

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

**LAND APPEAL NO. 27534 OF 2023**

**AMANDA BRITON KAMANGA.....1<sup>ST</sup> APPELLANT**

**BEATRICE BRIGHTON KAMANGA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**ZIADA WILLIAM KAMANGA..... RESPONDENT**

**JUDGEMENT.**

*Date of last order; 01/03/2024*

*Date of judgement; 14/03/2024*

**MWAIPOPO, J**

This Appeal emanates from the decision of District Land and Housing Tribunal for Kinondoni at Mwananyamala in Application No.287 of 2023. The Applicant in the said case, one Ziada William Kamanga filed an Application under Certificate of urgency, made under sections 68(e) and 95 of the Civil procedure Code, Cap 33 RE 2019 and all other enabling provisions of the law. In the said Application the Applicant prayed for the following orders;

**a) EXPARTE**

That this Hon. Tribunal be pleased to issue and grant and exparte order for maintainance of the status quo ante and or temporary injuction restraining the Respondents, their agents or servants and any other person , natural or artificial acting under

instructions of the Respondents from evicting the Applicant from Plot no 539 Block C Palestina, Sinza, Dar es Salaam hence forth the disputed property pending hearing and determination of the present Application interpartes

**b) INTER PARTES**

- a) That this Hon. Court be pleased to call upon the Respondents to show cause why they should not be committed to prison or stopped from evicting the Applicant from her premises without any lawful eviction order or warned or fined for contempt of the Tribunal 's order dated 1<sup>st</sup> July 2022 and for an abuse of Court process
- b) Costs of this Application
- c) Any other relief(s)

Upon hearing the Application the Tribunal granted the following orders;

- a) Wadaawa wanaamriwa kubaki na hali zao za sasa na waendeleo kufuatilia shauri la rufaa**
- b) Maombi haya yanaondolewa**

**c) Kutokana na mazingira ya kesi kila upande  
ubebe gharama zake**

Aggrieved by the said decision, the Respondents  
appealed to the High Court based on the following  
three grounds;

- i. That the Tribunal erred in law and fact in  
determining the Application and issue orders  
therein whilst the Application contravened  
Regulation 3(1) and (2) of the Land Dispute  
Courts (The District and Housing Tribunal  
Regulation) 2002**
- ii. That the Tribunal erred in law and in fact by  
ordering parties to maintain status quo and  
follow up the appeal which is pending to the  
Court of Appeal.**
- iii. That the Tribunal erred in law and fact having  
made aware of the presence of Appeal to the  
Court of Appeal proceeded to make orders  
against parties therein whilst lacking  
jurisdiction.**

At the commencement of hearing on 07<sup>th</sup> February 2024, Appellants were represented by Learned Advocate Benjamini Mwakagamba assisted by Advocate Phares Festo and the Respondent was represented by Learned Advocate Nafikire Elly Mwamboma Avocate. The matter was argued by way of written submissions whereby each party complied with the timetable issued by the Court.

In arguing the appeal the learned counsel for the Appellants submitted that this matter is of its own nature involving probate, which has been pending for 30 years and which has been the subject of other litigations as well as complaints to various Authorities. That sometimes on 10<sup>th</sup> July 2020, this Court before Hon. Mlacha J, issued an order which re enforced the appointment of the 1<sup>st</sup> Appellant as the Administratrix of the Estate of the Late Brighton William Kamanga and ordered the Respondent herein to handle over the estate of the Late Brighton Kamanga (his brother) to the appointed administratrix of the estate. He referred the Court to the attached copy of the said Ruling. Pursuant to the said High Court Order, the Primary Court Magistrate of Sinza was directed to ensure that those orders are complied with. Being aggrieved by the said ruling of the High Court, the Respondent herein filed a Notice of Appeal to the Court of Appeal on 8<sup>th</sup> August 2020 followed by a Memorandum of Appeal No 333 of 2023. The Appellants referred the

Court to annexure BMA-8 of the Joint Counter Affidavit filed in the Tribunal on the 23<sup>rd</sup> of June 2023.

There being no stay of execution orders, the Appellants herein filed an Application no. 287 of 2021 in the DLHT, among others seeking for eviction orders against the Respondent which orders were struck on on 1<sup>st</sup> July 2022 before Hon. Mbilinyi, Chairperson on the reason that there is a pendency of intended Appeal in the Court of Appeal. He referred the Court to Annexure BMA-8, para 14 of the 1<sup>st</sup> and 2<sup>nd</sup> Respondent Counter Affidavit filed in the Tribunal on 23<sup>rd</sup> June 2023.

The Appellant thus proceeded to file an inventory and account and the probate matter was closed then the relevant Authorities proceeded to issue title of the three houses namely; Plot No. 830 Block Sinza Madukani-dar es salaam , House located at Plot no. 128 Block E Sinza kwa Remmy DSM and House No. 539 Block C Sinza /Palestina Hospital DSM in the name of Amanda Brighton Kamanga, the lawfully appointed administratrix of the estate of late Brighton Kamanga, their late father.

That to date there is no pending orders for stay of execution of the Decision of the High Court regarding the said Ruling nor order from Sinza Primary Court, the Appellants herein instructed the Court Broker Mass and Associate Co. Ltd to evict the Respondent in the House located at Plot No. 539 Block C Sinza –DSM. However, the Respondent

resisted the said eviction whereby the matter was referred to the OCD Police Kinondoni and later to the District Commissioner of Ubungu who directed the Court broker to proceed. Despite the intervention of the matter, the Respondent herein secured the injunctive order, purporting to restrain the Appellants from carrying out the eviction exercise pursuant to the order issued in Misc. Application no 287/2023, alleging to be arising from Application no. 287/2021 which was struck out.

Being aggrieved by the said exparte order, the Appellants herein on the 23<sup>rd</sup> of June 2023 filed the Notice of Preliminary Objections, which were dismissed by the Tribunal and it proceeded to hear the Application.

Having produced the historical background of the case the learned counsel for the Appellants proceeded to argue on the first ground of Appeal to the effect that the Trial Tribunal erred in law and fact by determining the Application and issue orders therein whilst the Application contravened Regulation 3(1) and (2) of the land Disputes Courts (The District and Housing Tribunal Regulations, 2002)

The learned counsel argued that Misc. Application No.287 of 2023 filed by the Respondent herein is misconceived and an abuse of the Court Process since the filing of the dispute in the Tribunal is regulated by Regulation 3(1) and (2) of the Tribunal Regulations which demand that any proceeding to the Tribunal shall commence with Application.



Regulation 3(2) demands further that the Application shall be made in the form prescribed in the 2<sup>nd</sup> schedule of the Regulation in which the Application constitutes the names of the parties, address ,nature of the dispute and course of action, estimated value etc. That this Court may note that the word shall indicate the mandatory term therefore the Tribunal entertained to hear and determine the Chamber summons supporting the Affidavit without containing the Main Application. Since at the time the Application for injunction was filed, Application no 287/2021 had already been struck out on the ground that that there is a pending Application in the High Court and Court of Appeal.


With regard to the 2<sup>nd</sup> ground of Appeal, the Appellants have contended that the Tribunal erred in law and fact by ordering parties to maintain status quo and follow up the appeal which is pending to the Court of Appeal. The learned counsel has invited the Court to note that the Chairman at page 9 of the ruling the ordered as follows;

**"Maombi haya yanaondolewa"**

And at the same the same time the Trial Chairman proceeded to state that;

**wadaawa wana amriwa kubaki na hali zao za**

**sasa na waendeleo kufuatilia shauri la rufaa'.**



The learned counsel argued further that the Chairman erred in law for ordering maintenance of status quo and at the same time giving an order for striking out of the Application. Thus the Tribunal was moved by the Respondent and actually proceeded to grant injunctive orders on allegation that are unfounded because the order for striking out the Application had already been issued. The Tribunal held that the matter was pending before the Court of Appeal, paradoxically, the same Tribunal made an order for maintenance of status quo while it had already disqualified itself as having no jurisdiction over the matter which is pending in the Court of Appeal. The Appellants submit that this behaviour is a pure delay tactic, which the Respondent has been applying in order to defeat justice and dragging the Court away from dealing with substantive justice. The Appellants submit that this behaviour should be disregarded and stopped immediately.

Regarding the 3<sup>rd</sup> ground, that the Tribunal erred in law and fact having made aware of the presence of Appeal to the Court of Appeal Proceeded to make orders against parties therein whilst lacking jurisdiction. The learned counsel submitted that the Civil Revision No.13 of 2020 was determined and finally concluded in the High Court. He referred the Court to the preliminary objections raised in the Application no. 287/2021, whereby the Tribunal held that the Application was incurably





incompetent as the decision of the High Court in Civil Revision No. 13/2020 is being challenged in both Civil Application No. 390/2020 and the Court of Appeal (Notice of Appeal). (See para 10 of the Order of the Tribunal-Hon. Mwakibuja Chairperson)

The learned counsel submitted that the Trial Chairman Ho. Chenya entertained the same despite the fact it was filed without the main Application. He entertained the same despite the fact that the matter was functus officio since the same was finally concluded by the decision in Civil Revision no. 13/2020 before Mlacha J(see Annex BMA-1 to the Affidavit). That pursuant the said Court Order of the High Court, Sinza Primary Court distributed the deceased properties and the probate matter was closed. Being aggrieved by the said decision of the High Court the Respondent appealed to the Court of Appeal. See the case of **Serenity on the Lake Ltd v Dorcus Martin nyanda** Civil Revision No.1 of 2019 the CAT stated that;

**"Once the Court of Appeal been has duly served, the High court ceases to have jurisdiction".**

The learned counsel argued that on the strength of the above decision, it is a settled principle of law that once a Notice of Appeal and the Record of Appeal has been filed to the Court of Appeal, similarly, the

District Land and Housing Tribunal ceases to have Jurisdiction to hear and determine the matter. He argued that the High Court is a creature of the constitution, foundation of justice and a Court of record, any attempt of the parties, to use the Tribunal as a waiting room or life supporting machine should strictly be discouraged. He finally prayed for the Appeal to be allowed and the Tribunal Order set aside with costs. Submitting in rebuttal, the learned counsel for the Respondent began by stating that this Court should confine itself on what was before the Tribunal because the Respondent has found out that the background stated by the Appellants is misleading, marred with contradictions and many things stated are totally irrelevant to the present matter. He went on arguing that in short what was before the Tribunal was Court/Tribunal contempt due to the Appellants failure to obey and comply with the Tribunal Order dated 01 July 2022 in Application No.287 of 2021. The Appellants filed that Application seeking for an order to evict the Respondent from the disputed property, however the eviction order was not granted as the Application was struck out and the Appellants never challenged that decision. Surprisingly the Appellant started to use local machinery trying to evict the Respondent without the lawful order. This prompted the Respondent to file Application No.287 of 2023.

Regarding the 1<sup>st</sup> ground, the learned counsel submitted that the Appellants counsel simply submitted that the Tribunal erred in law and fact by determining an Application without having the main Application. The learned counsel argued that this argument is misconceived because looking at the Application, it is clearly indicated that, the same originated from Application No.287 of 2021. The learned counsel for the Appellant tried to argue that the said Application no 287 of 2021 was struck out and there was nothing pending before the Tribunal. The Respondent submitted that even if that Application was struck out the order arising from the said Application remains intact/valid to date because since it has never been challenged by the Appellants in any manner whatsoever. In simple terms, the Tribunal's order in Application no.287 of 2021 is still intact/valid. The Respondent's Application arose from the said Application no 287/2021 as cited in the Chamber summons.

See the case of **Mwanaisha Kapera (Administratrix of the Kapera Katumba) vs Salim Suleiman Hamdu** (Civil Reference No,8 o 2021)

Tanzlii where at page 13 stated that;

**"It is trite law that where a decision is not reversed or altered by the higher court, it remains intact".**

He submitted further that it is undisputed fact that in an Application for for contempt of court, the Applicant is required to refer to an order of the Tribunal purported to have been contravened or disrespected. In their case the Respondent cited order dated 01/07/2022 which was delivered in an Application No.287 of 2021. Therefore, the submission that the Application was incompetent for lack of the main Application is a misconception and failure to properly direct to the position of the law on the part of the Appellants counsel. Therefore the first ground of Appeal is devoid of merit.

With regard to the 2<sup>nd</sup> ground, that is the Tribunal erred in law and fact by ordering parties to maintain status quo and follow up the Appeal which is pending before the Court of Appeal. The Respondent argued that the Appellants have failed to support this argument with the case law to cement their arguments. The ground remains mere words without any legal backup. He added that on their part, looking at the circumstances of the case, the Tribunal was justified to direct as it did. Since both parties agree that there is dispute pending before the Court of Appeal to this end both justice and equity require them to wait until the determination of that case. Moreover, the learned counsel submitted that under para 8 of the Respondent's Affidavit supporting the Application in the Tribunal, the Applicant/Respondent stated that she is

in possession and occupation of the disputed property for 35 consecutive years. The law is settled that the interruption of such long possession can only be justified after only the pending appeal is determined. See the case of **Sudi Seif Ngota (Administrator of the Estate of the Late Mohamed Ngota ) v Aloyce John Kazimbaya** (Civil Application No.261/17 of 2019 )TZCA (18 February 2021).

Regarding the 3<sup>rd</sup> ground of Appeal, the learned counsel for the Respondents has contended that the Appellants counsel has argued that the Tribunal has no jurisdiction or was functus official to determine the matter because the matter is pending before the Court of Appeal and that was determined by the High court, he argued that this is confusing because at the same time he said that the matter was pending before the Court of Appeal and at the same time the matter has been determined by the High Court. He added that, be it as it may the matter before the High Court and the Court of Appeal are totally different from the matter, which is before the Tribunal. The matter before High Court and Court of Appeal concern with administration of the of the deceased estate and the matter before the Tribunal concerns contempt of Court.



The learned counsel for the Respondent submitted that another confusion brought by the counsel, is when he cited the case of **Serenity on the Lake Ltd** which states the principle that;

**"once the notice of appeal has been duly lodged, the High Court ceases to have jurisdiction".**

He argued that the learned counsel has totally failed to know that this principle is against the Appellants because the Respondent's Affidavit filed before the Court of Appeal on August 2020 shows clearly that the Appellants proceeded with the matter in the Primary Court sometimes in January 2021 and if we agree with the above principle then it is the Appellant who have sworn on nullity proceedings because since the Notice of Appeal was filed on August 2020, then the Primary Court ceased to have jurisdiction to deal with the matter.

On the issue of stay of execution, the learned counsel for the Appellants has confused matters since how can one file an Application for stay of execution while there is no an Application for execution filed. He found it to be a total misconception of the law.

In rejoinder the learned counsel for the Appellants reiterated his submissions in chief and added that the Respondent has admitted that Application No.287 / 2021 was struck out so after the striking out order



there was no pending matter in the Tribunal so the argument that the order for striking out the Application was valid/intact is incorrect and misleading the case.

Having heard the competing and rival arguments of the trained legal minds, my duty is now to determine whether the Appeal has merit or not.

In determining this Appeal I will begin with ground no 2 and 3 of the Appeal in which the Appellants contend that; **the Tribunal erred in law and in fact by ordering parties to maintain status quo and follow up the Appeal which is pending in the Court of Appeal and that the Tribunal erred in law and fact having been made aware of the presence of the Appeal to the Court of Appeal, proceeded to make orders against parties therein whilst lacking jurisdiction.**

In order to satisfy myself with the said grounds of Appeal, I have perused the records and noted that the Appeal at hand emanates from Misc. Application No. 287 of 2023 in which the Respondent/Applicant then, made an Application before the Tribunal praying for an order for maintenance of the status quo ante and or temporary injunction restraining the Respondents, their agents or servants and any other persons, natural or artificial acting under the instructions of the

Respondents/Appellants from evicting the Applicant from Plot no 539 Block C Palestina, Sinza, Dar es salaam, hence forth the disputed property pending hearing and determination of the said Application interpartes and also prayed for the Tribunal to call upon the Respondents to show cause as to why they should not be committed to prison or stopped from evicting the Applicant from her premises without any lawful eviction order or warned, fined for contempt of the Tribunal's order dated 1<sup>st</sup> July 2022 and for an abuse of court process.

In the course of hearing the said Application, the Respondent /Applicant contended before the Tribunal that the Appellants/Respondents did not have the authority to evict her from the suit premises for lack of a court order. They cited Application no. 287/2021, which was filed by way of summary procedure, for purposes of evicting her but was struck out by the Tribunal on 1<sup>st</sup> July 2023, based on technical reasons. The Appellants on the other side contended that they could evict the Respondent based on the strength of the High Court decision in the Revision case no 13/2020 which appointed the 1<sup>st</sup> Appellant as the Administratrix of the estate of their late father. Secondly, they argued that the matter is also a subject of the pending Appeal before the Court of Appeal of Tanzania and therefore Courts below it are tied up to handle the matter.

Thirdly, they challenged the legality of the Application for being filed without being preceded with the main Application.

The Tribunal after hearing the submissions of both parties issued the following orders;

- a) Wadaawa wanaamriwa kubaki na hali zao  
za sasa na waendeleo kufuatilia shauri la  
rufaa**
- b) Maombi haya yanaondolewa**
- c) Kutokana na mazingira ya kesi kila upande  
ubebe gharama zake**

In their grounds of appeal and submissions in support of the same, the learned counsel for the Appellants has contended that the Tribunal erred in law and in fact by ordering parties to maintain status quo and follow up the Appeal before Court of Appeal and that the Tribunal having been made aware of the presence of the Appeal to the Court of Appeal, proceeded to make orders against parties therein whilst lacking jurisdiction.

Based on the cited orders above and the submissions of the Appellants, I have also noted and observed in the Judgement of the Tribunal page 9 that, the Hon. Chairman, having been made aware of the pending

matter before the Court of Appeal, proceeded to give an order for maintenance of status quo as follows;

**Kwakuwa yapo maelezo katika kiapo kinzani na mawasilisho ya mawakili juu ya uwepo wa shauri la rufaa huko Mahakama ya Rufani ya Tanzania, naamuru yafuatayo; wadaawa wanaamriwa kubaki na hali zao za sasa.....**

Having issued an order for maintenance of status quo the Hon. Chairman then proceeded to state as follows;

**Na waendeleo kufuatilia shauri lao la rufaa...Maombi haya yanaondolewa.Kutokana na mazingira ya maombi haya kila upande ubebe gharama zake.**

I agree with the assertions by the Appellants that the Chairman erred in law for ordering maintenance of status quo while at the time giving an order for striking out of the Application. Since injunctive order was the gist of the Application which was filed before the Tribunal, and the Tribunal had already noted and observed that there was indeed a pending appeal before the Court of Appeal on the same issue and it did not have Jurisdiction to proceed, it ought to have disqualified itself to deal with the matter and just proceeded to only order the parties to



follow up the matter which is pending before the Court of Appeal and dismiss the Application. However it stepped out of its jurisdiction and went beyond what was expected from it. In this regard I support the case of **Serenity on the Lake Ltd v Dorcus Martin Nyanda** Civil Revision No.1 of 2019 the CAT cited by the Appellants to the effect that;

**"Once the Court of Appeal been has duly served, the High court ceases to have jurisdiction".**

Indeed it is a settled principle of law that once a Notice and Record of Appeal have been filed to the Court of Appeal, similarly, the District Land and Housing Tribunal ceases to have Jurisdiction to hear and determine the matter which is a subject of Appeal. I subscribe to this position submitted by the Appellants and I hereby distinguish the cases of **Sudi Seif Ngota (Administrator of the Estate of the Late Mohamed Ngota** cited by the Respondent in the sense that the said case does grant an approval for the Respondent to file Applications in the similar or related matter in the Tribunal while there is already a pending appeal, before the Court of Appeal I refer to Civil Appeal No. 333 of 2023 between Ziada William Kamanga and the Appellants herein;

In the case of **TANZANIA ELECTRIC SUPPLY COMPANY LTD Vs DOWANS HOLDINGS SA (COSTA RICA) AND DOWANS**

**TANZANIA LTD (TANZANIA) CIVIL APPLICATION NO. 142/2012**

**CAT DSM**, the Court of Appeal (Rutakangwa J.A) while discussing the issue of filing Applications in the High Court while the Notice of Appeal on a related matter has already been filed before the Court of Appeal, stated that;

**We have found the crucial issue before us to be whether or not Rule 11(2) of the Rules confers the High Court with jurisdiction to grant a stay order pending appeal once a notice of appeal to this court has been filed.....it is settled law in our jurisprudence, which is not disputed by the counsel for the Applicant that the lodging of a Notice of Appeal in this Court against an appealable Decree or Order of the High Court, commences proceedings in the Court. We are equally convinced that it has long been established law that once a notice of appeal has been lodged, the High Court ceases to have jurisdiction over the matter. See also the case of Aero helicopter (T) Ltd V. F.N Jansen**





**(1990) T.L.R 142. The counsel for the Applicant does not dispute this position.**

The Court of Appeal went on to state that;

**For the order of the High Court or Tribunal, in our respectful firm, to be valid, it should be or should have been made before a Notice of Appeal is lodged. See also the following cases; Komba Mkabara v. Maria Luis Frisch, Civil Application no. 3/2000, Matsushita Electric co. Ltd v. Charles George t/a CG Travers, Civil Application No. 71/2001 unreported.**

The Court stated further that; in the **Matsushita's** case it held that;

**Once a notice of appeal is filed under Rule 76 then the court is seized of the matter in exclusion of the High Court except for applications specifically provided for, such as ...certificate of law, extension of time.**

Therefore on the strength of the above cited cases, principles, and reasoning on the power of the Court of Appeal once the Notice of Appeal is lodged before it the lower courts cease to have Jurisdiction that is the position or principle derived from this case. it is my firm

position that it was therefore legally wrong for the Applicant to apply for orders for maintenance of status quo and contempt of court before the Tribunal while fully knowing that there was already a pending appeal on the related subject matter (Civil Appeal No. 533 of 2023 between the parties herein). More so it was equally wrong for the Tribunal to be seized with the matter and proceeding to determine it and grant an order for the maintenance of status quo as prayed for by the Respondent/Applicant while knowing that there is already a pending appeal before the Court of Appeal on the related issue. The so-called Application for maintenance of status quo and the order for maintenance of status quo granted by the Tribunal were misconceived. The Respondent ought to have followed the proper procedure and the Tribunal ought to have disqualified itself to deal with the matter. Further in the case of **Tanzania Electric Supply Company Ltd vs Dowans Holding SA (Costa Rica) and Another Misc. Civil Application No. 8/2011 the High Court** (Fauz J) as he then was) when confronted with a situation akin to the instant case that was filed before the Tribunal while there is a pending Appeal held that;

**The Hon. Chief Justice must have been aware of the legal position as laid down in several decisions of the Court of Appeal to the effect that**

**once proceedings in the Court of Appeal have been commenced by filing a Notice of Appeal, this Court ceased to have jurisdiction to entertain an application for stay of execution. If his Lordship the Chief Justice had wanted to change the legal position and vest in the High Court and Tribunals the power to order stay of execution , he would have done so expressly.**

In this High Court case, the Hon. Judge declined to grant relief sought predicated his decision on want of jurisdiction. The Application before him was accordingly dismissed.

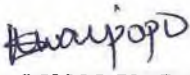
I support this decision and I hold that the Hon. Chairperson ought to have followed the stance taken by Hon. Fauz J as he then was. The Tribunal indeed erred in law and in fact by ordering parties to maintain status quo and proceeding to make orders against parties therein whilst lacking jurisdiction and while being aware and knowing fully that there was already a pending appeal on the related matter in the Court of Appeal.

In the upshot, I proceed to allow the Appeal based on ground no 2 to the extent of setting aside an order for maintenance of status quo and ground no.3. These two grounds are sufficient to dispose the Appeal and for that reason, I will not belabour on the first ground.



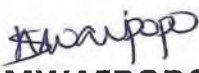
Considering the circumstances of this case and the nature of the parties herein who are relatives, I grant no order for costs. Each party shall bear its own costs.

It is so ordered.

  
**S.D. MWAIPOPO**  
**JUDGE**  
**14. 03.2024**



The Judgement delivered by E.K. Sanga RM, this 14<sup>th</sup> day of March 2024 in the presence of Learned Advocate Kelvin Kidifu and Ziada William Kamanga the Respondent, is hereby certified as a true copy of the original.

  
**S.D. MWAIPOPO**  
**JUDGE**  
**14/3/2023**

