

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

**MISC. LAND APPLICATION NO. 258 OF 2021**

*(From Execution No. 14 of 2016 and Misc. Land Appeal No. 102 of 2011)*

**ZAKAYO COSAM AMBUKEGE** (Administrator of the estate of late  
Cosam Ambukege) ..... **APPLICANT/JUDGMENT DEBTOR**

**VERSUS**

**AHMED MAFIMBA** ..... **1<sup>ST</sup> RESPONDENT/DECREE HOLDER**  
**LEGIT AUCTION MART** ..... **2<sup>ND</sup> RESPONDENT/DECREE HOLDER**

**RULING**

*Date of Last Order: 22/3/2022*  
*Date of Ruling: 05/04/2022*

**A. MSAFIRI, J**

This is an ex- parte Ruling. The applicant has filed this application under Order XXI Rule 24(1) and Section 68(e) of the Civil Procedure Code, Cap 33 R.E. 2019. He is moving this Court for the following orders;

- 1. That this Hon. Court be pleased to order stay of execution pending review on a landed property Plot No. 368 Block "J" Tangani, Ifakara Town, the property of Cosam Ambukege.*
- 2. Costs of the application.*

The application was filed under certificate of urgency. The respondents were served with summons to appear. Only the 1<sup>st</sup> respondent entered appearance and filed a counter affidavit on which he raised a

*Atte*

preliminary objection on 31/08/2022. Through his advocate one Paul Elias, the 1<sup>st</sup> respondent prayed for hearing of a preliminary objection. The preliminary objection was set to be heard by way of written submissions and by mutual consent of parties, the Court made a scheduled order. However, the 1<sup>st</sup> respondent failed to comply with the court's schedule and hence the preliminary objection was dismissed and the court ordered the matter to proceed on hearing on merit. The respondents, for the reasons known to themselves, never entered appearance when this matter was set for hearing on diverse dates set by the Court. The 2<sup>nd</sup> respondent was served by the Court Process Server but did not appear in Court.

Therefore, the Court ordered that the hearing of the application should proceed ex-parte against the respondents.

On the date set for the hearing, the Court discovered some defects in the affidavit of the applicant whereby the deponent of the affidavit one Zakayo Cosam Ambukege was not the person appearing as applicant in the chamber summons, i.e. the deponent was Zakayo Cosam Ambukege while the applicant was Cosam Ambukege.

The Court asked Mr. Edward Msigwa, advocate of the applicant to address it on the apparent defectiveness. Mr. Msigwa quickly conceded to the defectiveness and pointed that the applicant Cosam Ambukege has passed away and the administrator of his estate one Zakayo Cosam Ambukege is the one who has instituted this application and sworn an affidavit. Mr. Msigwa, prayed for the leave of the Court to make the necessary amendments of the application so that Zakayo Cosam Ambukege should be the one appearing as an applicant being an

*Atto.*

administrator of the estate of Cosam Ambukege. The Court granted the leave and the amendments were done.

The hearing of this application was oral and as said earlier it was ex-parte against the respondents. Submitting in support of the application, Mr. Msigwa, learned advocate stated that this application is made pending Application No. 477 of 2021 which is an application for extension of time pending a Review. That, the pending application is also before this Court.

That, this application is filed for the reason that the property which is aimed by the decree holder for execution is not the one which is supposed to be executed.

That, in Misc. Land Appeal No. 102 of 2011, Hon. Judge Mwaimu (as he then was) ordered for an execution of about a portion of bare land, but not about the landed property which is intended by the decree holder (herein the 1<sup>st</sup> respondent), to be executed, which was owned by Cosam Ambukege, the deceased. Mr. Msigwa, prayed to adopt the applicant's amended affidavit, and pray further that this application be allowed.

The origin of this application for stay of execution is judgment and decree of Misc. Land Case Appeal No. 102 of 2011 by Hon. Mwaimu, J. In the judgment, the then appellant Ahmed Mafimba (who is now the 1<sup>st</sup> respondent), filed an appeal to this court having been aggrieved by the judgment of the District Land and Housing Tribunal of Kilombero. The appellant and the respondent were disputing over a piece of land which was named as Plot. No. 368 Tangani area. The District Tribunal reversed the decision of the Ward Tribunal and declared Cosam Ambukege (respondent) as owner of Plot No. 368, which he has acquired after the

land was surveyed. That, Cosam Ambukege acquired an offer for Plot No. 368 from the District Council of Kilombero.

This Court as appellate Court sat to deliberate the appeal and analyzed the evidence from the record, the Court observed that, the appellant Ahmed Mafimba caused his land including the portion of land in dispute to be surveyed. It also observed that, the respondent Cosam Ambukege was allocated the disputed land which formed part and parcel of Plot No. 368 Block "J" by Kilombero District Council in 1999.

The Court as per the evidence, discovered that the respondent and his witnesses also admitted before the Tribunal that the land in dispute belonged to the appellant before it was allocated to the respondent by the said District Council.

From the evidence, the Court was of the view that there is no dispute that the land which forms part of land in dispute was surveyed and allocated and portion of it was allocated to the respondent. What was in dispute is what the appellant was seeking before the appellate Court, i.e. that he be declared the owner of Plot No. 368 Tangani area and in the alternative, be compensated by the respondent at the market value of the land in the area.

Hon. Mwaimu, J, found that since the respondent did not dispute that part of Plot allocated to him was once owned by the appellant, then the respondent should have compensated the appellant on the unexhausted improvements which were on the land in dispute.

Allowing the appeal, he ordered as follows; *Accl.*

- a) The suit land should be evaluated by an independent land evaluator;
- b) The respondent should pay compensation to the appellant on the amount to be revealed in the evaluation report.
- c) Each party should bear their own costs.

Following that decision, Ahmed Mafimba (decree holder), filed for execution of decree in Execution No. 14 of 2016. In the execution, the Taxing Master stated that the respondent was ordered to compensate the appellant the amount to be revealed upon valuation of suit property. That, the valuation was made and the value of the disputed Plot was ascertained as TZS 31,672,000/-

Showing why the execution should not be carried on, one of the reasons given by the judgment debtor was that, the house subject of the attachment belonged not to the judgment debtor. The Tax Master held that, if the property subject of attachment belongs to a different person, the judgment debtor should follow the provisions under Order XXI of the Civil Procedure Code Cap 33 of the Laws.

Having narrated the brief background of this matter, the core issue is whether the applicant has shown sufficient cause for this court to grant the application and hence stay the execution as prayed.

In the applicant's amended affidavit which was adopted by his counsel Mr. Msigwa, the applicant has shown the reasons for application of stay of execution to be that, first, the valuer evaluated the house instead of evaluating the bare land, and that compensation was to be on bare land not a building. This is per paragraphs 4 and 5 of the affidavit.

*Adls.*



However, as per the ruling in Execution No. 14 of 2016, the property to be evaluated was on Plot No. 368 J Tangani, Ifakara Urban and that was evaluated to a sum of TZS 31,672,000/-. This Ruling was based on the decree in Misc. Land Appeal No. 102 of 2011.

Second, the applicant is stating at paragraph 6 of the affidavit that, no specific payment to be compensated was stated in the judgment of the High Court and the ruling by the Taxing Master. However, I find this to be untrue. The judgment of the High Court simply ordered the suit land to be evaluated and the respondent to pay compensation to the appellant on the amount to be revealed on the Evaluation Report. The ruling by the Taxing Master stated that the valuation of the suit land was made and the value was TZS 31,672,000/-.

Third, at paragraphs 7 and 8 of the affidavit, the applicant raised claims that, the Plot/house which this court ordered to be attached is Plot No. **386 Block "J"** Tangani, Ifakara. That the decree holder persuaded this Court to change the ruling to be plot **No. 368 Block "J"** Tangani. I also find this claims to have no basis because from the Decree of this Court in Land Appeal No. 102 of 2011, the land in dispute was Plot No. 368 Tangani area and not 386 Tangani area. Therefore, the executing Court was correct and acted within the judgment and decree of the appellate Court.

Fourth, at paragraph 9 of the affidavit, the applicant averred that, the Deputy Registrar (Taxing Master) was supposed to visit to the land in dispute at Ifakara to see that, Plot No. 368 Block J is the one which Decree holder claimed and the small portion of land which the Decree holder forcefully built a house. In this, I am of the view that since the Hon. Court was the executing Court, it was not mandated to visit the

locus in quo. What the executing Court did was to order execution as per the decree of the Court. And in this matter, the decree of the Court has ordered evaluation and compensation of the suit land which was Plot No. 368 Block J, Tangani, Ifakara. The evaluation was conducted and the execution Court proceeded to order execution for compensation.

Furthermore, in his oral submission before the court, Mr. Msigwa stated generally that, the dispute land was not about the property intended to be executed but it was about a portion of bare land to which Hon. Mwaimu, J in Misc. Land Appeal No. 102 of 2011, ordered to be compensated in his judgment. However, I have read the said judgment by Hon. Mwaimu, J. The specific land in dispute was Plot No. 368 Tangani area, Ifakara. There is nowhere in the said judgment where the suit land/land in dispute is described to be a bare land as put by the applicant and his advocate. Therefore, I find that the execution Court was right in the ruling and order for execution.

By this analysis, it is my findings that, there is no sufficient cause which have been shown by the applicant warranting this Court to stay the execution as prayed.

Application is hereby dismissed. No order for costs.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal line.

**A. MSAFIRI.**  
**JUDGE**  
**05/04/2022**