

TANZANIA / JUDGMENT

Hamisi Shabani v Amina Losi Galu

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI MISC. LAND APPLICATION NO. 30584 OF 2024 (Arising from Land Appeal
No. 28780 of 2024 in the High Court Manyara Sub-registry, Originating from Application No. 34 of
2023 in the District Land and Housing Tribunal of Babati) HAMISI
SHABANI.....APPLICANT VERSUS AMINA LOSI
GALU.....RESPONDENT

RULING

10th & 12th March 2025 MWIHAMBI, J.: This is an application for stay of execution of the decree of the District Land and Housing Tribunal of Babati (the trial Tribunal) pending the hearing and determination of Land Appeal No. 28780 of 2024 before this Court. This is a formal application made by way of chamber summons supported by an affidavit of Hamisi Shabani, the applicant. The chamber summons has been predicated under Order XXXIX Rule 5 (1) of the Civil Procedure Code [Cap. 33 R.E. 2019]. Amina Losi Galu, the respondent resisted the application through her counter affidavit. The background of the application is set out in the affidavit of the applicant and it is briefly stated as follows: the applicant was the 1 respondent in Application No. 34 of 2023 before the trial Tribunal and the decision thereof was delivered in favor of Amina Losi Galu who was the applicant. Being aggrieved by that decision, the applicant in this application, Hamisi Shabani appealed to this Court in Land Appeal No. 28780 of 2024 which is still pending. While waiting for hearing of his appeal, the applicant is of the allegations that the respondent being accompanied by her working men carrying traditional weapons to wit; machetes, clubs, bows and arrows invaded the disputed land without having a valid court/tribunal order warranting them to execute the decree of the trial Tribunal. This act of the respondent has denied access to the applicant to take his sugarcane planted on the disputed land. Furthermore, the respondent and her workmen are currently uprooting sugarcane planted by the applicant and looking for buyers to dispose off the disputed land to the third parties. That there is a pending appeal before the court and that the applicant will suffer a big loss; it is for these reasons that the applicant is seeking for the order to stay the execution. The respondent filed an opposing counter affidavit through her advocate Mr. Abdallah Kilobwa. When the matter came for hearing on 10th March 2025, the applicant was represented by the learned advocate Mr. 2 John M. Shirima while the respondent had the representation of the learned advocate Mr. Tadei Lister. Mr. Tadei Lister notified the Court that he has been engaged recently by the respondent and he conceded the

applicant's application urging the Court to grant him as he has prayed. After hearing Mr. Tadei Lister for the respondent in support of the applicant's application, I am of a different view from granting the order of stay of execution to the applicant for the reasons I will explain below. This Court is familiar with the procedures laid down and settled by the law on the path to take in enforcing the judgment given by the court through execution and on what conditions should a party fulfill upon seeking the stay of execution. Part V of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 provides for the procedure to be followed on execution of decrees and orders delivered by the District Land and Housing Tribunal. Regulation 23 (1) of the Regulations provides that: "A decree holder may, as soon as practicable after the pronouncement of the judgment or ruling, apply for the execution of the decree or order as the case may be." Upon revisiting the quoted provision of law, emphasis is put on the application for the execution of the decree or order. That is to say, the execution of a decree or order is put on motion upon the application of a decree holder to the court or tribunal which pronounced the judgment or ruling. Regulation 25 (1) further states: "Notwithstanding regulation 24 a judgment debtor who intends to appeal to the High Court (Land Division) may at any time before the decree or order of the Tribunal is executed, apply to the Tribunal for stay of execution" Being guided by the above provision, a stay of execution is intended to prevent the enforcement of the judgment for the time a party applying for stay is seeking for other reliefs such as appeal or revision. Therefore, without such enforcement process being initiated, there is no basis for granting the order for staying execution. Looking at the application before this Court; I have gone through the annexures to the affidavit of the applicant and what can be seen is the judgment and the decree of the trial Tribunal only. The applicant has not put before this Court whether the respondent has already instigated her application for execution before the tribunal or has been granted an order to execute the judgment. What is more interesting, the applicant has deposed at paragraph 6 of his affidavit, I will reproduce it for clarification: 4 "That, while the Land Appeal No. 28780 of 2024 still pending before this Honorable Court on divers dates between 24th November, 2024 to 30th November, 2024 the Respondent named herein accompanied by her working men equipped with traditional weapons to wit; machetes clubs, clubs, bows and arrows they invaded the disputed land without having a valid Court/Tribunal order warranting them to Execute Decree of the trial Tribunal and prevent the Applicant to access therein to takeoff his sugarcane planted thereto before the decision of the trial tribunal." [Emphasis is mine.] The applicant himself confirms that there was no valid execution order which warranted the respondent on the commission of the alleged acts. There is nothing apparent on the face of record for this Court to act upon in granting the order for stay as sought by the applicant. In the case of Athanas Albert and 4 Others v Tumaini University College, Iringa

[2001] T.L.R. 63, Kisanga, J.A stated that: "It seems to me that a stay of execution can properly be asked for where there is a court order granting a right to the respondent or commanding or directing him to do something that affects the applicant. In such a situation, the applicant can meaningfully ask the court for a stay and to restrain the respondent from executing that order pending the results of an intended appeal." 5 In addition to citing the case Athanas Albert, the Court of Appeal in the case of Maryam Nassor v Abila State

Developers & Agency Limited and 3 Others (Civil Application 153/17 of 2022) TZCA 168 stated: “...we have no scintilla of doubt that a stay order will issue only when there is a court order conferring a right to an applicant against a respondent the execution of which will affect the former. That, as already alluded to above, was not the case in the matter before us.” In regard to the cited cases above, I find and hold that the applicant’s application for stay of execution is misconceived, I strike it out. No order as to costs. DATED at BABATI this 12th day of March 2025. N. J. MWIHAMBI JUDGE COURT: Ruling delivered today in presence of the Applicant and Mr. Tadei Lister, Advocate of the Respondent who is also holding brief for Mr. John Shirima, Advocate of the Applicant. B/C: Ms. Fatina Haymale (RMA) is present. N. J. MWIHAMBI, J. 6

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