

TANZANIA / JUDGMENT

NA TZHC Arusha5

COURT
TZHCDECIDED
1 January 2013

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1 _ ~ IN THE HIGH COURT OF TANZANIA ., ' AT ARUSHA ' ' CIVIL REVISION APPLICATION NO.
2 OF 2015 (C1 F Application for Execution No. 213 Original District Land and Housing Tribunal of
Arusha at Arusha in Application NO.

112. of 2008) I :~:~;H:~:~ }...:.....APPLICANTS I VERSUS I ! • ST JULIUS
AZAEL;I..... 1 RESPONDENT LUMALIZA INVESTMENT AND <
COURT BROKER..... J..... 2ND RESPONDENT RULING ' 1 Date of last Order:
24/09/2015 I Date of Ruling: 23/10/2015 ! BEFORE S. C. MOSHI, J. The application is made
under Section 42(1) (b) (2) of the Land . Disputes Court Act [Cap. 26 R.E '2002]. The applicant
prays this court to revise the proceedings and order in the District Land and Housing
Tribunal of Arusha at Arusha Application for Execution No. 213 of 2013 and make such
decision or order setting it aside as there has ' 1 been an error an error material to the merits
of the case involving injustice because this Honourable Court has granted leave to appeal to
the court of Appeal of Tanzania. ' The applicants were represented by Mr. Lundu advocate
whereas the respondent were represented by Mr. Lume advocate. , . The appellant's
advocate, Mr. Lundu urged that the court erred when it proceeded with execution
proceedings in respect of· Application No. 213 of 2013 despite the fact that the applicants
herein filed reasons were that they were in the court of Appeal and that Misc. Civil
Application No. 99 of 2014 was pending. Mr. Lundu stated further that on 24/03/2015
Extension of time to file an application for leave arid for certificate on points of Law was
granted by the High Court in the presence of the 1st Respondent. While awaiting for
certified copy of the order on 30/03/2015, the respondents obtained an order' for execution.
On 08/04/2015 the ' Applicants filed Misc. Civil Application No. 64 of 2015 for Leave and
certificate on points of Law. l ' that there was no order which Briefly Mr. Lume contended
granted stay of Execution. There was only affidavit showing why 1 execution should not
proceed. Therefore, since the applicaht has already filed notice of appeal ' to the court of
Appeal, neither the District Land and Housing Tribunal nor the High Court can grant stay of
Execution. The High Court is barred to determine· an application for Execution, jurisdiction
is only vested by the Court of Appeal. He cited the case of Tanzania Electronic supply
company L:imi-ted Vs. Dowans Holding SA (COSTARICA) and Another, Civil Application No.
142 of 2012 2 (unreported) court of Appeal of Tanzania at Page 9 - 10. In that case the Court
held that ! ".....Although · unnecessary, it was only a recognition of the prevailing view

of the law that the High court and/or. tribunal had actually their inherent jurisdiction to grant orders for stay of execution pending appeal saved under section 95 of the Civil Procedure Code, Cap. 33. This however, has always been subject to one condition that no proceedings in the matter have been commenced in this court. For the order of the High Court or Tribunal, in our respectful firm opinion, to be valid it should be or should have been under before a notice ' of appeal is lodged'~ I It is my view that the authority cited is relevant in determining the case at present. I After considering both sidek submissions, it is my opinion that Mr. Lundu's urgumet is at the upper hand. Why? If the Notice of Appeal to court of Appeal was lodged in 2013, then it was wrong for the Tribunal to proceed with execution proceedings and issue an I order on 30/03/2015. That was an error material to the merits of the case involving injustice. I i Wherefore I find that the p-roceedings and order in the District Land and Housing Tribunal of, Arusha at Arusha Applicatio_n for execution No. 213 of 2013 were Ierroneously conducted and made. I quash the proceedings and decisions made in respect of Application for execution No. 213 of 2013, set aside all orders made there from. 3

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