

**IN THE HIGH COURT OF TANZANIA
TANGA SUB-REGISTRY
AT TANGA**

MISC. LAND APPLICATION NO. 65 OF 2023

(Arising from Ruling or and Orders of the District Land and Housing Tribunal for Tanga in Land Execution Application No. 25 of 2023, originating from Land Application No. 23 of 2019 of the District Land and Housing Tribunal for Tanga)

SHABAN MAAMRI APPLICANT

VERSUS

**JAMHURI GABRIEL SHAURI (Vide a power of Attorney
to Leonard Alfred Kilua)..... 1st RESPONDENT**

SHASHINHALE AUCTION MART 2ND RESPONDENT

RULING

K. R. Mteule, J

8/4/2024 & 15/4/2024

The Applicant lodged this application seeking for grant of an order for stay of execution in respect of orders issued in the District Land and Housing Tribunal of Tanga (DLHT) in **Land Execution Application No. 25 of 2023**. The orders were issued on 3/11/2023 and 28/7/2023. They emanate from the decree dated 25/3/2022 in **Land Application No. 23 of 2022** of the DLHT of Tanga. The Applicant is praying for the

order to stop the 2nd Respondent from executing the orders of the court in respect of the orders of the DLHT in the said application for execution pending an appeal pending in this Court. The Applicant is as well praying for the costs to follow the event and for any other orders as the Honourable Court may think fit to grant.

The 1st Respondent was the Applicant in **Land Application No. 23 of 2019** of the District Land and Housing Tribunal in which by its decision delivered on 25/03/2022, the 1st Respondent was declared the rightful owner of the suit property that is **Plot No. 57 Block K/Gezaulole** Tanga City. The decision aggrieved the Respondent therein who is the instant Applicant. He decided to lodge an appeal against that decision and the said appeal was finally determined before a Magistrate with Extended Jurisdiction. Thereafter, the 1st Respondent proceeded to pursue his application for execution in the DLHT from which orders were issued which dissatisfied the Applicant. Purporting to have appealed against the decisions issued in the Execution Application, the Applicant, lodged the instant application for stay of execution pending an appeal which was not disclosed in the Application.

The Application is supported by an affidavit sworn by the Applicant Shaban Maamri. In the applicant's affidavit the reasons advanced to



justify stay of execution are the existence of an appeal against the orders of the DLHT in the respective Application for execution.

Upon filing of a counter affidavit, the 1st Respondent raised two points of preliminary objection one challenging the jurisdiction of this court to entertain the application asserting contravention with **Regulation 25 (1) of the Land Disputes (The District Land and Housing Tribunal) Regulations, GN No. 173 of 2003** and **Order XXI Rule 24 (1) of the Civil Procedure Code, Cap 33 of 2019 RE.**

In the second point of objection, the Respondent is challenging the legality of the Application and asserting misconception as there is no appeal which is pending before this court to warrant granting the application. The Preliminary objection was argued by a way of written submissions. The 1st Respondent is represented by Ms Frida Akaro Adv while the Applicant is unrepresented.

Arguing the first point of preliminary objection, Ms Akaro Advocate for the 1st Respondent submitted that the real power to stay execution is vested in the court that passed the decree or the court vested with appellate jurisdiction over the decree sought to be executed. She recalled that the Applicant herein lodged an appeal which is **Land**

Appeal No. 60 of 2022 which was in the Resident Magistrate's Court of Tanga at Tanga (with Extended Jurisdiction) which was also decided in favour of the 1st Respondent. In her view, so far there is no any appeal from the decree of the trial Tribunal.

She cited the provision of **Regulations 25 (1) of the Land Disputes (The District Land and Housing Tribunal) Regulations, G.N NO. 173 of 2003** which provides that the Judgement Debtor may apply to the tribunal for stay of execution. The counsel further referred to **Order XX1 Rule 24 (1) of the Civil Procedure Code, Cap 33 R.E 2019** which provides as follows;

"24(1) 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 the first instance or appellate court if execution had been issued thereby or if application for execution had been made thereto."

Interpreting Order XX1 Rule 24 (1), Ms. Akaro submitted that, the real power for stay of execution is vested in the court that passed the decree and the court having appellate jurisdiction in respect of that decree. She addended that this position was re-stated in the case of **KHADIJA ABDALLAH vs. AJESH VAJA AND TWO OTHERS [1996] T.L. R 126** where it was held:

"The real power for stay of execution is vested in the court that passed the decree and the court having appellate jurisdiction in the respect of the decree.

It is Ms Akaro's submission that since the decree was passed by the District Land and Housing Tribunal for Tanga at Tanga, the applicant was required to seek for stay of the execution at the trial tribunal. It is her further submission that since the applicant lodged **Land Appeal No. 60 of 2022** of the Resident Magistrate's Court of Tanga at Tanga (with Extended Jurisdiction), then the Appellant should have sought the stay of execution in the Resident Magistrate's Courts of Tanga at Tanga being the court with the appellate jurisdiction in respect of the decree. In her view the application contravenes the provision of

Regulations 25 (1) of G.N NO. 173 of 2003 and Order XX1 Rule 24 (1) of the CPC.

Arguing the **second point of objection** that the application is bad in law and or misconceived as there is no any appeal which is pending before this honourable court, Ms. Akaro is of the view that existence of an appeal is one of the major factors to be considered to warrant granting stay of execution.

Ms. Akaro condemned the applicant's application for being silent as to which appeal is pending in this court to warrant granting the stay of execution. She submits that, the only Appeal was Land Appeal No. 60 of 2022 which was in the Resident Magistrate's Court of Tanga at Tanga (with Extended Jurisdiction) which is already determined to its finality in the 1st Respondent's favour and there is no any appeal so far which lies from the decree of the trial tribunal.

The Respondent considered the application as delaying tactics and denying the 1st Respondent from enjoying the fruits of the judgment. She referred to the case of **MATHIAS BUCYANA vs. REGISTRAR OF BUILDING [1998] TLR 117** where the Court of Appeal held:



"i) The intended appeal has no prospects of taking off as the applicant has no intention of appealing but is merely employing delaying tactics

ii.

Ms Akaro prayed for the court to hold the application being bad in law.

In reply to the Respondent's submissions, the Applicant does not dispute the fact that, **Appeal No. 60 of 2022** is already determined by a Magistrate with Extended Jurisdiction in the Resident Magistrate Court of Tanga. The Applicant contests the assertion that this application ought to have been filed in the Resident Magistrate Court of Tanga for a trial before a Magistrate with Extended Jurisdiction or alternatively in the tribunal which passed the decree. In the Applicant's view, **Section 45 (2) of the Magistrates Court Act Cap 11 of 2019 RE** provides for the High Court to transfer to the resident Magistrate with extended jurisdiction for trial. The Applicant cited further the provision of **Order XXI Rule 24 (1) of the CPC** which empowers the appellate court to admit and determine applications for stay of execution. As well he cited **Section 45 (3) of the Magistrate Court Act**. According to the



Applicant, in the strength of the cited laws, the Applicant submitted that the entire submission of the 1st Respondent collapses.

Regarding the second point of objection, the Applicant has submitted that there is an appeal which is **Appeal No 54 of 2023** between the same parties which is pending before the court which was filed under **Regulation 24 of GN 172 of 2003**. In his view, this argument collapses the 2nd point of objection.

From the points raised by the 1st Respondent, and the submissions of the parties, two issues arise for determination. The issues are:-

1. Whether this court lacks jurisdiction to determine this application.
2. Whether the application is bad in law or misconceived for having no appeal in this court.

While considering the two issues, one aspect came out as to whether the application is silent on the disclosure of the appeal pending before this court and if it is silent, what are the consequences of such non-disclosure. Although Ms. Akaro raised the non-disclosure of the appeal in her submission, she did not state the consequences of such non-disclosure. Her submission focused more on the non-existence of such

appeal. Her views were countered by the respondent who mentioned the existence of **Appeal No 54 of 2023** without any further details. I felt that even if thought the **Appeal No 54 of 2023** may be alive in our court registry which can be noted by judicial notice, still there is a question as to whether the applicant's failure to disclose it in the Application goes without any adverse effects in the propriety of the application. My mind being struck by this question, I saw it appropriate for the parties to address the court on the matter. On 8th April when the matter came for ruling, I called upon the parties to address me on the issue. The Applicant being a layperson, requested for opportunity to consult before making any submission. The court allowed the prayer and rescheduled the matter to come on 15th April 2024.

On 15th Day of April 2024, parties appeared and submitted on the matter. The Appellant did not dispute the fact that the application lacks the disclosure of the appeal pending in court under which the application hangs. His argument is that since there is an appeal, then all are court documents which need to be noted and the court to proceed with the application.

On the other hand, Akaro Adv. For the Respondent argued that the applicant deponed to have filed an appeal without disclosing the appeal

and for the application to stay an execution pending determination of an appeal, to be tenable, then there must be an appeal pursuant to **Regulation 25 (1) of the Land Dispute District Land and Housing Tribunal Regulations** and **Order XXI Rule 24 of the CPC**.

In her view, the application is incompetent.

Having considered the entire legal issues from the two points of preliminary objection raised by the Respondent and the parties' submission in response to the point raised by the court suo moto, I will address all of these legal points combined together to answer one issue as to whether the application is tenable.

The respondent vehemently attacked the application for lacking any appeal under which the said application is founded. The Applicant replied briefly and casually by mentioning the appeal pending in the court. It is to be noted that until the time when the Applicant filed his reply submission against the respondent's arguments to support the preliminary objection, it was not known if there is any appeal in this court. This is because the Applicant did not disclose such appeal. He came to disclose it after the long arguments challenging its nonexistence. Would the application disclosed the pending appeal, then the assertion on nonexistence of such appeal would not have been

mounted in the preliminary objection. This calls for a scrutiny of the propriety of failure to disclose such vital information in the Application.

The Court of Appeal of Tanzania addressed a similar scenario in the case of **Kasanzu Lusasula vs Lugito Bulayi (Criminal Appeal 26 of 2015) [2016] TZCA 221 (15 April 2016)**. In this case, the notice of appeal failed to disclose the case number under which the intended appeal is founded and it considered it to be a fatal irregularity. The Justices of Appeal stated:

"This requirement is important because it is the first document lodged in the Court by which the Court would then be able to identify and trace the particular matter that the Appellant intends to bring to the Court's attention. It identifies the particular case. Otherwise, the Notice as it reads now could apply to any matter decided by Rumanyika, J. on the 1st November, 2012. So, in the form as it is now the Notice of Appeal is not capable of being connected with the present appeal. It is defective, and the defect is a fundamental alone (See MANSOOR DAYA vs JENUS LIMITED, Civil Appeal No. 13 of 2001 (unreported))".

The position above entails that the applicant's failure to mention the appeal upon which the notice of appeal was based constituted a legal defect. The rationale referred to in the above cited case is that the court may not be able to trace the appeal which is to be the ground to allow the stay of execution. Non-disclosure of this vital information cannot be left to exist in an application of this kind where the applicant is mentioning stay pending an appeal which is not mentioned.

From this background, I find the Application to be defective for failure to disclose the appeal said to be pending in this court against which the application is founded. Consequently, the application is struck out. For interest of justice, the Applicant is granted leave to refile the application after correcting the error identified herein. The said application to be filed within 21 days from today.




KATARINA REVOCATI MTEULE

JUDGE

15 April 2024

Court:

Ruling delivered this 15th April 2024 in the presence of the Applicant in person and Ms. Frida Akaro for the Respondent.



A handwritten signature in blue ink, appearing to read "Katarina Revocati Mteule".

KATARINA REVOCATI MTEULE

JUDGE

15 April 2024