

**IN THE HIGH COURT OF TANZANIA  
(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISCELLANEOUS COMMERCIAL APPLICATION NO. 130 OF 2022**

**(ARISING FROM EXECUTION PROCEEDINGS IN RESPECT OF COMMERCIAL CASE NO. 20  
OF 2011)**

**BETWEEN**

**MOHAMED SALIM SAID.....APPLICANT**

**Versus**

**M/S MABUMDA AUCTION MART COMPANY  
LIMITED.....1<sup>st</sup> RESPONDENT**

**EMMANUEL OKOTI OLOO.....2<sup>nd</sup> RESPONDENT**

**JUMA SWADAKTA MZAMILI.....3<sup>rd</sup> RESPONDENT**

**HAMADI MUSHY.....4<sup>th</sup> RESPONDENT**

**YUSUFU NYASUTO.....5<sup>th</sup> RESPONDENT**

**ELIAS RICHARD KISETO.....6<sup>th</sup> RESPONDENT**

**VICK PAULO @MAMA MUDI.....7<sup>th</sup> RESPONDENT**

**ZEBY DEVIE DOTO.....8<sup>th</sup> RESPONDENT**

**LUCY ODIWA.....9<sup>th</sup> RESPONDENT**

**SHAKIRA JUMAA.....10<sup>th</sup> RESPONDENT**

Date of Last Order: 25<sup>th</sup> October, 2022

Date of Ruling: 25<sup>th</sup> October, 2022

**RULING**

**MKEHA, J.**

In this application the applicant is moving the court to investigate the matter in respect of persons who are resisting or obstructing the

applicant from entering and obtaining possession of his house with certificate of Title No. 130520/8 located at Usambara/Eckenford Street-Tanga City. The applicant is also moving the court for issuance of an order for eviction of the 2<sup>nd</sup> to 10<sup>th</sup> Respondents who are resisting in the house bought by the applicant.

The application is made under Order XXI Rule 95 (1) and (2) of the Civil Procedure Code. The application is supported with an affidavit affirmed by the applicant, Mr. Mohamed Salim Said.

Despite service of the application to the respondents, neither of them filed a counter affidavit. No single appearance was made by any of the applicants to contest the same.

In terms of the affidavit supporting the application, the applicant is the purchaser of a house with certificate of Title No. 130520/8 located at Usambara/ Eckenford Street within Tanga City through an auction conducted by the 1<sup>st</sup> Respondent, MABUNDA AUCTION MART on 05<sup>th</sup> July 2010. A copy of certificate of sale is attached to the affidavit as Annexure CC-1. Even after the purchaser/applicant had obtained a certificate of sale and a certificate of Title in respect of the purchased house, the 2<sup>nd</sup> to 10<sup>th</sup> respondents resisted vacating the said premises to give vacant possession to the purchaser. See: Paragraph 1, 2, 4, and 5

of the affidavit supporting the application. The facts hereinabove have not been controverted by any of the respondents.

Rule 95(1) of Order XXI of the Civil Procedure Code provides that, where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such resistance or obstruction. By filing the present application, no doubt the applicant has lodged the complaint envisaged under Order XXI Rule 95 (1) and (2) of the Civil Procedure Code. It is not disputed that, via Commercial case No. 20 of 2011, the applicant, by a decision of this court became the holder of a decree for the possession of immovable property, the disputed property.

Failure of the 2<sup>nd</sup> to 10<sup>th</sup> Respondents to appear before this court in view of contesting the application implies something. The said failure is a clear indication that, their resistance or obstruction was occasioned without any justifiable cause on part of the 2<sup>nd</sup> to 10<sup>th</sup> Respondents. It is for the foregoing reasoning I direct that the applicant be put into possession of the property. The 2<sup>nd</sup> to 10<sup>th</sup> Respondents be immediately

evicted from the suit property. No order is made as to costs. It is so ordered.

DATED at DAR ES SALAAM this 25<sup>th</sup> day of October, 2022



  
C.P. MKEHA,

JUDGE

25/10/2022

**Court:** Ruling is delivered in the presence of Mr. Peter Bana learned advocate for the applicant.



  
C.P.MKEHA,

JUDGE

25/10/2022