

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

AT MWANZA.LAND CASE APPEAL NO. 10 OF 2006

*(From the Decision of the District land and housing Tribunal of Mwanza District
at Mwanza.*

IN LAND CASE NO. 8 OF 2005

RAMADHANI SALUM MGANGAAPPELLANT

VERSUS:

JAMES MBATINARESPONDENT

R U L I N G

The appellant Ramadhani Salum Mganga filed a petition of appeal against the order of the chairman of the Housing Appeals Tribunal of Tanzania dated 8/09/2005 where he prays as follows:-

1. That the chairman erred in law and fact by giving an order appealed against as the Tribunal was functus officio, as there was appeal pending following the striking out dated 2/03/2005, annexed as Annex A.
2. That the chairman erred in law and fact in considering mediation or amicable settlement which has not been there.
3. That the order dated 8/09/2005 was given without the appellant being given an evidence hence interfering with the principle of natural justice.

4. The appellate prays for

1. Setting aside order appealed.
2. Quash the decision of the Tribunal
3. Allow the execution to proceed as applied for in M/S Civil Case No. 20/2005 in RM's Court Mwanza.
4. Any other order deemed fit.

The respondent on his reply to petition of appeal he replied as follows:-

1. That the appellant is still bound by the order of 2/3/2005 made by HAT for amicable settlement out of court, the order which was made in his presence and with his consent.
2. The record of the Housing Appeals Tribunal shows that the appellant was physically present in court on 2/3/3005 but he raised no objection when an order for settlement was made.
3. That the order of 8/9/2005 was mere intermediary and interlocutory order which was made ex-parte in order to maintain the status quo between the parties in consensual order of 2/3/3005.
4. That the appellant was precluded in law from filing execution proceedings in the District court in consensual order of 2/3/2005 and prays for dismissal of the appeal and order dated 2/3/2005 be

upheld and execution proceeding commenced at District court declared incompetent.

On his rejoinder the appellant insisted for his petition of appeal to be allowed.

There was neither oral nor written submissions by both parties, they requested the court to rely on their grounds of petition and reply to petition of the appeal.

There is no dispute that the appeal was struck out by the Housing Appeals Tribunal of Tanzania on 2/3/2005 after the request of the appellant who is the respondent for struck out of the appeal on basis of settling the matter out of court, and there is no dispute that both parties were present as per tribunal record.

Again the record is clear that the appellant was absent when the ex-parte order for stay of execution dated 8/09/2005 was issued.

It is my considered opinion that the chairman erred in ordering the stay of execution without considering that the applicant was the one who requested to struck out his appeal on ground that he was to settle the matter out of the tribunal since 2/3/2005 and it was September 2005 i.e about six months had passed, which action has been taken by the applicant before ordering stay of execution.

The order for stay of execution was issued on 8/9/2005 up to date there is no record or report that the respondent as a gentleman had paid something to the appellant as per judgment dated 23/09/2004 of the Housing Tribunal.

The appeal against the order of the Tribunal is allowed and costs are provided. It is hereby ordered accordingly.

Sgd. G.K. Mwakipesile

Judge

4/07/2012

Date 19/11/2012

Coram I. Arufani DR

Appellant: Present in person

Respondent Absent

B/C: Leonard RA

Court: Ruling read and delivered today 19th day of November, 2012 in the presence of the appellant in person and in the absence of the respondent.



Sgd. I. ARUFANI

DISTRICT REGISTRAR

19/11/2012