

IN THE HIGH COURT OF TANZANIA

DODOMA SUB – REGISTRY

AT DODOMA

LAND APPEAL NO. 75 OF 2023

(Arising from Misc. Application No. 10 of 2023, and Land Application No. 25 of 2022 in the District Land and Housing Tribunal for Kondoza at Kondoza)

SIMONI MAZOYA APPELLANT

VERSUS

ANTONI SIMBAI BADADA *(Administrator of the Estate of the late Simbai Badada Kidakau)* **RESPONDENT**

RULING

25th March & 28th March, 2024.

MUSOKWA, J.

Briefly, this is an appeal against the decision and ruling of Kondoza District Land and Housing Tribunal (DLHT) in Misc. Land Application No. 10 of 2023. The said matter emanated from Land Application No. 25 of 2022 being the main suit whereby the respondent herein sought judgment and decree against the appellant herein. The claims to the main suit related to trespass on a piece of land measuring 8 acres situated at Kidoka Village within Chemba District. Thus, the respondent prayed that the late Simbai Badada Kidakau be declared the legal owner of the suit land; an order of eviction against the appellant herein and their agents; payment of general damages and costs of the suit.

Upon hearing of the matter, the DLHT entered judgment in favour of the respondent, who filed Misc. Land Application No. 09 of 2023 applying for the execution of the judgement and decree. Subsequently, the appellant lodged before the DLHT, Misc. Land Application No. 10 of 2023 seeking to stay the execution process. However, the application for stay of execution was dismissed, resulting in the instant appeal.

When this appeal came for mention on 25th March 2024, the appellant was represented by Mr. Erick Christopher, learned counsel, the respondent was absent without notice. Indeed, the continuous non-appearance by the respondent was concerning despite summons being duly issued. Therefore, I allowed the learned counsel to proceed accordingly.

Mr. Erick informed the court on the existence of another matter that was instituted and determined by this court as Land Appeal No. 29 of 2023 before Hon. Khalfan J. Further, Mr. Erick stated that the said matter was an appeal against the decision of the same DLHT in Land Application No. 25 of 2022, aforementioned. The learned counsel further explained that on 27/11/2023, the matter was conclusively determined and the decision was issued by this court. The decision of the appeal before Hon. Khalfan J. was to the effect that the judgment and proceedings relating to the

Land Application No. 25 of 2022 were quashed and set aside. In addition, it was ordered the case file to be remitted to the DLHT for retrial.

Elaborating further, the learned advocate submitted that the matter before this court is an appeal against the decision in Misc. Land Application No. 10 of 2023, being an application for stay of execution which was dismissed by the DLHT. The application for execution in Misc. Land Application No. 9 of 2023, was filed by the respondent (the decree holder) based on the judgment, decree and orders granted by the DLHT in Land Application No. 25 of 2022. Undoubtedly, both the present appeal and the Land Appeal No. 29 of 2023 before Hon. Khalfan J., originated from Land Application No. 25 of 2022 which was quashed and set aside, among other orders. In that regard, the appeal before this court has been overtaken by events. In light of this background, Mr. Erick prayed to withdraw this appeal.

Upon careful scrutiny of the records of the DLHT and the records before this court, including the ruling of Hon. Khalfan J; I am of the settled view that this appeal is automatically redundant. The court records indicate that the appellant lodged this appeal on 5th July, 2023 against the DLHT's ruling dated 9th June, 2023 in Misc. Land Application No. 10 of 2023 in which the DLHT, dismissed the application for stay of execution regarding the orders that were granted in the Land Application No. 25 of 2022. The

records also indicate that on 16th March, 2023 the appellant herein had already filed Land Appeal No. 29 of 2023 challenging the decision of DLHT in Land Application No. 25 of 2022 before Hon. Khalfan J. On 27/11/2023, the said appeal was determined by this court and among other things, the case file was remitted to the DLHT for retrial. That being the case, the proceedings and the decree against which this appeal was brought were quashed and set aside thus, non-existent. In the circumstances, I therefore wholly concur with the learned advocate for the appellant that the appeal before this court has been overtaken by events.

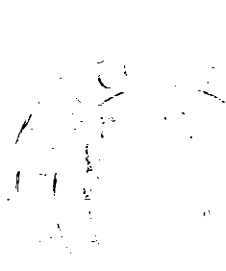
In the case of **National Microfinance Bank vs Japhet Machumu**, Civil Application No. 554 of 2019 (unreported), the Court of Appeal of Tanzania confronted a similar issue and it was held on page 6 as follows: -


***"The notice of appeal which is one of the requisite documents to enable us to grant stay of execution in terms of rule 11 (7) (a) of the Rules was struck out, hence there is no pending appeal. Thus, the application has been overtaken by events. We find the application incompetent and is accordingly struck out, with no order as to costs."** [emphasis added]*

Consequently, and based on the cited authority, the appeal is hereby struck out for being incompetent. No order as to costs.


It is so ordered.


DATED at **DODOMA** this 28th day of March, 2024.




I.D. MUSOKWA
JUDGE

Ruling delivered in the presence of Mr. Erick Christopher, learned advocate for the appellant and in the absence of the respondent.




I.D. MUSOKWA
JUDGE