

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO.743 OF 2020

(Arising from the application for stay of execution of the Judgment and Decree of
the District Land and Housing Tribunal for Temeke dated 7th May, 2015 by
Mbilinyi, Chairperson in Land Application No. 280 of 2013)

JUMA HASSAN MOHAMED APPLICANT

VERSUS

TABU ALLY NGALANDA RESPONDENT

RULING

Date of Last Order: 13.07.2021

Date of Ruling: 13.07.2021

A.Z.MGEYEKWA, J

The applicant filed an application for stay of execution with respect to Land Appeal No. Application No. 280 of 2013. The application is brought under Order XLIII Rule 2, Order XXI Rule 24 (1), and Order XXI Rule 27 of the Civil Procedure Code Cap.33 [R.E 2019]. The application was supported by an

affidavit sworn by Juma Hassan Mohamed. Opposing the application the respondent filed a counter affidavit deponed by Tatu Ally Ngalanda.

When the matter was called for hearing on 13th July, 2021, the applicant and the respondent appeared in person, unrepresented.

In support of this application, the applicant was brief and straight to the point, he stated that he has filed an application for stay of execution of the Judgment and Decree of the District Land and Housing Tribunal for Temeke in Land Application No. 280 of 2013. The applicant went on to submit that he has lodged an appeal before the Court of Appeal of Tanzania and served the respondent with a copy of the Notice of Appeal.

In his conclusion, he urged this court to stay the execution pending the determination of the intended appeal which is before the Court of Appeal of Tanzania.

Opposing the application, the respondent urged this court not to grant the applicant's application. She urged this court to allow the District Land and Housing Tribunal to proceed with execution. The respondent complained that the applicant has occupied the disputed property for a long time. She stated that the applicant can proceed with his appeal process while outside the disputed premises. She lamented that since when the matter was before

the District Land and Housing Tribunal to date the applicant has occupied the disputed premises and she has failed to execute the tribunal order. She lamented that she has incurred costs and all the time she is in court premises.

In his brief rejoinder, the applicant reiterated his submission in chief. Insisting, he urged this court to stay the execution pending the determination of the appeal at the Court of Appeal of Tanzania.

Having heard the submissions of both parties, I embark on determining the merit of this application. The conditions for the stay of execution is provided for under Order XXI Rule 27 of the Civil Procedure Code Cap.33 [R.E 2019] which state that:-

"Where a suit is pending in any court against the holder of a decree of such court, on the part of the person against whom the decree was passed the court may, on such terms as to the security or otherwise as it thinks fit, stay execution of the decree until the pending suit has been decided."

I have gone through the applicant's affidavit to find out if the applicant has stated any good cause to warrant this court to grant his application or otherwise. The applicant in his affidavit has moved this court to grant his

application by stating that he has high chance of winning the appeal before the Court of Appeal of Tanzania. The respondent on her side complained that in case the stay of execution will be granted, she will suffer loss since she has not occupied the disputed house to date. Order XXXIX Rule 5 (3) (a) of the Civil Procedure Code Cap.33 provides that:-

“ 5 (3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the High Court or the court making it is satisfied-

(a) that substantial loss may result in the party applying for a stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay.” [Emphasis added].

Applying the above provision of the law, I am in accord with the respondent that she has already suffered financial loss since 2013 when the matter was instituted before the District Land and Housing Tribunal to date the respondent has not occupied the said disputed house. In order to balance the loss between the Decree Holder and the Judgment Debtor I have realized that Tabu Ally Ngalanda, the Decree Holder, will suffer more if this court will grant this application for stay of execution. I have also considered that the

applicant will not be prejudiced, he will be in a position to recover the loss easily compared to the respondent.

From the above analysis, there is no doubt that the application is not meritorious. Therefore for the interest of justice, the applicant's application for stay of execution pending the determination of intended appeal before the Court of Appeal of Tanzania is not allowed. Consequently, I proceed to dismiss the application. No order as to the costs.

Order accordingly.

Dated at Mwanza this 13th July, 2021.


A.Z.MGEYEKWA

JUDGE

13.07.2021

Ruling delivered on this 13th July, 2021, in the presence of both parties.


A.Z.MGEYEKWA

JUDGE

13.07.2021