

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 26109 OF 2023

(Originating from the decision of the District Land and Housing Tribunal for Temeke District at Temeke in Execution No.155 of 2023 c/f Application No.177 of 2021 and Land Appeal No.191 of 2022 of the Resident Magistrates' Court of Kinondoni-Extended Jurisdiction)

HAROUB M. SHAMIS..... 1ST APPLICANT

RUKIA K. AHMED.....2ND APPLICANT

NASORO MOHAMED.....3RD APPLICANT

VERSUS

OMARI RUBASA.....RESPONDENT

RULING

11th & 19th March 2024

L. HEMED, J.

This is an application for revision brought under section 41(1) and 43(1)(a)(b) of the Land Disputes Courts Act, [Cap.216 RE 2019]. The applicants **HAROUB M. SHAMIS, RUKIA K. AHMED** and **NASORO MOHAMED** are seeking for an order that:-



"...This honourable court be pleased to call for and examine the records of the District Land and Housing Tribunal for Temeke District at Temeke and the Ruling thereto, Hon. L.R.Rugarabamu dated 16/11/2023 in Execution No.155 of 2023 which arose from the Decree of the Resident Magistrate Court's Court of Kinondoni (Rwehumbiza PRMA Extended Jurisdiction) dated 19th day of May 2023 in Land Appeal No. 191 of 2022 and revise the same."

The application has been preferred at the instance of the applicants and supported by the joint affidavit of **Haroub M.Shamis, Rukia K.Ahmed** and Nassoro **Mohamed**. The Respondent, **Omary Rubasa** challenged the application by filing his own counter affidavit.

The background of the matter at hand is that, initially the 1st and 2nd applicants instituted at the District Land and Housing Tribunal for Temeke, Land Application No.177 of 2021 against the Respondent herein **Omary Rubasa** claiming rent arrears of Tshs 8,000,000/-. The respondent raised



counter claim against them and the 3rd Applicant, one **Nassoro Mohamed**. The 1st and 2nd applicants' claims were found unfounded while the counter claim was partly granted. The Respondent herein was aggrieved by the said decision. He successfully appealed *vide* Ext. Land Appeal No.191 of 2022 at Kinondoni RM's Court where the respondent herein was allowed to proceed running his business in the suit land without payment of rent for 5 years from 19th May 2023 up to 19th May 2028.

The Applicants herein were aggrieved by the said decision, on 16th June, 2023; filed Notice of Appeal. The Respondent filed in the DLHT-Temeke, Application for Execution No.155 of 2023 trying to enforce the decree in Ext. Land Appeal No.191 of 2022. The applicants instituted Misc. Land Application No.424 of 2023 seeking for Leave to Appeal to the Court of Appeal of Tanzania. They also lodge in the Court of Appeal of Tanzania, Civil Application No.583/01 of 2023, for Stay of execution. On 10th August 2023 an *ex parte* order for stay of execution was granted *ex parte* pending hearing of the inter parties hearing by the full court to be fixed.



On 19th October, 2023 this Court, Hon. Mwenegoha, J dismissed Application for leave to appeal to the Court of Appeal of Tanzania, Misc. Land Case No.424 of 2023 on the ground that it was time barred.

Following the dismissal of the Application for Leave to Appeal to the Court of Appeal of Tanzania, on 16th November, 2023, the Respondent herein moved the DLHT- Temeke to grant Application for Execution No.155 of 2023 and was assigned to **Adili Auction Mart**, the Tribunal Broker. The order of the DLHT-Temeke to grant of the Application for execution, is the one that triggered the instant Application.

The Application was argued by way of written submissions. **Ms. Pendo Ngowi**, learned advocate represented the applicants while the Respondent acted in person.

I have thoroughly read the submissions filed by the parties and examined the records of the DLHT-Temeke in respect of the impugned ruling. What I have grasped from the rival submissions and affidavits in respect of the matter at hand is that, the applicants are questioning the legality of the ruling and order of execution by the DLHT-Temeke dated 16th November 2023. The issue that requires the attention of this court is



whether the chairperson was justified to grant the application for execution while there was an *ex-parte* order of the Court of Appeal of Tanzania for stay of execution.

In the submissions made in support of the Application, the learned counsel for the applicants has faulted the order of the DLHT in Misc. Application No.155 of 2023 that it was made in contravention of the Court of Appeal order for stay of execution. She was of the view that the dismissal of the application for leave to appeal to the Court of Appeal made by this Court, could not affect an *ex parte* order of the Court of Appeal staying execution of the Decree in Ex-Land Appeal No.191 of 2022. Reliance was put on the decision of the Court of Appeal of Tanzania in **Nurdin Mohamed Chingo vs.Salum Said Mtiwe and Hadija Said Mtiwe**, Civil Application No.60/01 of 2021, where it was held that;

"...what happened in the High Court did not affect the ex-parte order of this Court which was issued pending the determination of the application inter-partes."



The learned counsel for the applicants ended up praying for revision of the order of the DLHT in execution proceedings.

On his part, the Respondent supported the decision of the chairman of the DLHT to grant the application for execution. In his view, since the application for leave to appeal to the CAT brought before this Court *vide* Misc. Application No.424 of 2023, had already been dismissed, then the trial Chairman was justified to proceed to determine the application for execution.

I have perused the records of the District Land and Housing Tribunal for Temeke in Misc. Application No. 155 of 2023 and found that on 16th November 2023, the trial Chairman delivered Ruling on the application for execution. While granting the application he observed as follows:-

“ Kutokana na Wadaiwa, maombi yao ya kuomba kibali cha kukata Rufaa Mahakama ya Rufani kukataliwa na Mahakama Kuu ina maana hata amri ya zuio la utekelezaji iliyokuwa imetolewa na Mahakama ya Rufani mnamo tarehe 10.08.2023 nayo moja kwa moja (automatically) imekufa toka



tarehe Shauri Misc. Application No.424 of 2023

lilipoisha."

The above quotation has the meaning that the order for stay of execution by the CAT ceased to have effect upon the dismissal of the Application for leave to appeal to CAT which was before this Court. I think the learned Chairman acted under misconception. I am holding so because it is not always that the termination of any proceedings before the High Court affects proceedings before the CAT, to the contrary, orders or proceedings in the CAT are the ones which take precedent over proceedings in courts subordinate to it.

The *ex-parte* order made by the CAT in Civil Application No.583/01 of 2023 had the effect of binding the High Court and the executing Tribunal. In fact, the said order for stay of execution remains valid and binding unless vacated by the CAT itself or upon disposal of the Application for stay of execution *inter-parte*. The dismissal of application for leave to appeal to the CAT in Misc. Land Application No. 424 of 2023, by this Court could not in any way affect the CAT order for stay of execution on the following reasons:-



1. The CAT order is superior to that of the High Court;
2. The application for leave to appeal to the CAT as it used to be had two stages; the 1st bite in the High Court, and if lost and aggrieved, then, would prefer the 2nd bite in the CAT;
3. Application for stay of execution in the CAT was/is distinct from the application for leave to appeal to the CAT which was before this Court. Therefore, the termination of the application which was before this Court could not automatically terminate the application for stay of execution pending in the CAT; and
4. The Application for Stay of Execution is still pending in the CAT waiting for *inter-parte* hearing.

From the foregoing, the *ex-parte* order of the CAT for stay of execution of the Decree of the Resident Magistrate's Court of Kinondoni-Extended jurisdiction in Land Appeal No.191 of 2022, remain valid and binding so long as Civil Application No.583/01 of 2023, is still pending in



the registry of the CAT. I have read the said Order and found that the Court made the following remarks thereto:-

*"In all therefore, this application is hereby allowed in terms of Rule 11(6) of the Rules **thus staying execution of a decree in Land Appeal No.191 of 2022 pending hearing of this application inter-parties by the full Court on a date to be fixed by the Registrar.**"*

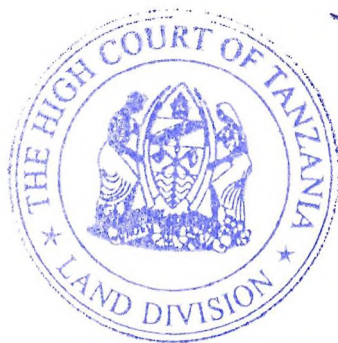
According to the above *ex-parte* order of the CAT, the same will cease to be valid only if, Civil Application No.583/01 of 2023 is heard *inter-parties* by the full Court. I have perused the records of the trial Tribunal and found no evidence was placed before the DLHT showing that the application for stay of execution before the CAT had already disposed of. The chairman would have been justified to proceed to determine the application for execution before him if he would have satisfied himself that the application for stay of execution before the CAT was no longer in existence.

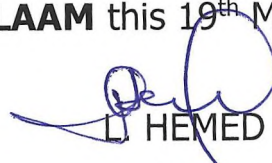


In the final analysis I find that, in the circumstance where there is an ***ex-parte*** order for stay of execution and pending application for stay of execution before the CAT, the executing Court, in the instant matter, the District Land and Housing Tribunal for Temeke, ceases to have jurisdiction to grant application for execution before it.

In the upshot, I find merits in the application the same deserves to be granted. The Chairman of the DLHT-Temeke acted without jurisdiction to grant the application for execution in "*MAOMBI MADOGO NA.155/2023*" contrary to the CAT order of staying the execution. The Ruling and orders dated 16th November 2023 in respect of '*MAOMBI MADOGO NA.155/2023*' (Application for execution) are quashed. In the circumstance of this case, each party to bear its own costs. Order accordingly.

DATED at DAR ES SALAAM this 19th March 2024.




L. HEMED
JUDGE