

IN THE HIGH COURT OF TANZANIA
LAND DIVISION

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 170 OF 2017

SEPARATUS TRYPHONE KATAMBULA.....APPLICANT
VERSUS
SALUM MOHAMED SAID.....RESPONDENT

R U L I N G

P.M. KENTE, J:

The applicant, Separatus Tryphone Katambula, filed this application for stay of execution of an order granted by the District Land and Housing Tribunal of Temeke, pending the determination of an appeal lodged before this court. The application is made under Order 21 Rule 27 of the **Civil Procedure Code** and is supported by an affidavit deponed to by the applicant.

At the hearing, the applicant submitted that there is an appeal lodged in this court which has not been determined. Therefore according to the applicant, if the appeal will be determined in the favour of the applicant and at the same time the execution having been done, there is a high probability for the applicant to suffer irreparable loss other than the respondent would suffer if the execution is stayed. The applicant added that the appeal lodged

before this court is prima facie and likely to succeed. He argued that, the District Land and Housing Tribunal in its judgment failed to evaluate properly the evidence and the submissions made by the applicant and proceeded to pronounce the judgment basing on the evidence which was not before it. He contended that there was an irregularity which was committed by the Ward Tribunal that is the failure to determine the objection and pronouncing the judgment without serving notice on the applicant herein. The applicant states that his intended appeal has overwhelming chances of success because the District Land and Housing Tribunal failed to consider the evidence given by the applicant during the trial.

The applicant was of the view that the balance of convenience will be in his favour, because the house which is the subject of the execution is a matrimonial home where the applicant and his family are living. It is submitted that if the stay of execution will be granted, the respondent will not get any inconvenience as he will have nothing to loose.

In reply, the respondent brought to the attention of this court that the application for stay of execution has been overtaken by events therefore it deserved to be struck out with cost. He added

that the decree holder had already filed application for execution in the District Land and Housing Tribunal whereby both parties were heard and the demolition order was issued on 27th February, 2017 to the effect that the judgment debtor should demolish the wall constructed for the length of 158 centimeters horizontally so as to give a path way to the decree holder.

It is submitted that the applicant was given a 14 days notice to demolish the said wall but the same was not adhered to by the applicant instead, one day before the lapse of 14 days notice, the respondent was served with the application for stay of execution which was filed in this court.

The respondent submitted that, despite the demolition order, the applicant has intentionally ignored the same and he has constructed another wall to block the way to the respondent. It is the respondent's contention that the applicant is trying to interfere with the court process which would ultimately determine the rights and obligations of the parties.

It is further submitted that the applicant is trying to mislead the court by saying that the house subject to the execution is used by himself and his family as a matrimonial home. The respondent

submitted that the house is half constructed and is not in a habitable condition.

It is therefore submitted that the application is misconceived, hence incompetent and the same should be struck out with costs.

In rejoinder, the applicant submitted that the application has not been overtaken by events because the execution is yet to be concluded.

Now the first question for determination is whether the present application has been taken by events or not. In resolving this issue, I think, it is relevant at this juncture to reflect on the rationale behind the process of seeking a stay of execution. It is clear that, after the decisions of the court in any particular civil or case, usually, stay of execution is sought by the losing party in order to maintain the **status quo** obtaining at the time of the application until the appeal pending is determined. In this case the applicant filed the application for stay of execution while the execution had already been carried out. In that situation I think there is nothing to be stayed.

The house which the applicant wishes this court to protect has already been demolished. In my view, to grant the present

application would serve no practical purposes. It is for this reason that I am respectfully in agreement with the respondent that the application for stay of execution in this case has been overtaken by events. In other words there is nothing that the Court could do at this stage to reverse the action which has already been carried out.

In a number of cases, where it is shown that the application has been overtaken by the events, the Court has to dismiss such an application. See for instance, **Joachim Kalembe Vs M.K. Mwamlima, Civil Application No. 76 of 1998** and **Shell and BP Tanzania Limited v The University of Dar es Salaam, Civil Application No. 68 of 1999** (both unreported).

In the light of the above, authorities, I am settled in my mind that the present application has been taken by events as the execution has already been overtaken by events as the execution has already been done and there is nothing this court can stay. Consequently, the application is found to have no merit and is hereby dismissed with costs.

Dated at Dar es Salaam this 30th day of July, 2018.


P.M KENTE,
JUDGE