

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

MISC LAND APPLICATION NO. 528 OF 2020

(Arising from Execution No. 84 of 2019 which originates from consent Judgment and Decree in Land Case No. 98 of 2005, High Court of Tanzania (Land Division) dated 20th January, 2006)

M/S GEM PROPERTIES LIMITED APPLICANT

VERSUS

MSINDIKA STORES LIMITED 1ST RESPONDENT

CHAMIKO LIMITED 2ND RESPONDENT

SHAJI TRADERS LIMITED 3RD RESPONDENT

TANZANIA VIFAA LIMITED 4TH RESPONDENT

MABATIPAIN HOUSE (1996) LIMITED 5TH RESPONDENT

MUNTAZIR HARDWARE STORES LIMITED 6TH RESPONDENT

NUREEN'S DISPENSING CHEMISTS LIMITED 7TH RESPONDENT

MAPENDO STORES LIMITED 8TH RESPONDENT

NEW HARDWARE STORES LIMITED 9TH RESPONDENT

NATIONAL HOUSING CORPORATION 10TH RESPONDENT

RULING

Date of Last Order: 21/10/2021

Date of Ruling: 04/11/2021

A. MSAFIRI, J

The applicant M/S GEM PROPERTIES LIMITED filed an Application for stay of execution arising from Execution No. 84 of 2019 which originates from consent Judgment and Decree in Land Case No. 98 of 2005, at this Court dated 20/01/2006.

However, before the hearing of the Application, the applicant lodged a preliminary objection on point of law that the counter affidavit filed jointly by the 1st – 9th respondents was incurably defective. After hearing of the objections which was by way of written submission, the Court sustained the preliminary objections and then proceed to strike out the entire respondent's counter affidavit. However, for the interest of justice, the court made an order that the 1st – 9th respondents should file a corrected counter affidavit within 14 days from the date of delivery of the Ruling and then the Application should proceed on merit. The Ruling was delivered on 14/9/2021, and the matter was scheduled for mention on 21/10/2021. On that date, the 1st – 9th respondents did not enter an appearance.

Mr. Marcel Kanoi, advocate for the applicant addressing the Court, pointed that the respondents were ordered by the Court to file a corrected counter affidavit within 14 days. However until to date they have not complied with that order. He stated that, failure by the 1st – 9th respondents to file counter affidavit within the prescribed time means that they have no objection to this Application on point of facts. In that breath, Mr. Marcel prayed before the Court for leave to proceed with the hearing of this Application in absence of the 1st to 9th respondents for failure to comply with the Court's order.

Mr. Marcel submitted on the second point that on 30/09/2020, this Court issued an order of maintenance of status quo in reference to the execution

No. 84/2019 which was filed by the 1st – 9th respondents against the 10th respondent which is the origin of this Application.

That this Court ordered that the execution should be stayed pending determination of this Application. Mr. Marcel stated that unfortunately, the 1st – 9th respondents decided to withdraw the stayed Application for execution i.e. Execution No. 84/2019 which is contrary to the Court Order of maintenance of status quo. That the said respondents have filed a new execution case which is registered as Execution Case No. 23/2021 in this Court before the Hon. Deputy Register. Mr. Marcel stated further that in response, the applicant has decided to file another objection proceedings which is registered as Misc. Land Application No. 371/2021 in this Court before Hon. Makani, J.

Mr. Marcel prayed for the court to take notice of the acts of 1st – 9th respondents' abuse of court process and prayed for a court's guidance on the circumstance. Also, he prayed for an ex- parte order against the same in reference to this Application.

Having heard the submission by the counsel for the applicant, I agree with him that the counter affidavit by the 1st – 9th respondents was struck out on 14/9/2021 by this Court. However, the 1st – 9th respondents were ordered to file a corrected counter affidavit within 14 days and then the Application to proceed on merit. Since the 1st – 9th respondents have failed to comply with the court's order, then this court has drawn an inference that the said

respondents has no wish to contest this Application. In that position I would have ordered the hearing of this Application to proceed ex-parte against them. However, I hesitate to do so for the reason I will adduce herein below.

As I have stated earlier, this is an Application for stay of execution arising from Execution No. 84 of 2019. In the chamber summons the applicant among other orders they are seeking is for this court to remove the New Complex Swahili Plaza from execution proceedings in Execution No. 84 of 2019 arising from Land Case No. 98 of 2005. However, the counsel for the applicant has informed this court that the 1st – 9th respondent has withdrawn the Execution case No. 84 of 2019 and instituted a new Execution case No. 23 of 2021. That the new application for Execution No. 23 of 2021 is similar to the parties, orders prayed and the disputed property as the withdrawn case No. 84 of 2019.

In retaliation, the applicant in the current Application has filed another objection proceedings i.e. Misc. Application No. 371/2021 which also has similar parties and prayers as this Application.

In such circumstances, it is my view that this Application has become redundant and it has no leg to stand on as it was arising from the Execution No. 84/2019 which as stated before, has been withdrawn in this court.

This Application cannot be consolidated with Misc. Application No. 371 of 2021 which is before Hon. Makani, J as there is no counter affidavit of the respondents as the same was struck out and have never been refiled. From

this, I find that this Application has no base and I hereby struck it out without any costs.

On the issue of the 1st – 9th respondents' failure to comply with the order of this court on maintenance of status quo, by withdrawal of Execution Case No. 89/2019, I find that that order has been overtaken by events as the matter upon which the order was issued has already been withdrawn from this court.

It is hereby ordered.



A handwritten signature in black ink, appearing to read "A. Msafiri".

A. MSAFIRI,

JUDGE

04/11/2021