

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

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 183 OF 2021**

(Arising from Misc. Application No. 54 of 2016 at the District Land and Housing  
Tribunal for Ilala)

**MAJUTO RAMADHANI MPUTA ..... APPLICANT**

**VERSUS**

**SIJA RAJABU MURO ..... 1<sup>ST</sup> RESPONDENT**

**LINUS F. LYERA ..... 2<sup>ND</sup> RESPONDENT**

**EXPARTE RULING**

**Date of Last Order: 24/11/2021 &**

**Date of Ruling: 13/12/2021**

**A. MSAFIRI, J**

This is one of those Application which are unmaintainable before this Court where by the applicant seeks an order for stay of Execution of the judgement and decree of the District Land and Housing Tribunal for Ilala in Misc. Land Application No. 54 of 2016 dated 25<sup>th</sup> August, 2019 by Hon. J.M Bigambo. The Application is brought under Order XXI Rule 27 of the Civil Procedure Code Cap. 33 R.E 2019, accompanied by the affidavit of Majuto Ramadhani Mputa, the applicant.

According to applicant's affidavit, he is aggrieved by the said decision of the District Tribunal he therefore intends to appeal to this Court. However

*Adls.*

being out of time, he has filed the application for extension of time to appeal to this Court in the Misc. Application No. 567 of 2021 which is pending. He further filed the current application to this Court to stay the execution of the District Tribunal Decree.

The application was disposed by way of oral submissions, and since the respondents never entered appearance despite being served, the Court ordered to proceed ex-parte against them. The applicant appeared in person.

According to his submission the applicant insisted that this Application is for stay of execution of the judgment of the trial Tribunal in Land Application No. 54 of 2016 because he intends to challenge the said decision before this Court and he is of opinion that if the application is not granted, his property which is in dispute will be in danger of being demolished and he will suffer great harm.

Having heard the submission of the applicant and going through the decision to be stayed, it is my opinion that the applicant being a layman who was under the care and obtained the legal aid from Widowers/Widows and Orphans Legal Aid Assistance of Tanzania drawing the Application, was misguided. This Court have no Jurisdiction to entertain this Application because it is trite law that the Court which passed the decree has the power to execute it or stay the execution of it upon the application of the part to a suit. This Court did not pass the Judgement and Decree in Land Application No. 54 of 2016, it is the District Tribunal for Ilala which passed it therefore it is the one which can execute or stay the execution basing on the application of the parties. (See the decision in **Prime Catch Exports Limited and Two Others vs.**

*Adls.*

**Ongudo Wakibara Nyamarwa**, Civil Application No. 450/16 of 2018 (CAT at DSM, unreported) and the case of **David Mahende vs. Salum Nassor Mattar and Another**, Civil Application No. 160/01 of 2018 (CAT at DSM, unreported). As per these authorities, once a party has lodged a notice of appeal, he is supposed to apply for stay of execution in the same Court and not in the High Court. Thus, it was held that the High Court has no jurisdiction to entertain the application for stay of execution filed by the applicant. The applicant's application has been filed under an improper provision and in a wrong court

I am aware of the case between **Ramadhani Nyoni and M/S Haule & Co. Advocates**, where the applicant in that case was a layman who did not have the services of an advocate. The learned judge held;

*"In a case where a layman, unaware of the process of machinery of justice, tries to get relief before the courts, procedural rules should not be used to defeat justice and the irregularities in an affidavit are curable in terms of Section 95 of the Civil Procedure Code".*

The decision in this case is not of any assistance to the applicant. The applicant in any case is not a layman without the services of an advocate. He has the services of Legal Aid. Even if I apply the principle here it won't hold water since the matter before me is unmaintainable.

In upshot and for the reasons stated above, I hereby dismiss the application accordingly for lack of mandate to be entertained by this Court. I make no order for costs.

*Alle.*

**It is so ordered.**

Dated at Dar es Salaam this 13<sup>th</sup> Day of December 2021.



*A. Msafiri*

**A. MSAFIRI**

**JUDGE**