

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 646 OF 2021

(Originated from Execution/Misc. Land application No. 68 of 2017)

HIZZA ABDUL HOZA.....APPLICANT

VERSUS

**THE REGISTERED TRUSTEES OF TANZANIA SOCIETY FOR THE
PRESERVATION AND CARE OF ANIMALS.....1ST RESPONDENT**

**DASSU MOHAMED MUSSA (the Legal personal Representative of the late AL
HAJJ MOHAMED MUSSA..... 2ND RESPONDENT**

Date of last order: 09/5/2022

Date of ruling: 31/5/2022

RULING

A. MSAFIRI, J.

On the 19th day of November 2021, the applicant lodged an application in this Court by way of chamber summons under Order XXI Rule 57 (1) of the Civil Procedure Code [CAP 33 R.E 2019 (the CPC), for the following orders;

- i. That this Honourable Court may be pleased to restrain the 1st respondent from making execution on Plot No. 47 Block 40*

Alls.

Hananasif, Kinondoni, Dar es Salaam pending investigation of the objectors claim.

- ii. That this Honourable Court may be pleased to investigate the Applicant/Objector's objection and investigate the legality of the acts of the 1st respondent who in execution on Plot No. 47 Block 40 Hananasif Kinondoni and may the Court proceed to release Plot No. 47 Block 40 from the execution and order the 1st respondent to do the said execution on Plot No. 40 Block 40, Hananasif as per the judgment of the Court in Land case No. 133 of 2013.*
- iii. Costs of this application.*
- iv. The applicant may be granted any other incidental reliefs that the Court may deem just to grant.*

The application has been taken at the instance of the applicant and it is supported by an affidavit affirmed by Hizza Abdul Hoza the applicant herein.

The respondents contested the application by lodging counter affidavits as well as while in addition, the 1st respondent raised a notice of preliminary objection on point of law to the effect that; *Adls.*

- i. The application is hopelessly time barred so should be dismissed with costs.*

The said preliminary objection was disposed of orally. When the matter was fixed for hearing of the preliminary objection on 9th May 2022, Catherine Mzava, Henry Kishaluli and Reginald Shirima learned advocates, appeared for the applicant, 1st and 2nd respondents respectively.

Mr. Kishaluli submitted that the present application is time barred and therefore it should be dismissed. The learned advocate for the 1st respondent contended further that the present application has been preferred under the CPC, and because there is no time frame prescribed for filing the same, reference should be made to the Law of Limitation Act [CAP 89 R.E 2019], (the Act) Item 21 of the Schedule to the Act, which requires the application in which no time has been prescribed in other prescribed laws to be instituted within 60 days from the date of the execution order.

The learned counsel submitted further that the main case i.e. Land Case No. 133 of 2013 the judgment was delivered on 30/7/2015 while the application for execution was filed before the Court on 27/9/2017, the present application for objection of execution has been filed on 19/11/2021

Attb.

which is beyond the prescribed period of 60 days. The learned advocate contended further that the application has been lodged without seeking for extension of time hence the application should be dismissed as provided for under section 3(1) of the Act.

Replying the 1st respondent's submission, Ms. Mzava learned counsel for the applicant contended that the application is not time barred since the Court is only required to satisfy itself whether the property in question is liable for attachment or not. The learned advocate for the applicant contended that the applicant was not a party to the main case even the property attached was not part of the judgment therefore this application has been preferred in time.

On rejoinder the learned counsel for the 1st respondent maintained that though the application is for investigation it still falls under the applications whose time limit is prescribed by the Act. The application cannot be instituted at any time.

On further submission the learned advocate for the 1st respondent stated that under section 6 (b) (i) of the Act, objection proceedings are required to be lodged within the prescribed period of time that is 60 days. The learned advocate contended further that the applicant claimed to have

Act.

become aware of the existence of the main case on 8/11/2021 but he has not enlightened the court how he knew about the main case and the execution.

Having gone through the submissions in support and rival to the preliminary objection raised by the 1st respondent, the point for my determination is whether the present application is time barred.

To appreciate the nature of the application at hand, I have gone through the record and the following are brief facts, the 2nd respondent herein instituted Land Case No. 133 of 2013 against the 1st respondent claiming for the reliefs *inter alia* that the house No. 47B on Plot No. 40 situated at Kinondoni District Dar es Salaam (the suit premises) forms part of the estate of the late Al Hajj Mohamed Mussa. At the hearing of the matter three issues were formed as to whether the 2nd respondent is the lawful owner of the suit premises.

Having heard the parties, on 31/7/2015 this Court dismissed the suit for lack of merits and the 1st respondent was declared as a lawful owner of the suit premises having purchased the same from the National Housing Corporation (NHC).

Adls

It is on record that on 27/9/2017, the 1st respondent instituted an application for execution of the decree in Land Case No. 133 of 2013 the mode of execution being the eviction of the 2nd respondent from the suit premises. It is borne out of the record that, the 2nd respondent lodged notice of intention to appeal to the Court of Appeal of Tanzania as well as an application for execution of the decree which was granted by the Court of Appeal on 21st October 2020 with the condition that the 2nd respondent deposit a sum of TZS 30,000,000/=.

Back to the present application having seen the prevailing circumstances, the application before me has two substantive prayers, namely stay of execution as well as investigation as to the legality of the proceedings for execution whether the property subject of the execution is proper.

I am of the settled mind that the application is not time barred contrary to the 1st respondent's assertions. I state so because firstly on the first prayer regarding the stay of execution, the application for execution as I have stated before is still pending in this Court and has not been determined and the same came for mention on 17/3/2022 before the Deputy Registrar. The applicant has concern only with the stay of

Alle

execution because he feels his property is likely to be subject of the said execution.

In the second substantive prayer, much as I understand the application before me and having thoroughly read the affidavit in support of the said application, the applicant does not seek to challenge the judgment and proceedings in Land Case No. 133 of 2013. To be more precise, the applicant does not have any problem with the judgment of this Court because in the said judgment, Plot No. 40 Block 40 Hananasif Kinondoni formed the subject matter of the dispute, while in the present application for execution, the 1st respondent intends for the execution to be extended to the applicant's property Plot No. 47 Block 40 which this Court did not order the same to be 1st respondent's property.

Hence the applicant asks the court to investigate only the propriety of the execution proceedings and not the proceedings in Land Case No. 133 of 2013. I am therefore of the settled mind that the proceedings have been lodged in time because the impugned application for execution is still pending before this Court. *Alle.*

Consequently the preliminary objection raised by the 1st respondent is hereby overruled with costs.



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

A. MSAFIRI.

JUDGE

31/5/2022