

TANZANIA / JUDGMENT

FAUDHIA HUSSEIN Vs

COURT
TANZLIIDECIDED
12 July 2024

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IN THE HIGH COURT OF TANZANIA (DODOMA SUB REGISTRY) AT DODOMA MISC.
APPLICATION NO. 15584 OF 2024 (Made under Rule 8 of the Civil Procedure (Appeals in
Proceeding originating in Primary Court) Rules) FAUDHIA
HUSSEIN.....APPLICANT Versus AHMED
SALEH.....RESPONDENT

RULING

Date of last order: 12th July, 2024. Date of Ruling: 19th July, 2024. E.E. KAKOLAKI, J. This ruling seeks to address one ground of the preliminary point of objection raised by the respondent in respect of the applicant's application after he abandoned the second ground during the hearing. Respondent's ground of objection is to the effect that, the application is bad in law for being made under wrong provision of the law. Briefly the application has moved this Court under Rule 8 of the Civil Procedure (Appeals in Proceedings originating in Primary Court) Rules, for grant of stay of execution to restrain the respondent from selling the house located on Plot No. 11 Mwangaza Street within Dodoma City pending hearing and determination of the Appeal lodged in this Court, maintain status quo and further that, costs of this application to be borne by the respondent, hence the raised ground of objection in that, the Court has been moved under wrongly cited law. 1 At the hearing the applicant was represented by Mr. Meshack Yona Ngamando while the respondent hired legal services of Ms. Elizabeth Kagembe, both learned advocates. Submitting in favour of the ground of objection Ms. Kagembe argued that, Rule 8 of GN. No. 312 of 1964 under which this Court is moved to grant the stay of execution has sub-rules in which the applicant has failed to specify exactly under which sub-rule is the court being moved under. According to her that, non-citation of the sub-rule amounts to wrong citation of the provision of the law which renders the application fatally defective hence incompetent before the Court, deserving to be struck out. She thus prayed the Court to dismiss this application with costs. In reply Mr. Ngamando, urged the Court to overrule the objection as the position of the law is that, non-citation or wrong citation of the law is not fatal more so when the court is seized with jurisdiction to entertain the application. He insisted the Court has the jurisdiction to entertain the application under Rule 8(2) of the GN. No. 312 of 1964. When probed by the Court as to whether the said rule was conferring jurisdiction to the Court Mr. Ngamando confessed that, it was not as the same was referring to appeals before this Court, originating from the decision of the District Court granting or refusing to grant stay of execution made under Rule 8(1) of the said

Rules. He however asked the court to invoke its inherent powers to find that, it is seized with jurisdiction to entertain the application as there is no any specific provision under the law to carter for such application for stay of execution before the High Court in 2 matters originating from the Primary Court. In rejoinder submission Ms.Kagembe reiterated her submission in chief while pressing the court to struck out the application for being moved under wrong citation of the law. I have carefully followed the contending arguments by the parties. To start with the ground of objection by the respondent the settled law is that, non- citation or wrong citation of the relevant provisions of the law under which the Court is moved to grant the sought orders in the application or petition is not fatal in the awake of the Oxygen principle or overriding principle introduced in our vide Written Laws (Miscellaneous Amendments) Act No. 8 of 2018, where the principle demands courts of law to consider substantive justice rather than being bound by technicalities. It is more so when the Court is seized with jurisdiction to entertain the matter. I therefore find the ground of objection wanting in merit and proceed to overrule the same. Next for determination is whether this Court is seized with jurisdiction to entertain the application for stay of execution on matters origination from the Primary Court in which the governing law is the Civil Procedure (Appeals in Proceeding originating in Primary Court) Rules GN. No. 312 of 1964. Rule 8(1) and (2) of the said Rules Provides:

8. Stay of execution.

- (1) Any person who has filed an appeal to a district court may apply in writing to that court for astay of execution of the decision or order against which he is appealing. 3
- (2) An appeal shall lie to the High Court from any order granting or refusing a stay of execution. From the above exposition of the law, it is patent clear under sub rule (1) of the Rules, the law confers jurisdiction to the District Court in which the appeal has been lodge to entertain the application for stay of execution, in which its decision when challenged by the aggrieved party the appeal lies to the High Court as dictated in sub rule (2). I therefore agree with Mr. Ngamando that, this law does not confer jurisdiction to this Court to entertain the application under hand nor is specifically provided therein or in any provision of the law. That being the position, the glaring question is whether it can be conclusively stated that this Court has no jurisdiction to entertain the application under hand in the circumstances where the appeal by the parties is pending before it? I think the response is no. This Court under section 2(2) and (3) of the Judicature and Application of Laws [Cap. 358 R.E 2019] (the JALA), has inherent powers to entertain both civil and criminal in which no specific law is providing for. In this matter since there is no specific provisions of law conferring this Court the jurisdiction to entertain an application for stay of execution over matters origination from the Primary Court, I find is possessed with inherent powers under the JALA hence seized with the necessary jurisdiction to entertain the matter at hand. 4 All said and done, the preliminary objection by the respondent is overruled as I hereby order that, hearing of the application should proceed on merit. I order each party to bear own costs. Order accordingly. Dated at Dodoma this 19th of July, 2024. E. E. KAKOLAKI JUGDE 19/07/2024. Court: The Ruling has been delivered at Dodoma today on 19 th day of July, 2024, in the

presence of Mr. Meshack Yona Ngamando, Advocate for the Applicant, Ms. Elizabeth Kagembe, Advocate for the Respondent and Ms. Veradina Matikila, Court clerk. Right of appeal explained. E. E. KAKOLAKI JUGDE 19/07/2024. 5

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