

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

**MISCELLANEOUS CIVIL APPLICATION NO. 9 OF 2023
(Arising from Application No. 9 of 2020 of the District Court of Tanga
Original District Court of Temeke Civil case No. 6 of 2017)**

SHAMILA ZUBERI KANIKIAPPLICANT

VERSUS

- 1. ALLY KHATIBU MKANGA.....1ST RESPONDENT**
- 2. HUSSEIN NASSORO ALI.....2ND RESPONDENT**
- 3. JAMAL MBAROUK SALIM.....3RD REAPONDENT**
- 4. NASSORO MAJID SAID.....4TH RESPONDENT**
- 5. TAN GLOBAL VENTURES CO. LTD.....5TH RESPONDENT**
- 6. SHASHINHALE AUCTION MART AND
GENERAL TRADING COMPANY.....6TH RESPONDENT**

RULING

2nd October, 2023 & 9th October, 2023

MANYANDA, J.

This is the ruling in respect of an application for stay of execution of eviction order made under Order XXXVII Rule 1(a) and Section 68(e) of the Civil Procedure Code, [Cap. 33 R. E. 2019]. The application is made by way of a chamber

summons supported by an Affidavit affirmed by Shamila Zuberi Kaniki, the Applicant. It is brought under a certificate of urgency but it took a normal cause after the court finding that there was no urgency.

The applicant is applying for lifting of eviction order issued against her from a house situated at Plot No. 37 Block "D", Mnyanjani Area in Tanga City. The eviction order was issued by a District Court of Temeke in Civil Case No. 6 of 2017 which was decided in disfavour of the applicant hence the matter was sent to Tanga District Court for execution.

The attached house was sold in a public auction under the supervision of the District Court of Tanga as an executing court. Hence, the court execution processes were legally carried out and completed. The execution was conducted and completed by a court broker called Shashinhale Auction Mart and General Trading Company. Then after completion of the execution the file was returned back to trial court, the Temeke District Court.



However, it appears that the buyer condoned the applicant to stay in the house in their arrangements completely out of the court, hence, the applicant continues living in the house.

After all those, the applicant came to this court in this application applying for lifting of the eviction order pending application for revision which also is not yet filed in court.

The application was urged orally; Shamila Zuberi Kaniki (applicant) was represented by Mr. Shukuru Khalifa, learned Advocate, and Mr. Warehema Kibaha, learned Advocate, appeared for the 1st Respondent while Mr. Christopher Wantora, learned Advocate, represented the 3rd and 4th Respondents. The application proceeded ex-parte against the 2nd, 5th and 6th Respondents.

Supporting the Application, Mr. Shukuru Khalifa, learned Advocate submitted that the applicant is a wife of the 2nd Respondent and that they live in the same house, Plot No. 37 Block "D" Mnyanjani Area in Tanga City. That, the 2nd Respondent borrowed money Tshs. 37,500,000/= from the 3rd



and 4th Respondents, but he defaulted repayment of the loan, he was adjudged by the trial court, Temeke District Court to repay the said Tshs. 37,500,000/=.

He also submitted that, the District Court of Tanga, to which the decree was sent for execution, completed execution of a decree by attaching the house in issue and selling in an auction whereas the 1st Respondent purchased the house.

The Counsel for the Applicant added that the Applicant has been in court corridors all the time praying for stay of execution pending determination of Misc. Civil Application No. 8 of 2023 for extension of time for filing application for revision of execution of the decree, which as said above, that was completed. Finally, the Counsel submitted that, to date the Applicant is still living in the house as her residential premises. Mr. Shukuru prayed this Court to issue an order condoning the Applicant to continue living in the house until an application in Miscellaneous Civil Application No. 8 of 2023 for revision of the execution is determined.



In reply, Mr. Warehema Kibaha, learned Advocate for the 1st Respondent submitted that the eviction was executed on 28/3/2023 and on 29/3/2023 the report of execution was registered in court. The 1st Respondent stated in the counter affidavit that the eviction order was already executed and that fact has not been opposed. He was of the view that as far as the status of the house, it was already finally determined, now it belongs to the buyer, who is the 1st Respondent, hence, this application has no merit, as it has been overtaken by event, he prayed the application to be dismissed with costs.

Mr. Christopher Wantora, learned Advocate for 3rd and 4th Respondents submitted that, this application intends to stay execution order of the District of Tanga which was sent to it from trial court, Temeke District concerning the house in issue. That, it is not disputed that the same was implemented and a back report filed in the Tanga District Court, as executing court, That the said back report contains an inventory signed by the Applicant acknowledging receipt of her properties after eviction. This fact is not controverted by



the Applicant, hence the act complained of has already been overtaken by event as eviction was conducted a day before this matter was filed in court.

He further submitted that this court cannot reopen eviction issue which has already been closed. Existence of the Applicant in the house does not legally justify re-opening of the case. Since the District Court of Tanga was just an executing court, it already returned the case file to the adjudicating court of Temeke District Court, hence, prays the application to be dismissed with costs.

In his rejoinder, Mr. Shukuru Khalifa, learned Advocate for the Applicant admitted that it is true the Respondents evicted the Applicant about two years ago, but they have condoned her presence in the house in issue to date. He insisted that the Applicant will suffer irreparable loss, hence, let this application be granted.

From the submission it is obvious that the main issue is whether the application is tenable. Further that from the parties' submissions, this matter concern execution of a



decree that was issued by the Temeke District Court (Trial court) and it is not disputed that the execution was conducted and completed. The Applicant signed an inventory of her properties acknowledging that she received her properties after eviction.

However, it appears that the applicant is still living in the house following an arrangement between her and the 1st Respondent an arrangement alien to the proceedings of this matter as the applicant was condoned to continue living in completely out of the execution proceeding which are now closed. As rightly submitted by the Counsel for the 3rd and 4th the execution file was closed and returned to the trial court. The Counsel for the Applicant admits this fact that execution was completed about two years ago. This Court agrees with the Counsel for the Respondents that this matter which was filed after completion and closure of the execution proceedings is overtaken by events.

If, at all, the Applicant is still living in the suit house, then, she is doing so out of private arrangements with the

buyer of the house which has nothing to do with the closed execution proceedings. It is my view that, although she is physically and biologically living in that house, in legal terms, she is technically evicted as the eviction order has already been executed.

In the circumstances, this Court finds that this application is barren of fruits as the application is overtaken by event, execution was completed and finally closed and the file already returned back Temeke District Court, this Court has nothing to do.

Consequently, I do hereby dismiss this Application with costs.

It is so ordered.

Dated at Tanga this 9th day of October 2023




F. K MANYANDA

JUDGE