

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

MISC. LAND CASE APPLICATION NO. 650 OF 2022
(Arising from Execution Cause No. 84 of 2022)

ALPHONSE KIHWELE.....APPLICANT

VERSUS

**IRENE LAZARO MOLLEL (as Administratrix of the Estate of the
late PRUCHERIA MEITORIS MOLLEL,
SUING AS ATTORNEY LAZARO LOKAJI MOLLEL)....RESPONDENT**

R U L I N G

Date of Last Order: 30. 11.2022
Date of Ruling: 23.01.2023

T. N. MWENEGOHA, J

The Applicant sought for the following orders given under Order XXI Rule 24 (1) and Section 95 of the Civil Procedure Code, Cap 33 R. E. 2019, that:-

- 1. This court be pleased to stay the execution of the decree in Execution No.84 of 2022 which emanated from Land case No. 132 of 2013, pending the hearing and determination of Application No. 589 of 2022.**
- 2. Costs of the case.**
- 3. Any other relief as the court may deem fit to grant.**

The application was supported by the affidavit of the applicant himself, Alphonse Kihwele.

The application was heard by written submissions, where Advocate Boniface Erasto Meli appeared for the applicant. His submissions were that, this Application should be allowed as the applicant has a pending case, seeking to set aside an ex-parte Judgement, subject to the Execution No. 84 of 2022. That, if this application is denied, the applicant will suffer irreparable loss. Further, the applicant is ready to furnish for a security for as may be directed by this court for the due performance of the decree in question. Above all, the instant application was filed without undue delays and if the same is denied, the pending application for setting aside the ex-parte judgment will be rendered meaningless. He cited several cases including the case of **Tanzania Electric Supply (TANESCO) versus Independent Power of Tanzania (IPTL) & 2 Others, Court of Appeal of Tanzania (2000) TLR 324** and the case of **Simon John Ngalesoni versus Father Velemir Tomic, Misc. Civil Application No. 26 of 2022, High Court of Tanzania at Arusha(unreported)**.

In reply, the respondent's counsel, Hubert Mligo, was of the view that, the applicant has not fulfilled any condition required to be met before allowing an order of stay of execution. That, the applicant has not proved any substantial loss that may occur if the order for stay is denied. Also, that, they ought to be made without any delay and lastly, the applicant must furnish a security for cost for the due performance of such decree as per Order 21 Rule 24 of the Civil Procedure Code, Cap 33 R.E 2019. All these conditions were not met, though the applicant made a promise to furnish a security for costs, but a mere promise is not sufficient for the court to allow this application.

In his brief rejoinder, the applicant's counsel reiterated his submissions in chief and insisted that, allowing the application at hand is necessary owing

to the pending application for the setting aside the ex-parte judgment, which form the basis of the application for execution.

Having gone through the submissions of parties, the issue for determination is whether the application at hand has merits or not. Indeed, it has merits. Unquestionably, the basis of case is the pending application (Misc. Land Application No. 589 of 2022), to set aside an exparte judgment given against the applicant, favour of the respondent here in above, vide, Land Case No. 132 of 2011. This fact alone, is sufficient to stay the execution of the decree in question, as the same is under scrutiny by this court through Misc. Land Application No. 589 of 2022. If the application is denied, there is no doubt that, it will render the decision to be given in the pending application to have no value in the eyes of law. Above all, he has agreed to furnish the security for the due performance of the decree in question if ordered and this makes an additional reason why the court should allow the application in question.

Tanzania Electric Supply (TANESCO) vs. Independent Power of Tanzania (IPTL) & 2 Others, (supra). Either, I have also considered the reality that, the respondent will suffer no harm if this application is allowed.

For the foregoing reasons, I allow the application with costs. The Execution No. 84 of 2022 proceedings are hereby stayed, pending the hearing and final determination of Misc. Land Application No. 589 of 2022.

Ordered accordingly.


T. N. MWENEGOHA

JUDGE

23/01/2023

