

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)**

AT SUMBAWANGA

MISCELLANEOUS LAND APPLICATION NO. 9 OF 2021

(C/O Civil Case No. 4 of 2019 District Court of Sumbawanga)
(M. S. Kasonde, SRM)

MARY MABUGA APPLICANT

VERSUS

IVONA KAHEMA RESPONDENT

RULING

16/03 & 8/04/2022

NKWABI, J.:

In this application, the applicant is seeking for an order of stay of execution of the decree of the District Court of Sumbawanga in Civil Case No. 4 of 2019 that was delivered on 21st December, 2020 pending the hearing of DC Civil Appeal No. 6 of 2021 now pending in this court. She prayed also for costs of the application as well as any further relief the Court may be pleased to grant. The application is brought under section 68 (e), Order XXI Rule 24(1) and section 95 of the Civil Procedure Code Act 1966 [Chapter 33 Revised Edition 2019]). It is supported by the affidavit of the applicant.

In her affidavit, the applicant avers that if the application will not be granted, she stands to suffer irreparable loss as the respondent intends to sell their property situated at Majengo street which is the only residential home. She

said she stands a high chance of succeeding in the pending appeal as the trial court acted without jurisdiction and the matter was res-judicata as the matter had been determined by the District Land and Housing Tribunal. Else, the appeal will be rendered nugatory.

In the counter affidavit, the respondent denied that the appeal has a high chance of success. The trial court had jurisdiction to try the matter and the District Land and Housing Tribunal had not finally determined the suit hence it was not res-judicata and the matters differ, she averred. She prayed the application be dismissed with costs, else she will be denied her right of reaping the fruits of the decree.

In their written submissions both parties stood to their stances. Given the truth that an application of this nature is not the first one, one could find an authority in the case of **University of Dar-es-Salaam v. Richard Kajuma Muzo**, Civil Application No. 117 of 2001 (unreported) where it was stated:

"On a number of occasions, this Court has held that one of the circumstances in which stay of execution is granted is a situation where on the face of the record, prima facie the appeal stands reasonable chances of success. It is however, not in every case or situation that it is apparent on the face of the record that it

can with certainty be that the appeal has great chances of success ... it is, however possible in certain situations on the face of the record, to gauge the prospects of the appeal on the face of the record."

I have carefully considered this application for stay of execution and I am of a considered view that the application has to be granted because the applicant has established that she has a great chance of success. Further, she has established that if the order of stay of execution is not granted, she stands to suffer irreparable loss of the house she resides in while the respondent may still execute if she wins the appeal that is against her.

In the premises I reject the averments of the respondent to the effect that the appeal has not any high chance of success. Further the claim that respondent will be denied his right of reaping the fruits of the decree is also rejected. As such, balance of convenience heavily weights in the favour of the applicant rather than the respondent.

The applicant is, however, prohibited from disposing of the house in any way till the appeal that is pending in this court is determined.

To wrap-up, I rule that the application filed by the applicant in this court has merits and it is granted with costs. Execution of the decree in Civil Case No. 4 of 2019 of the District Court of Sumbawanga is hereby stayed pending the outcome of DC Civil Appeal No. 6 of 2021 now pending in this court.

It is so ordered.

DATED at SUMBAWANGA this 8th day of April, 2022.



J. F. NKWABI

JUDGE