

TANZANIA / JUDGMENT

BOAZ MWAIPOPO LAND REVISION

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF SHINYANGA AT SHINYANGA LAND REVISION REFERENCE NO. 202404151000008031 BOAZI MWAIPOPO.....APPLICANT VERSUS DOTTO PAMELAH ZACHARIA KULINGA.....RESPONDENT [Application from the decision of the District Land and Housing Tribunal for Shinyanga at Shinyanga.] (Hon. C. Hatson, Chairman.) dated the 15th day of March, 2024 in Application for Execution No. 124 of 2023

RULING

27th August & 20th September, 2024. S.M. KULITA, J. This application for revision has been filed by way of chamber summons under the provision of section 51(1) of the Land Dispute Court Act No. 2 of 2002, read together with Order XXXIX, Rule 5(1) of the Civil 1 Procedure Code [Cap 33 RE 2019] and Section 43(1)(b) of the Land Dispute Court Act No. 2 of 2002. The Applicant prays for this Court to revise the ruling of the District Land and Housing Tribunal (DLHT) for Shinyanga in Execution Case No. 124 of 2023 delivered on 15th March, 2024 which ordered him to vacate from the disputed land and stay the said order pending determination of his application for extension of time to appeal to the Court of Appeal. The application is supported with an affidavit, sworn by the applicant herein on the 26th day of March, 2024. In a nut shell, the records provide that, the parties herein had a land dispute namely Land Application No. 46 of 2016 at the DLHT for Shinyanga. The Applicant lost in that said case. That was on 17th February, 2017. Dissatisfied with it, the applicant appealed at High Court through Land Appeal No. 17 of 2019. The same got dismissed. On that account, the applicant decided to seek for leave to appeal to the Court of Appeal, but his application was out of time. Through Land Application No. 8 of 2021, the applicant was extended time of 30 days within which to file for leave to appeal to the Court of Appeal. 2 After been extended that time, the applicant through Application No. 37 of 2021 he applied for leave to Appeal to the Court of Appeal. Again, the applicant was unlucky, because, this application was found to been filed out of time again, contrary to the order of this court in the Misc. Land Application No. 8 of 2021. Due to this dismissal, the applicant decided to seek for extension of time to file application for leave to appeal to the Court of Appeal. While the applicant was in a process of seeking extension of time to apply for leave to appeal to the Court of Appeal, the respondent sought for execution of decision in Land Application No. 46 of 2016

through Execution Application No. 124 of 2023 at the DLHT. It is through the said Execution Application No. 124 of 2023, the Applicant was ordered to vacate from the disputed premises, and this is what initiated this application for Revision. The applicant seeks for revision on the grounds that; one, execution should stop as there is still a matter going on at the Court of Appeal in respect for the same property, and two, if demolition of his house is executed he will suffer irreparable loss, and that he doesn't even know and never met with the respondent, as she always appears through a person with power of attorney. 3 On 27th August, 2024, the matter was scheduled for hearing through written submissions. Both parties complied with. Mr. Masalu, Advocate, represented the Applicant whereas Mr. Frank Samwel represented the Respondent. Submitting in support of the application Mr. Masalu stated that, the DLHT Chairman upon discovering that the applicant is processing a way to appeal to the court of appeal, he ought to have stayed the execution, instead of entering an order for the applicant to vacate the disputed land. To buttress his position Mr. Masalu cited Order XXI, Rule 27 of the Civil Procedure Code. Replying to the applicant's submissions in chief Mr. Frank firstly stated that, the applicant's submissions should be dismissed for being filed out of court's scheduled time. He explained that, according to the scheduling order for filing the written submissions, the applicant ought to have filed his submissions in chief not later than 5th August, 2024. He thus condemned the applicant for filing it on 6th August, 2024. In addition, Mr. Frank stated that, since there is no any pending appeal at any court against the judgment for the Land Application No. 46 of 2016. He then formed a considered opinion that, in that sense, stay cannot be granted and that there is nothing to prevent execution. 4 Rejoining the issue of filing written submissions in chief out of time, Mr. Masalu stated that, the same is not true. He gave reason that, he firstly filed his written submissions in chief on 3rd August, 2024 and the same got admitted. He went ahead narrating that, when he went to the billing officer for control number, to effectuate payment, he was told of the system problem, which caused applicant's written submissions not to be seen. He resorted into making follow up before the Deputy Registrar who advised him to refile it afresh. On those circumstances, Mr. Masalu concluded that, his submissions were filed in time. Further to that, Mr. Masalu reiterated his submissions in chief and added that, appealing to the Court of Appeal is a process. He stated that, formerly, appealing to the Court of Appeal involved seeking for leave which was waived in December, 2023. He said that, even after the waive on the said leave, the applicant did not rest and sleep, but he filed an application for extension of time, to file a Notice of intention to appeal to the Court of Appeal. To him, that said matter is still pending in court. That was the end of both parties' submissions. I have keenly gone through the entire pleadings, as well as the tribunal and courts' records. I have also taken into considerations the 5 parties' submissions. Upon going through all these, I find the issue for determination is whether this application is meritorious. On the issue as to whether the applicant's written submission was filed out of the time scheduled by the court, this cannot detain me much, because, upon going through the court's electronic filing system, I found out that, the applicant had lodged the written submission on 3rd August, 2024, the date that falls within the scheduled time frame. On that account, this issue fails, hence, I am going to determine this application by making consideration of the submissions filed by both parties. On the issue as to whether stay of execution for the decision of Land Application No. 46 of 2016 should be granted, I have the following to say;

concerning the said decision, both parties to the case do not dispute, as the records shows, that, the applicant had lodged a Notice of Appeal to the Court of Appeal on 20th May, 2020. It means that he was challenging it. The records show further that, through Civil Application No. 441/14 of 2023 of the Court of Appeal, the applicant was seeking a way to get leave to appeal to the court of appeal. On this application, the Court of Appeal gave an order for amendment of the Notice of Motion on 29th September, 2023. These facts mean that, up until 29th 6 September, 2023 the applicant's former Notice of Appeal to the court of appeal was still valid. However, parties do not dispute that, to date, there is no pending appeal against the judgment for Land Application No. 46 of 2016. But the applicant, justifies his application for stay of execution, basing on the pending Application for extension of time, to lodge Notice of Appeal to Court of Appeal, after the former notice got expired. My perusal to the court pending cases, shows that, it is true that, the applicant has been in court corridors, seeking for extension of time to lodge a new Notice of Appeal to the Court of Appeal, for the same decision of Land Application No. 46 of 2016, now through Misc. Land Application Ref. No. 202408211000020489 which is pending before Mwakihaba, Principal Resident Magistrate, with Extended jurisdiction. As there is no appeal in the Court of appeal on the judgment of Land Application No. 46 of 2016, the crucial issue is, whether this court should grant stay of execution, pending the said application for extension of time to lodge a Notice of intention to appeal to the Court of Appeal. I am alive with the wording in Order XXI, Rule 27 of the Civil Procedure Code, which provides; - 7 "Where a suit is pending in any court against the holder of a decree of such court, on the part of the person against whom the decree was passed the court may, on such terms as to security or otherwise as it thinks fit, stay execution of the decree until the pending suit has been decided" With the prevailing enshrined position of the law set in the above quoted excerpt, I find it safer for the trial Chairman to have stayed execution of the impugned decision, than ordering eviction and demolition of the applicant's structure on the disputed land. In other words, it is simple and practicable to compensate the respondent, for the whole time she is wasting to enjoy her disputed and ownership rights, if at all the court of appeal will confirms her victory, rather than, compensating the applicant on the eviction disturbance and demolition of his house, if the Court of Appeal finally will turn him the winner. On that account, I find the execution order by the DLHT in the Execution Case No. 124 of 2024, not convenient at this time, hence stayed as sought, pending determination of the ongoing application for extension of time to lodge Notice of Appeal at the Court of Appeal. 8 Therefore, this application for revision is hereby granted for being meritorious. Each party to bear his/her own costs. S.M. Kulita JUDGE 20/09/2024 DATED at SHINYANGA this 20th day of September, 2024. S.M. Kulita JUDGE 20/09/2024 9

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