

IN THE HIGH COURT OF TANZANIA

TANGA SUB- REGISTRY

AT TANGA

CIVIL APPLICATION NO. 56 OF 2022

(Arising from Probate Case No. 10 of 2015 of Pongwe Primary Court, Land Case No. 15 of 2018 of the District Land and Housing Tribunal for Tanga at Tanga, Land Appeal No. 20 of 2022 of the High Court of Tanzania at Tanga)

MARIAM MAGANGA.....APPLICANT

VERSUS

MASHAKA SHABANI.....1ST RESPONDENT

PILI SAID.....2ND RESPONDENT

RULING

Mteule, J.

8/2/2024 & 13/3/2024

The Applicant is praying for this Court to grant stay of proceedings in **Land Appeal No. 20 of 2022** pending investigations on the legal status of the Certificate of the Administratrix. The Application is made under **Rule 8 Part I (sic) of the Civil Procedure Code [Cap 33 RE 2019]**, supported by an affidavit of the Applicant. According to her affidavit, the applicant seems to be suspicious with the validity of death certificate issued in the name of Mwanakazwika Kazwika. That the said affidavit was presented by the 1st Respondent in the Pongwe Primary **Court in Probate cause No. 10 of 2015** and it was handed to the Applicant on 16/8/2022 by Pongwe Primary Court Magistrate. That the Applicant sent the certificate to RITA for investigation as to its validity.



The Applicant is now praying for stay of **Land Appeal No. 20 of 2022** pending the investigation.

To dispute the Application, the Respondents filed a joint Counter Affidavit asserting vagueness in the Applicant's affidavit which in their view, seems to be not involving this application.

Before embarking on the merits of this Application, I would firstly point out that the instant Application was previously dismissed for failure of the Applicant to prosecute it. However, it was restored vide **Civil Application No. 06 of 2023** before Hon. Ndesamburo, J.

Hearing of the Application was conducted by written submissions. Both the Applicant and the Respondent were not legally represented in this application.

I have noted a point of law which I think appropriate to address it at this juncture. This Application is made under **Rule 8 Part 1 of the Civil Procedure Code [Cap 33 RE 2019]**. This provision is not found anywhere in the **Civil Procedure Code Cap 33 of 2029 RE**. Having given it a consideration, and taking into account that parties are not represented, I found it fair to invoke the principle of overriding objective enshrined under **Section 3A (1) and (2) of the Civil Procedure Code**, and make an assumption that the Applicant



intended to refer to **Section 8 found under Part 1 of the Civil Procedure Code (CPC)**. The provision reads;

"No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in Tanzania having jurisdiction to grant the relief claimed."

This matter having been brought under Rule **8 Part I of the CPC**, it can be reasonably assumed that the applicant wrongly cited the provision as such, instead of **Section 8 Part 1 of the CPC**. I will consider the later provision as the intended provision in this matter and I am bound to make this assumption due to the position already developed to the effect that wrong citation of law can be tolerated so long as what is sought can be competently and legally be granted. In the case of **Samwel Munsiro vs Chacha Mwikabe, Civil Application No. 539 /08 of 2019 CAT at Mwanza (unreported)** the Court of Appeal inter alia held that;



"Where an application omits to cite any specific provision of the law or cites wrong provision, but the jurisdiction to grant the order sought exists, the irregularity or omission can be ignored and the court may order that the correct law be inserted."

Now, considering what is provided under **Section 8 of the CPC** and the position in **Samwel Munsiro supra**, the issue is whether the Application has merits.

The application of the contents of **Section 8 of CPC**, as quoted above has been a subject of discussion in various cases. In the case of **Ravji Construction Limited vs Mohamed Enterprises (Tanzania) Ltd and Another**, Civil Case No. 59 of 2022 of Dar es Salaam at Dar es Salaam at page 4 and 5, (Ismail, J.), it was held that;

*"The import of section 8 is, therefore, that the matter in issue must be directly and substantially in issue in a previously instituted suit. When it isn't the same, the section isn't applicable. Expounding the rationale of having section 10 of the Indian Code of Civil Procedure, 1908, that is in parimateria with section 8 of the CPC, an Indian Court held in **Guru***

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Prasad Mohanty & Others v. Biyoj Kumar Das, AIR

1984 I OLR 447, held as follows: 5

"The purpose of this clause is to safeguard a person from several legal proceedings and to prevent a conflict of decisions. It also tries to minimize the parties discomfort and effect to the law of res judicata."

Thus, the essential conditions for applicability of the doctrine of res subjudice must be prevalent, lest the doctrine's potency is rendered suspect. These are: One, that there must be two suits, one previously instituted and the other subsequently instituted; two, Issues must be directly and substantially the same in both suits; three, the pending matters must involve the same parties; four, courts in which the matters are pending must be competent to grant the reliefs; and five, That the parties should be litigating under the same title."

In the instant application, the applicant has not by any chance demonstrated how the issues in the application sought to be stayed is directly and substantially an issue in another matter pending in any



court. It is apparent that the provision of **Section 8 of the Civil Procedure Code [Cap 33 RE 2019]** is not applicable in the instant Application since it only applies to matters with issues and parties similar to other proceedings previously filed in court. For **Section 8 of the Civil Procedure Code [Cap 33 RE 2019]** to apply the suit should be based on the same issues, with similar parties litigating under the same title and the courts in which the matters are pending must be competent to grant the reliefs sought. In the instant matter there are no established facts to indicate the existence of such suits. This means the application is not legally founded under Section 8 of the CPC.

Could it be assumed that the application is legally founded, I have asked myself as to whether there is a lee way to give circumstances which may justify stay of **Land Appeal No 20/2022** pending the investigation of variation of names in the certificate of administratrix of the estate in question.

Actually, I was probed on the concept of stay of the proceedings and how an application for stay of the proceedings is referred in the Court till when I read the case of **Yahaya Khamis vs Hamida Haji Idd and two others**, Civil Appeal No. 255 of 2018, CAT at Bukoba at pages



9,10,11,12 and 13 where it exhaustively expounded the concept of stay in proceedings. The Court stated:

"Unfortunately, there is no provision which deals with stay of proceedings under the Land Disputes Courts Act, Cap 216 R.E 2002 (the LDC Act) or the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 (G.N. No 174 of 2003) (the DLHT Regulations) which governed the matter in dispute. The only provision covering stay of suits is section 8 of the Civil Procedure Code, Cap 33 R.E 2002 (the CPC). It as states as follows:

"No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any o f them claim litigating under the same or any other court in Tanzania having jurisdiction to grant the relief claimed."

The Court of Appeal proceed to state:

"..... The question which has taxed our mind, more so, since there is no provision for stay of proceedings under the LDC Act



and DLHT Regulations is whether in the situation where the DLHT referred the matter to the primary court, could have proceeded with striking out the matter before it. We think no. This is so because, as we have alluded to earlier on, striking out is applied where the matter is incompetent before the court. Incidentally, section 51 (1) and (2) permits the HC and the DLHT to apply the provisions of CPC where there is a lacunae. In this regard the High Court in the case of **Kobil Tanzania Limited v Mariam Kisangi and Another**, Commercial Application No. 12 OF 2007 (unreported), of which we are inspired, stated as follows:

"In a situation where there is no procedure to cater for a certain situation the court is obliged to use its common sense; justice, equity and good conscience and resolve the problem before it to further the interests of justice and prevent abuse of the process (See SARKAR ON CODE OF CIVIL PROCEDURE 10th ed. p. 9). And that is the philosophy behind the court's inherent powers under s. 95 of the Civil Procedure Code Act 1966."

The above position invites us to invoke the provisions of Section 95 of the **Civil Procedure Code [Cap 33 RE 2019]** to address the matter.



In the instant matter as well, I am cognisant that the **Civil Procedure Code [Cap 33 RE 2019]** does not contain a specific provision for stay of proceedings. Therefore I resort to invoking **Section 95 of the Civil Procedure Code [Cap 33 RE 2019]** as per the guidance from the above cited case.

The Applicant prays for this Court to stay the proceedings in **Land Appeal No. 20 of 2022** of the High Court of Tanzania at Tanga. The Respondents in their joint submission in reply argued that the case sought to be stayed does not exist in the High Court registry.

I have thoroughly retrieved the records of the Registry of this Court and found that **Land Appeal No. 20 of 2022** under which the Applicant prays that the proceedings should be stayed does not concern the parties in this case. The Parties in **Land Appeal No. 20 of 2022** are **Ernest Talay and Alfani Mhando vs Mohamed Waziri Jendagwa** which appear to be quite different from the parties in the instant matter. Unfortunately the Applicant has not given the details of **Land Appeal No. 20 of 2022** sought to be stayed and how she is involved in the matter in which she is not a party. The reasons advanced by the Applicant in her affidavit to justify the stay is that there is a pending investigation over the certificate of administration of



estate issued to the 1st Respondent in **Case No. 10 of 2015**. How the said **Case No. 10 of 2015** is related to **Land Appeal No. 20 of 2022** sought to be stayed is not stated in the said affidavit. Further to this, the affidavit mentioned as annex (i) – (ii) as comprising the said **Land Appeal No. 20 of 2022**. However, when I perused the said annexures, I found annex (i) to be a Judgment of **Probate Cause No 10 of 2015** from Pongwe Primary Court while annex (ii) is a Judgement of **Case No. 15 of 2018** of the District Land and Housing Tribunal of Tanga at Tanga. None of these cases seems to be related to **Land Appeal No. 20 of 2022**. I could not comprehend how these two judgments in annex (i) and (ii) to the affidavit could be related to **Land Appeal No 20 of 2023** to the extent of justifying an order to stay the proceedings. I therefore agree with the Respondents that there is no **Land Appeal No 20 of 2022** which has a pending investigation over the certificate of administration of estate. This comes in line with the position in **Yahaya Khamis cited supra**, where it was stated:-

"On the other hand, "stay" according to Blacks' Law Dictionary means "the postponement or halting of a proceeding, judgment, or the like; or an order to suspend all

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or part of a judicial proceeding or a judgment resulting from that proceeding". (See – Blacks Law Dictionary/ Eighth Edition Bryan A. Garner at page 4432). This implies that the matter to be stayed must be valid or competent before the Court."

Moreover, for the proceedings to be stayed, there must be a reasonable ground such as an order of the Court requiring a party to comply with a Court order or Court procedure. In the instant matter, it could be expected the Applicant to indicate such a ground in respect of **Land Appeal No. 20 of 2022** sought to be stayed.

Again, the Respondents further argued that the Applicant's submission does not relate to the prayer sought in the Chamber Summons hence they prayed for dismissal of the Application with costs. I have keenly read the Affidavit in support of the Application and found that it does not relate to the prayer stipulated in the Chamber Summons, rather it contains probate grievances and issues of legality of the Death Certificate. On top of that, the Applicant prays in her submissions that the Respondent be ordered by this Court to produce original copies of the Death Certificate in dispute, the prayer which does not appear in the Chamber summons and which I think. In the case of **Ramadhani**



Mikidadi vs Tanga Cement Company, Civil Application No. 275/01

of 2019, CAT at Dar es Salaam at page 4 it was held that;

"Having revisited the record of revision, particularly the notice of motion and the supporting affidavit thereof, and clearly, as expounded by the learned counsel for the respondent, the affidavit deposed by the applicant himself is engrained with various defects. These include the complaint that the averment in the affidavit supporting the application does not support the prayers sought and that at the same time the applicant only verified the contents of a few paragraphs therein."

In finality, since the instant Application could not fall within the ambit of **Section 8 of the CPC**; and having found **Land Appeal No 2022** sought to be stayed not related to the instant matter, and having found no sufficient grounds advanced by the applicant for this court to order stay of proceedings, the issue as to whether the application has merit is answered negatively.

In the upshot, I find the Application at hand to be unfounded for being misplaced and for want of proceedings sought to be stayed. As such, much as I can say, the Court cannot stay the proceedings as there are



no proceedings capable of stay. Therefore, this Application is dismissed.

The Applicant to bear the costs of the application. It is so ordered.



Dated at Tanga this 13th day of March 2024.

A handwritten signature in blue ink, appearing to be "Ks", is written over the judge's name.

KATARINA REVOCATI MTEULE

JUDGE

13/3/2024

Court:

Judgement delivered this 13th Day of March 2024 in the absence of the Applicant and in the presence of both Respondents. Right to appeal is explained.



A handwritten signature in blue ink, appearing to be "Ks", is written over the judge's name.

KATARINA REVOCATI MTEULE

JUDGE

13/3/2024