, the present application before this Court has both been misconceived and above all it has no merits.

As regards to the assertion by the learned advocate for the applicant that, the whole process of execution was illegal on the ground of failure to issue summon to the applicant herein to show cause, and that it was made prematurely, in my view, this allegation is not attainable in this type of application, unless this Court is moved by a way of revision.

Coming to another point for determination as to whether the pending appeal, that is Land Appeal No. 59 of 2021 has been dismissed for want of prosecution, this matter need not detain me much. I cannot but agree with the learned counsel for the respondent that records of appeal show that Land Appeal No. 59 of 2022 which this application is subject of, was dismissed in this Court on 13/3/2022 for want of prosecution. Hence, this point of objection also fails.



For the above reasons and in view of what I have endeavoured to deliberate, I am settled in my mind that, the present application has been overtaken by events as the execution process already has been done and that, the case registered as Land Appeal No. 59 of 2021 in which this application stemmed therefrom, has already been dismissed.

Consequently, this application is non-meritorious and it is hereby dismissed with costs. It is so ordered.

  
M. J. Chaba



**JUDGE**

**30/06/2023**