

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

MISC. LAND CASE APPLICATION NO.341 OF 2020

(Originating from the Judgment and Decree of the High Court of Tanzania (Land Division) at Dar Es Salaam, dated 28th April 2017 by Hon. S.A Wambura J, in Land Case No. 35 of 2015)

DOTO ISODA.....1ST APPLICANT
TEOFRIDA MBOGO (As an Administratrix of the Estate of the late Emiliana Kisangilo.....2ND APPLICANT
GABCHANDA GIBUYA.....3RD APPLICANT
SIMBA SAI.....4TH APPLICANT
GWISU GUHUMA.....5TH APPLICANT
BARIAD LUKELA.....6TH APPLICANT
MINZA MAIGE.....7TH APPLICANT
MABURA NYAMHANGWA.....8TH APPLICANT
MARKO KIJA MAIGE.....9TH APPLICANT

VERSUS

AMBOGO ELLY AMBOGO.....RESPONDENT

RULING

Date of Last Order: 21.05.2021
Date of Ruling: 09. 07.2021

OPIYO, J.

The above-named applicants, jointly and together are seeking for an order of this court to stay the execution of a decree issued by Wambura J. in Land Case No. 35 of 2015. Their application was made under Orders XLIII

Rule 2, XXI Rule 24 (1), XXI Rule 27 of the Civil Procedure Code, Cap 33 R.E 2019 and section 51 (1) of the Land Disputes Settlement Act, No. 2 of 2002. The same was supported by an Affidavit sworn jointly by all of the applicants listed above. The application was heard by way of written submissions. The applicants appeared in person while the respondent enjoyed the legal services of Advocate Josephat Sayi Mabula.

In their submissions, the applicants jointly contended that, the reasons they are seeking to stay the execution of the decree so named hereinabove is the fact that they have lodged an application for an extension of time at the Court of Appeal of Tanzania, vide Civil Application No. 222/17 of 2020 seeking to challenge by way of Revision, the judgment and decree of Hon. Wambura J, vide Land Case No. 35 of 2015. According to them, the existence of a pending application for extension of time before the Court of Appeal of Tanzania bars this court to proceed with the application for execution until the pending matter before the court of appeal is finalized as it has already been settled that once a notice of appeal is issued, the High Court ceases to have jurisdiction over the matter. This was stated in **Serenity on Lake Ltd versus Dorcus Martin Nyanda, Civil Revision No. 1 of 2019, Court of Appeal of Tanzania at Mwanza (unreported)**.

In reply, the counsel for the respondent maintained that, the matter at hand has been overtaken by events as the Civil Application No. 222/17 of 2020, before the Court of Appeal of Tanzania, to which the applicants did rely upon as a reason for staying the execution of the decree in question was dismissed. Hence the applicants have no any reasons for their application to succeed, hence the same should be dismissed with costs.

In rejoinder, the applicants admitted to the fact that, Civil Application No. 222/17 of 2020 before the Court of Appeal of Tanzania was truly dismissed, however they insisted that they managed to obtain a notice of Appeal which shows that, the appeal against the judgment and decree of Wambura J is already in motion, therefore the court should stay their execution as stated in **Serenity on Lake Ltd** (supra).

What is noted from the submission of both sides above is that, at first the applicants relied on the existence Civil Application No. 222/17 of 2020, at the Court of Appeal, to pray for stay of the execution of the decree issued in Land Case No. 35 of 2015. But when the respondents notified this court on the dismissal of the said case at the Court of Appeal, the applicants changed the reasons in their rejoinder submissions and insisted that there is a notice of appeal already in place at the court of Appeal of Tanzania against the impugned decision, hence its existence bars this court to entertain anything from the said matter. The applicants attached the said notice with their rejoinder submissions, (annexure A), where it has been shown that the said Notice of Appeal was issued on the 5th May 2017. The same states clearly that the appellants/ applicants are dissatisfied by whole decision of Hon. Justice Wambura, dated 28th April 2017 and they intend to appeal to the Court of Appeal against it.

After being satisfied on the existence of the Notice of Appeal as stated by the applicant, then I should state categorically that my hands are tied. It is common understanding derived from the authorities cited by the applicants that upon the filing notice of appeal to the court of appeal, this court ceases to have jurisdiction to entertain any issue in relation to the

matter that for which appeal is intended to be preferred against to the court of appeal. Upon filing notice, the counting is that, anything in connection with the case is already under the jurisdiction of the Court of Appeal of Tanzania until the same is withdrawn by a formal pronouncement of the court **(see the Serenity on Lake Ltd (supra))**. The same has also been the position of the court in a number of authorities including the case of **Aero Helicopters (T) Ltd versus FN Jensen (1990), TLR, 142** and also the case of **William Mugurusi versus Stella Chamba (2004), TLR 406**.

That being said, the determination of issue in relation to this matter falls in the realm of the Court of Appeal as existence of notice ties the hands of this court. This include determination of application for stay of execution like the one at hand. The court is in essence reaped of the jurisdiction to deal with this the matter. It constitutes a misconception, on my considered view, on part of both parties to think that, this court is reaped of jurisdiction to proceed with execution proceedings, rather than proceedings trying to affect any thing that is already in the realm of the court of appeal. For the reasons the application is dismissed for this courts lack of jurisdiction. No order as to costs as the issue that disposed of the matter was raised by the court *suo motu*

Ordered Accordingly.



A handwritten signature in blue ink, appearing to read "M.P. OPIYO", is written over a horizontal line.

M.P. OPIYO,
JUDGE
09/7/2021