

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**  
**CIVIL REFERENCE NO. 05 OF 2023**

**IBRAHIM TWAHILI KUSUNDWA ..... 1<sup>ST</sup> APPLICANT**

**IBRAHIM TWAHILI KUSUNDWA** (The administrator of the  
estate of The late **TWAHILI SELEMANI KUNDWA ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**EPIMAKI MAKOA ..... 1<sup>ST</sup> RESPONDENT**

**PRIMA A. MUSHI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

*30/3/2023 & 31/3/2023*

**A. MSAFIRI, J.**

This application was filed under Certificate of Extreme Urgency by the applicants. The applicants initially sought for the ex-parte orders that this Court be pleased to maintain status quo ante pending application for hearing inter partes. On 20/3/2023 this Court granted the sought ex-parte order and ordered for maintenance of status quo on the suit premises pending the hearing and determination of the application.

The matter was scheduled for mention on 29/3/2023 to pave way for the completion of proceedings. However, in the course of going through the

*Alle.*

Application, this Court *suo motu* raised a point of law on the competency of this application and whether this Court has jurisdiction to entertain the application at hand.

The Court called upon the parties to address it on the points of law herein above. At the hearing, the applicants were represented by Mr. Ashiru Lugwisa, learned advocate and the respondents were represented by Mr. Godwin Musa Mwapongo, learned advocate.

Mr. Lugiswa, counsel for the applicants addressed the court on the issue on whether this Court is vested with jurisdiction to entertain this matter by way of reference in respect of an order emanating from Deputy Registrar in the exercise of the execution proceedings.

Mr. Lugwisa was of the firm view that this Court has such jurisdiction. He averred that this application is brought under Order XLI Rule 1 and Section 38 of the Civil Procedure Code, CAP 33 R.E 2019 (the CPC).

That, Order XLI Rule 1 gives power to this Court to stay execution which this Court did by ordering maintenance of status quo. That, under Section 38, the proceedings emanating from execution arises from a Decree which was being executed by this Court.

*Aelle*

Mr. Lugiswa argued that there is a point of law worth of being entertained by this Court by way of reference. The said point of law is that the applicants complains that the execution proceedings were initiated contrary to the mandatory statutory requirement of G.N. No.388 of 2017. So, in his view, this is the proper forum for this Court to intervene and regularize the proceedings.

To bolster his arguments, he cited the case of **TIB Development Bank vs. Weruweru River Lodge & Another**, Civil Reference No. 2 of 2020, HC Moshi Registry (Unreported).

He prayed this Court to allow the application to proceed and be heard on merit.

In reply, Mr. Mwapongo for the respondents addressed the Court that it has no jurisdiction to entertain the application at hand. He said that the only jurisdiction this Court has on the decisions of the Deputy Registrars exercising execution powers is on taxation of Bill of Costs which is made under Order VI(1) of the Advocates Remuneration Order, G.N. No. 263 of 2016. He pointed that, this Court has no powers on the Registrar or Deputy Registrar exercising execution particularly where the broker has been

*Acts.*

appointed by this Court itself and execution has been ordered by the Court itself.

He stated further that the case of **TIB Development Bank vs. Weruweru River Lodge & Another(supra)** cited by the counsel for the applicants is distinguishable from the application at hand because in the cited case, the Court was dealing with different matter i.e. Taxation matters.

He prayed for the Court to strike out the application with costs.

On rejoinder, Mr. Lugwisa mostly reiterated his submissions. He added that, the Judge of the High Court can interfere the decision of the Deputy Registrar even in the execution proceedings. He said that in the circumstance of the current matter, there is no room for the parties to go to the Registrar because she has already issued her order. He reiterated his prayers.

Having heard the submissions from parties to the application, I will embark on the determination of the competency of this application before me.

This application is brought under Order XLI Rule (1) (2), Section 38(1) and Section 95 all of the Civil Procedure Cap. 33 R.E 2019.

The applicants, on the chamber summons seeks for the Orders inter-partes that; *Alls*

(a) To call upon and review procedural irregularities manifest in the proceedings and the resultant orders in respect of Execution No. 61 of 2020 between Epimaki S. Makoi & Another vs. Ibrahim Twahili Kusundwa & Another made on the 09<sup>th</sup> March 2023 whereby the High Court of Tanzania (Land Division) issued an eviction Order in respect of Landed property located on Plot No. 13 Block 30, Nyamwezi Street, Kariakoo Area, under Certificate of Title No. 32350 on grounds that;

- i) That there exist serious errors and illegalities on the face of records amounting to total injustice and break down of law in proceedings, and order of the High Court of Tanzania (Land Division) at DSM in Execution No. 61 of 2020 in that the Application for execution was preferred in contravention of the Civil Procedure Code (Approved forms) Notice G.M. No. 388 of 2017.

Taking a glimpse of the sought orders, this Court is called upon to review the procedure irregularities which manifested in the Execution case which is before the Execution Court presided by the Deputy Registrar of the High Court.

*Alle*

It is my belief that, I have no jurisdiction to entertain this matter as the orders which are sought to be challenged or corrected emanates from this Court by the decision of the Deputy Registrar of High Court exercising her powers as the executing Court. Therefore this application is not only incompetent but it is a gross abuse of Court process by the applicants.

If the applicants have encountered the procedural irregularities as submitted, the proper procedure was not to come to the High Court Judge for review but rather the Execution Court before the Deputy Registrar who has issued the disputed orders and has powers to review his/her own orders.

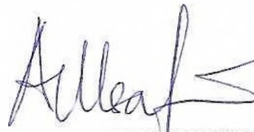
Counsel for the applicants has averred that, there is no room for the parties in this matter to go to Deputy Registrar because she has already gave her order. However, it is my opinion that the parties still can go before the Registrar for review of her order. Furthermore, the parties can file an appeal challenging the disputed order in the Court of Appeal.

Section 5(1) (b) (ix) of the Appellate Jurisdiction Act, CAP141 R.E.2019 provides that an appeal shall lie to the Court of Appeal against any order specified in Rule 1 of Order XLIII of the CPC. *Alle.*



The powers of the Registrar, Deputy Registrar or District Registrar of the High Court are exercised under Order XLIII (1) (g) of the CPC and the way of challenging those orders made by the Registrar in that power is to appeal to the Court of Appeal and not to the High Court before the Judge.

Having said so, I hereby find that this Court has no jurisdiction to entertain this application as it has been wrongly preferred before this Court. I hereby proceed to strike out this application with costs.



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**A. MSAFIRI**  
**JUDGE**  
**30/3/2023**

