

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 423 OF 2021

(Originating from Execution No. 84 of 2017 and Land Case No. 156 of 2012)

VERONICA JOHN SINGANO1ST APPLICANT/OBJECTOR
MARIAM IDRIS MWACHAMBO.....2ND APPLICANT/OBJECTOR
ATHUMAN JUMANNE.....3RD APPLICANT/OBJECTOR
RAHEL UBISIMBALI.....4TH APPLICANT/OBJECTOR
MOSHI JUMA PAZI.....5TH APPLICANT/OBJECTOR
MARIETHA A. MINJA.....6TH APPLICANT/OBJECTOR
RAMADHAN NASSORO KALOMBOLA.....7TH APPLICANT/OBJECTOR
JOYCE E. MBELE.....8TH APPLICANT/OBJECTOR
HASHIMU HAMISI MTANDI.....9TH APPLICANT/OBJECTOR
JUMANNE JUMA KHAMISI.....10TH APPLICANT/ OBJECTOR
MARIAMU OMARI ZIMBWE.....11TH APPLICANT/ OBJECTOR
RAMADHANI S. KIJAUHAWI.....12TH APPLICANT/OBJECTOR
PASCAL IBRAHIMU MRISHO.....13TH APPLICANT/OBJECTOR
KARIMU ISSA SAIDI.....14TH APPLICANT/OBJECTOR
SALAMA MIKDADI MGAHAMA.....15TH APPLICANT/ OBJECTOR
CHARLES INOCENT GIKULI.....16TH APPLICANT/ OBJECTOR
SELEMAN TULLO MDOE.....17TH APPLICANT/OBJECTOR

Alle.

BARNABAS STEVEN MKOBA.....18TH APPLICANT/OBJECTOR
SIRATA NYAMHANGA MCHUNGU.....19TH APPLICANT/OBJECTOR
MOHAMED MBOWETO.....20TH APPLICANT/OBJECTOR
TRYPHONE FRAIDY MTWEVE.....21ST APPLICANT/OBJECTOR
JULIUS THOMAS MALWA.....22ND APPLICANT/OBJECTOR
JAFARI SHAME ATHUMAN.....23RD APPLICANT/OBJECTOR
ANTONY G. LUZABA.....24TH APPLICANT/OBJECTOR
ALLY HASSAN MAFITA25TH APPLICANT/ OBJECTOR
FATUMA SALEHE ISMAIL.....26TH APPLICANT/OBJECTOR
AMINA ABDALLA PAULA.....27TH APPLICANT/OBJECTOR
OMARI NGONJI.....28TH APPLICANT/OBJECTOR
RASHID ATHUMAN MDOE.....29TH APPLICANT/OBJECTOR
SHABAN MOHAMED KIMBWILI.....30TH APPLICANT/OBJECTOR
AMOUR HASSAN NGONYANI.....31ST APPLICANT/OBJECTOR
HASSAN YUSUF NGONYAN.....32ND APPLICANT/OBJECTOR
MARITHA SELESI MSANGA MBEGO.....33RD APPLICANT/OBJECTOR
DENIS LUCAS THOMAS34TH APPLICANT/OBJECTOR
MZAFARU ZUBAIL BISHANGA.....35TH APPLICANT/OBJECTOR

VERSUS

SAMWEL LEWIS KWABU.....1ST RESPONDENT
MM AUCTIONEERS & DEBT COLLECTORS CO. LTD..... 2ND RESPONDENT

AMU

Date of last order: 26/7/2022 & 02/8/2022

Date of ruling: 12/8/2022

RULING

A. MSAFIRI, J.

On the 20th day of August 2021, the applicants lodged an application in this Court by way of chamber summons under Order XXI Rules 57 (1) and 58 and Section 95 of the Civil Procedure Code [CAP 33 R.E 2019 (the CPC), for the following orders;

1. *That this Honourable Court may be pleased to investigate this objection and ascertain the ownership of the property involved and threatened to be executed/attached that is not liable to such eviction/execution/attachment in respect of Application for Execution No. 84 of 2017 which is before Hon. C. M. Tengwa, DR.*
2. *Costs of this application.*
3. *Any other orders and reliefs this Honourable Court may deem fit and just to grant.*

The application has been taken at the instance of the applicants and it is supported by an affidavit affirmed by Mtumwa Rajab Kiondo, the advocate for the applicants herein. The applicants were represented by Mr. Mtumwa Rajab Kiondo, learned advocate while the respondents enjoyed the services of Ms. Upendo Charles, learned advocate.

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A brief background giving rise to the present application as could be gathered from the record is that the 1st respondent instituted Land Case No. 156 of 2012, before this Court against one Selemani Bakari Chunganguo and 40 others (not the applicants), for reliefs *inter alia* that the 1st respondent be declared a lawful owner of ten acres of land situated at Majohe Kichangani, Ilala District, Dar es Salaam.

The 1st respondent claimed to have purchased the said land on 24/7/1991 in which he purchased 13 acres of land from four persons but later the 1st respondent relinquished 3 acres of land which he claimed to have been trespassed. The matter proceeded *ex parte* as the defendants therein never lodged their respective written statements of defence.

Having heard the 1st respondent, this Court decided in his favour as he was declared the lawful owner of the land in dispute and it was further ordered that each of the 40 defendants to pay the 1st respondent a sum of Tsh 1,000,000/= being general damages for trespass. All the defendants were also ordered to vacate from the land in dispute within 60 days.

In the present application it is stated by the applicants that on 17 August 2021 they found notices affixed on their respective houses by the 2nd respondent requiring them to vacate from the land in dispute. The said notices were in relation to Execution No. 84 of 2017. The applicants claimed that they were not sued in Land Case No. 156 of 2012 and also their land is not liable for attachment.

Alle

The application was disposed of by written submissions in which both parties duly complied with the Court's order however for the reason that would be revealed shortly I will not determine the merits or otherwise of the present application. This is because after my carefully perusal of the application, while I was composing the ruling, I came across a notice of appeal to the Court of Appeal duly lodged by Selemani Bakari Chunganguo and 40 others, these were the defendants in Land Case No. 156 of 2012. The said notice of appeal shows clearly that the defendants whom are judgments debtors in Execution No. 84 of 2017 intend to challenge the order for execution before the Court of Appeal.

The notice of appeal referred in the foregoing paragraph was attached by the applicants in the present application. It follows therefore that while the applicants are challenging the Execution No. 84 of 2017 and its resultant order before this Court, the same is also being challenged before the Court of Appeal by the judgment debtors in Land Case No. 156 of 2012. Hence though parties are different, but they are challenging the same order, namely Execution No. 84 of 2017, both at this Court and in the Court of Appeal.

In that regard, I brought it into the attention of the parties herein to address me on the issue of the presence of the Notice of appeal which is filed before the Court of Appeal (a copy was annexed to the joint affidavit of the applicants) challenging the decision of Execution No. 84 of 2017, which is also being contested in the current application by the applicants. *Alls.*

Mr. Kiondo addressed the Court that, the applicants in this matter were not parties to the Land Case No. 156 of 2012 and Execution No. 84 of 2017. He said that the Notice of appeal was lodged on 10/9/2020, it was lodged by judgment debtors in Execution No. 84 of 2017.

He admitted that, where there is a Notice of Appeal to the Court of Appeal, all other matters concerning the subject matter to be appealed against has to be stayed. He said that, in such circumstances, the High Court ceased to have jurisdiction to entertain this matter.

Mr. Kiondo submitted that, the parties who have instituted the Notice of Appeal are not the current applicants. He added that, despite that, this application cannot proceed while there is a pending appeal on the Execution No.84 of 2017. He prayed for the stay of proceedings pending the proceedings in the Court of Appeal.

Ms. Charles also addressed the Court and stated that, she has no objection to the submissions and prayers by the counsel for the applicants, Mr. Kiondo. However she pointed that, the Notice of Appeal to the Court of Appeal is not a bar to the execution. That the only thing which can bar the execution is stay of execution which can be sought and granted by the Court of Appeal. She pointed that since there is a Notice of Appeal, this Court has no jurisdiction to entertain this application or make any other decision concerning Execution No. 84 of 2017.

Acts.

In rejoinder, Mr. Kiondo stated that, this Court has jurisdiction to entertain this matter and its powers is derived under section 95 of the Civil Procedure Code, Cap 33. R.E 2019.

Having heard the submission from both parties and after a brief deliberation, I am of the settled mind that as there is a Notice of Appeal to the Superior Court intending to challenge Execution No. 84 of 2017 which is subject of the present application, it is wise, in order to avoid conflicting decisions and multiplicity of suits, to let the matter before the Court of Appeal be finalized first. I state so because the outcome of the matter before the Court of Appeal may have an impact on the present application as far as Execution No. 84 of 2017 is concerned. The said Notice of Appeal is still alive and it has not been withdrawn or struck out by the Court of Appeal.

Consequently the application is hereby struck out with no order as to costs, the applicants are at liberty to refile the same after the matter before the Court of Appeal is determined.

It is so ordered.



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

A. MSAFIRI,

JUDGE

12/8/2022