

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

**MISC. LAND APPLICATION NO. 14336 OF 2024**

**(Originating from Misc. Land Application No. 10457 of 2024 in the High  
Court)**

**KOMBO SHAHA SALEHE HISA..... APPLICANT**

***VERSUS***

**MAZIN ABDULAZIZI HAMED..... RESPONDENT**

**RULING**

**25/06/2024 & 03/07/2024**

**GWAE, J**

On 22<sup>nd</sup> May 2024 this Court the order maintaining status quo of the landed property located on Plot No. 1019 Block "B"-Msasani area within Kinondoni District in Dar es salaam Region (suit house) pending hearing and determination of Land Case No. 10321 before the Court. The Court further ordered that, the respondent herein should be maintaining suit property properly during the pendency of the case.

However, on 18<sup>th</sup> June 2024, the applicant named herein filed this application under XXXVII Rule 2 (2) and Section 95 of the Civil Procedure

Code Cap 33 R. E, 2019 (CPC) brought this application praying for the following orders;-

1. This Court be pleased to issue summons to the respondent to appear and show cause as to why he should not be committed as a civil prisoner for not obeying the court order dated 22<sup>nd</sup> May 2024
2. An order requiring the respondent to adhere to the Court order issued on 22<sup>nd</sup> May 2024 pending determination of the main case
3. Costs of this application be in the cause
4. Any other order/orders that the Court may deem fit to grant

The chamber summons containing the reliefs sought as herein has been taken at the applicant's instance and it is supported by his affirmed affidavit. According to the applicant's affidavit, on 11<sup>th</sup> June 2024 when the applicant visited the suit property, he found the respondent's workers busy demolishing the same. It is thus his opinion, that the applicant willfully and unlawfully disobeyed the Court order, which directed him to maintain the suit house and demolish it.

On the other hand, the respondent hotly disputed to have willfully disobeyed instead he stated that he was maintaining the house as per the Court order as the roof of the suit property was leaking caused by the

recently heavy rains, which damaged the walls and electrical system. It was therefore his view, that, what he did was within the dictate of the Court order issued on 22<sup>nd</sup> May 2024.

As the application was filed under certificate of urgency, the parties and their advocates namely; George Muhanga accompanied with Mr. Baraka Mwakibete and Mr. Rajabu Mlindoko for the applicant and respondent respectively appeared on 26<sup>th</sup> June 2024 for the hearing and parties' advocates argued it orally.

Arguing for the application, Mr. Muhanga primarily requested for adoption of the applicant's affidavit to form part of his submission. However, he added that, the respondent intentionally and unlawfully demolished the suit house while aware of the validity of the Court order. He thus sought an order committing the applicant to prison custody as a civil prisoner for his disobedience as per Order XXXVII Rule 2 (2) of the CPC.

Responding to the applicant's submission, Mr. Mlindoko equally sought court's adoption of the respondent's counter affidavit and went on submitting that, the respondent did what he was mandatorily required to do. He also argued that if the respondent is found to have disobeyed the lawful order, the Court has discretion to impose a fine instead of custodial verdict. He

urged the court to refer to **Silent Hotel Ltd vs. Interstate Office Service Ltd**, Civil Case No. 464 of 1999, **Mary Joseph vs. Rechel Zephania**, Misc. Land Application No. 37 of 2020 and **Yusuph Shaban Luhumba vs. Hapyness John and three others**, Civil Application No. 304/14 of 2022 (CAT). He thus requested the Court to adhere to the above judicial jurisprudence in order to enter the verdict of fine instead of detention as a civil prisoner if it is satisfied that, the respondent is liable for the disobedience of the Court order.

Having gone through the parties' affidavits, order of the Court issued on 22<sup>nd</sup> May 2024 and rival submissions given by the parties' advocate, I have observed that, there is no dispute that this Court (**Gwae, J**) made the order for compliance by both parties. Of course, it was the expectation of the Court that, there would be more compliance of the order since the matter was mutually settled. It is common ground that, whenever a dispute is resolved through amicable settlement, an enforcement of such decree or order is quicker than the one whose decree or order obtained or issued through full trial of the dispute on merit.

Nevertheless, the applicant in this application is found strongly complaining that respondent had disobeyed the order of the Court procured

through parties' amicable settlement. He is now looking into seeing the respondent is detained as a civil prisoner. Henceforth, there are two issues for the Court's determination namely;

1. Whether the respondent disobeyed the lawful order made on 22<sup>nd</sup> May 2024 as alleged by the applicant
2. If the 1<sup>st</sup> issue is answered positively, whether detention to prison custody as a civil prisoner is mandatory and appropriate, in the circumstances of the case

Before embarking into determination of the above issues, I find it apposite to have the moving provisions the law, Order XXXVII Rule 2 (2) of the CPC reproduced herein under;

*"2 (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right:*

*"(2) In case of disobedience or of breach of any such terms, the court granting an injunction may order the property of*

*the person guilty of such disobedience or breach to be attached and may also order such person to be detained as a civil prisoner for a term not exceeding six months, unless in the meantime the court directs his release."*

In our instant application, the injunctive order sought and obtained via Misc. Land Application No. 10457 of 2024 was for actual possession by the respondent and from doing anything injurious to the suit house save maintenance of the same as provided under Order XXXVII Rule 2 (1) of the CPC. However, the applicant is now found seriously complaining that, the respondent has disobeyed the court order. Hence, in order to be just and fair, it is pertinent that, the order under consideration be quoted as herein below;

**"Court:** Following the parties' mutual agreement so reached, I hereby make the following orders;

1. That, the application is marked as amicably settled pursuant to the terms and conditions herein under;
  - a. That, the respondent, Mazini Abdulaziz shall maintain the suit property, Plot No. 1019 Block "4" located at Msasani area within Kinondoni District in Dar es salaam Region.

- b. That, the status quo of the suit property shall be maintained until hearing and determination of the main suit or if subsequently ordered otherwise by the Court
2. Each Party to bear his costs of this application

It is so ordered”

Examining the nature of the order, I find the applicant to have been ordered to maintain the suit property during pendency of the parties’ main case or unless ordered otherwise by the Court. It is general principle that court must ensure their decrees or orders are complied with. Thus, the parties to the dispute were expected to act or omit to act in conformity with the order issued by the Court after their settlement out of the Court in order not only to protect the orderly administration of justice but also to maintain the public trust over the judiciary. The Court of Appeal in **Yusuph Shaban Luhumba** (supra) stressed this position by stating that;

*“That, the courts of law have inherent powers to ensure the obedience of their lawful orders. In exercise of such powers therefore, courts of law are mandated, where necessary to impose penal sanctions to compel obedience of its orders.”*

In this instant matter, on one hand the applicant is now found complaining that the respondent had willfully disobeyed the lawful order by

demolishing the suit house and the respondent is found lamenting that, he was complying with the order of the Court since he was obligated to maintain the suit house on other hand. Looking at the wording of the order especially in item 1 (a) above, I am not persuaded if the respondent plainly disobeyed the lawful order of the Court since the order of maintenance did not specify its scope.

The contention by the respondent that, what he did what was actually in accordance with the court order that is maintenance of the suit house, as the house roof was leaking resulting into damage of the walls and electrical system mitigate the applicant's complaints. I am of that view simply because there is no sufficient proof that, the respondent's intention was to completely demolish the suit property. Had it been the proven fact that, the respondent demolished the suit house completely with view of erecting a new one or emerging with a new structure, the finding of this court could have been in favour of the applicant.

I have however paused a question that, assuming the respondent omitted to repair the said leakage as a result, the roof of the suit house and electrical system would be seriously damaged. Therefore, in my considered



view, such omission would inevitably constitute disobedience of the order by the respondent.

As far as far the intention of the respondent has not established to the required standard to constitute disobedience of the order of the Court made on 22<sup>nd</sup> May 2024, it is therefore appropriate to modify the order with effect that, any substantial repair, if so required, shall be communicated between the parties. In other words, the respondent before effecting any major maintenance or repair is required to communicate with the applicant. By doing so, harmony will be guaranteed meanwhile the suit house will be smoothly maintained by the respondent.

Having determined the 1<sup>st</sup> issue, I shall not therefore be curtailed by the 2<sup>nd</sup> issue since its determination was dependent on the finding of the 1<sup>st</sup> issue in affirmative.

All said and done, I find the applicant's application lacking merit save to the direction that, whenever there is a need of repair or maintenance of the suit house on Plot No. 1019 Block "4" situate at Msasani area within Kinondoni District is major or substantial one, there shall be communications between the parties and their respective advocates. The respondent is further directed to immediately repair parts of the suit property that, he

demolished or dealt in a manner that resulted the applicant's complaint's and continue to properly maintain it until determination of the Parties' main case. This order shall read together with the order of the court of 22<sup>nd</sup> May 2024. Given the nature of the matter between the parties, I shall not make orders for costs.

It is so ordered

**DATED at DAR ESALAAM** this 3<sup>rd</sup> July 2024

