

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 451 OF 2022

(Originated from Execution No. 20 of 2022)

YOHANA MAIKO SENGASU.....APPLICANT

VERSUS

MIRAMBO MABULA.....RESPONDENT

Date of last order: 19/9/2022

Date of ruling: 30/9/2022

RULING

A. MSAFIRI, J.

On 3rd August 2022 the applicant filed an application before this Court by way of chamber summons under Section 38 (1) of the Civil Procedure Code [CAP 33 R.E 2019] seeking for the following reliefs;

- i. That this Honourable Court be pleased to determine questions arising from execution of the Court of Appeal order between the parties with view of quashing and reversing the proceedings in Execution No. 20/2022 before Hon. Kisongo DR.*
- ii. Any other reliefs that this Honourable court deem just to grant.*

Alle.

iii. Costs.

The application has been taken at the instance of the applicant and it is supported by an affidavit sworn by Mr. Emmanuel Augustino learned advocate for the applicant herein.

When this application was called on for hearing on 19th September 2022, Mr. Emmanuel Augustino learned advocate represented the applicant while Messrs Herman Kilenzi, Abraham Senguji and Barnaba Luguwa learned advocates represented the respondent herein.

Mr. Augustino learned advocate for the applicant having adopted the affidavit in support of the application contended that the application for execution currently pending before the Honourable Deputy Registrar against which the application at hand has been preferred, is tainted with several defects such as order for payment of Tsh 5,000,000/= to the respondent being sought against the applicant himself while there is another person who should share the liability.

The learned advocate submitted further that the Honourable Deputy Registrar has no jurisdiction to change the order of the Court of Appeal.

In further submission by the learned advocate for the applicant is that the Court of Appeal gave declaratory order which according to the

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applicant cannot be executed. There is nowhere the Court of Appeal had ordered the eviction of the applicant from the suit premises. Hence the learned advocate has submitted that the Honourable Deputy Registrar cannot create her own order or modify the order of the Court of Appeal.

Similarly, the applicant has contended that the intended execution for attachment and sale of the applicant's house for payment of Tsh 5,000,000/= is bad in law because there is no valuation that clearly state the value of the house and also there is no proof of ownership.

On reply, Mr. Kilensi learned advocate for the respondent contended that the applicant should have raised his complaints before the Deputy Registrar instead of lodging the present application. Whether or not the order issued by the Court of Appeal is executable the same should have been raised before the Honourable Deputy Registrar.

Similarly on the issue of valuation of the purported house sought to be attached and sold, the learned advocate for the respondent contended that that is a minor issue and there is no provision of the law cited by the applicant's counsel which requires valuation to be conducted.

On further submission, Mr. Lugua learned advocate for the respondent contended that the application for execution before the Deputy

Alls

Registrar is proper and correct and therefore the matter is not properly before the court as any complaint should have been raised before the Honourable Deputy Registrar.

On rejoinder the learned advocate for the applicant essentially reiterated his submission in chief.

Having gone through the parties' submission rival and in support of the application, the sole issue for my determination is whether the present application has merits.

The present application has been preferred under Section 38 (1) of the Civil Procedure Code [CAP 33 R.E 2002], (the CPC). The said provision requires all questions relating to execution, discharge or satisfaction of the decree be determined by the executing court itself and not by preferring a separate suit.

I have gone through the record of proceedings in Execution No. 20 of 2022 in which after series of objection raised by the applicant and ruling to the effect delivered, it was ordered that the hearing of the application for execution should proceed on merit. Before hearing commenced, the applicant lodged the present application for several questions to be determined as follows; *Alls.*

- i. There being judgment debtors (Sengasu and Kabora) can payment of the ordered amount Tsh 5,000,000/= entirely be directed at the applicant alone?*
- ii. Can deputy registrar order execution of a declaratory order in a manner not specifically decreed?*
- iii. Can attachment and sell of a house of the applicant herein to satisfy payment of the ordered amount be ordered without proof of location, description and value of the said house?*
- iv. Does deputy registrar have jurisdiction to entertain an execution application made outside the granted prayers?*

There is nowhere on the record the applicant attempted to raise any of the above questions before the honorable Deputy Registrar. After all the matter had just been fixed for hearing after ruling on preliminary objection on citation of the enabling provision of the law was delivered. The applicant should have waited during hearing of the application for

Alle.

execution and therefore he could have raised those questions and wait for their determination by the Honourable Deputy Registrar.

In the circumstances, there is no doubt therefore that the present application has been pre-maturely filed as the application for execution before the presiding Deputy Registrar has not yet been determined. The applicant should have raised those questions for determination before the Deputy Registrar first before preferring the present application. It follows therefore that there is no any question for determination before me at this stage because the decision on execution proceedings is yet to be made. I wish to add further that if the applicant has any query regarding the judgment of the Court of Appeal he should seek redress before the said Court by way of review.

Consequently the application is incompetent before me and I hereby strike it out with costs.

It is so ordered.



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A. MSAFIRI,
JUDGE
30/9/2022