

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB REGISTRY
AT TABORA**

MISC. LAND APPLICATION NO. 2367 OF 2024

(From the decision of the District Land and Housing Tribunal for Tabora at Tabora in Execution Application No. 71 of 2023, Original Land Application No. 48 of 2023)

NASIBU BUDAAPPLICANT

VERSUS

FREE PENTECOSTAL CHURCH OF TANZANIA.....RESPONDENT

RULING

Date of Last Order: 08/05/2024

Date of Delivery: 06/06/2024

MANGO, J.

Nasibu Buda, filed this application for stay of execution of orders of the District Land and Housing Tribunal in Application No. 48 of 2023 via Execution Application No. 71 of 2023 before the same tribunal. In its ruling dated 22/09/2023, the District Land and Housing Tribunal for Tabora as the executing tribunal, ordered the Applicant to demolish any building he erected exceeding the boundaries of the disputed land and vacate the premises within 14 days. The tribunal ordered further that, failure to comply with the order to demolish and vacate the disputed land, the building would be demolished without further notice. The Applicant being dissatisfied with the manner execution was conducted, he filed the application for stay execution before this Court.

The application was brought by way of Chamber Summons made under Order XXI Rule 24(1) of the Civil Procedure Code [Cap 33 R.E 2019], supported by an affidavit affirmed by Nasibu Buda, the Applicant herein. The Chamber Summons contains prayer for the following orders:

- i. This honorable Court be pleased to stay the nonstop or continuing execution of the Application No. 71/2023 and execution of wrong item pending hearing of Misc. Land Revision No. 4/2023 whose summons was properly served to the respondents.
- ii. This honorable Court be pleased to order the respondent to stop disposing by auction by surprise and disregard the issue of notice to the Applicant
- iii. Costs of the application be provided
- iv. Any other and further order as this honorable court shall deem proper to issue

A brief background is significant to appreciate what prompted the filing of this application. Court record establishes that, the Respondent successfully instituted Land Application No.48 of 2023 before the District Land and Housing Tribunal for Tabora against, the Applicant. Thereafter, the Respondent filed an application for execution before the District Land and Housing Tribunal for Tabora via Execution Application no. 71/2023. The Applicant decided to file Misc. Land Revision No. 4/2023 before this court. On 28th March 2024, the revision application was withdrawn while the current application is still pending.

The application was received by a notice of preliminary objection from the Respondent containing two issues that read: -

- i. Since the High Court is not executing court, it has no jurisdiction to order for stay of execution as prayed by the Applicant
- ii. The application for stay of execution has been taken by events in that the execution has been completed and decree has been fully satisfied

The preliminary objection was argued by way of oral submissions. During hearing of the preliminary objection, the Applicant was represented by Mr. Lucas Ndanga, learned Advocate whereas the Respondent was represented by Mr. Mgaya K. Mtaki, learned advocate. In support of the preliminary objection, Mr. Mtaki gave a brief account of facts constituting the background of the matter at hand. He submitted that, the decision alleged to have been wrongly executed by the Respondent is the decision of the District Land and Housing Tribunal in Execution Application No. 71 of 2023 that originates from Application No. 48 of 2023.

He then proceeded to submit on the points of objection raised by the Respondent. On the first point of objection, he challenged powers of this Court to stay execution which is being done by the District Land and Housing Tribunal. He submitted that, the application has been preferred under Order XXI Rule 24(1) of the Civil Procedure Code which is applicable to applications before the executing Court. He is of the view that, High Court being not an executing Court in this matter, cannot be moved nor can it act on the provisions of Order XXI Rule 24(1) of the Civil Procedure Code.

The learned counsel argued further that, the Applicant seeks stay of execution pending determination of Misc. Land Revision No. 4 /2023 which is allegedly pending before this Court while the said revision application is no longer pending before this Court. He submitted that, the Revision Application was filed before this Court but it was withdrawn by the Applicant on 28th March 2024 before Hon. Mambi, J. Thus, the pending application for which the stay of execution was sought for, no longer exists.

On the second preliminary objection, he argued that, the application is overtaken by events because execution sought to be stayed was completed on 27/11/2023. He prayed the Application be dismissed with Costs.

In reply, Mr. Ndanga challenged the relevancy of the preliminary objection and urged this Court to apply overriding objective principle to overrule the same and determine the application on merits. He contended that, the preliminary objection should not be entertained because it contravenes the principle of natural justice which require impartiality of those making decisions. He is of the view that, the provision requiring the executing court to determine applications for stay of execution makes the executing court act as a judge in its own cause. He wonders how, District Land and Housing Tribunal can determine an application for stay execution of its own orders.

Advocate Ndaga conceded that, the application for revision was withdrawn. He however alleged that, the Applicant filed an appeal which is not yet admitted due to network challenges in the judiciary e-filing system.

execution had been issued thereby, or if application for execution had been made thereto."

From the provision reproduced above and parties' arguments, it is not disputed that, this Court is not an executing Court which has jurisdiction to determine an application for stay of execution. With due respect to Mr. Ndanga learned advocate, the Court cannot apply overriding objective principle in circumstances where the law expressly bars jurisdiction of a particular Court. This Court cannot even employ its inherent powers in this matter because, the Applicant is not left with no remedy at all. The law provides expressly that applications for stay of execution should be lodged before the executing court. In the matter at hand, the executing court is the District Land and Housing Tribunal.

With such observations, I find the preliminary objection raised to be meritorious and it is hereby sustained. The application is dismissed for want of jurisdiction. Given the necessity to ensure finality of litigations, I do not award costs.

Dated at Tabora this 6th day of June 2024



A handwritten signature in blue ink, appearing to read "Z.D. Mango", written over a set of horizontal dashed lines.

Z.D. MANGO
JUDGE