

TANZANIA / JUDGMENT

honoratha stephano nkuwi vs albino theodory ghumpi 2024 tzhc 408 26 february 2024

COURT
TZHCDECIDED
26 February 2024

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IN THE HIGH COURT OF TANZANIA DODOMA SUB REGISTRY AT DODOMA MISCELLANEOUS
LAND APPLICATION NO. 47 OF 2023 (Arising from Mise Land Application No. 35 of 2021 at the
District Land and Housing Tribunal for Singida at Singida) HONORATHA STEPHANO
NKUWI..... APPLICANT VERSUS ALBINO THEODORY GHUMPI.....
RESPONDENT

RULING

Date of last order. 12/02/ 2024 Date of Ruling-. 26/02/2024 LONGOPA, J: On 20th July 2023, the applicant filed this application under Order XXI Rule 24 (1) of the Civil Procedure Code, Cap 33 R.E. 2019. The applicant and respondent were parties to the District Land and Housing Tribunal of Singida in Mise Land Application No. 35 of 2022 where the applicant was applying for setting aside of an ex parte judgment of the Tribunal entered 25/2/2022 in favour of the respondent against the appellant in Land Application No. 22 of 2021. The applicant was dissatisfied by that decision 1 | Page thus challenged it by an application to set aside the ex parte order on account that the appellant herein was not dully served. On 17/2/2023, the District Land and Housing Tribunal for Singida in Mise Land Application No. 35 of 2022 dismissed the application for setting aside ex parte decision dated 25/2/2022. The applicant instituted an appeal against such decision of the District Land and Housing Tribunal. Pending the determination of the appeal before this Court, the applicant realized existence of the application for execution at the District Land and Housing Tribunal which is likely to impair the determination of the pending appeal thus application for the following orders:

1. That this Honourable Court be pleased to stay execution l\lo. 32 of 2022 of the District Land and Housing Tribunal for Singida pending the hearing of Land Appeal No. 32 of 2023 before Masabo, J. in the High Court of Tanzania at Dodoma.
2. That costs be provided for.

3. Any other order (s) that this Honourable Court may deem fit and just to grant. The application is supported by affidavit of the applicant which states that the applicant being dissatisfied with the decision of District Land and Housing Tribunal for Singida in Mise Land Application No 35 of 2022 challenged the same vide an appeal to this Court. 2 | Page It is also stated that the respondent was in the process of executing the said dispute property whereby he filed an Application for Execution No. 32 of 2022 in the District Land and Housing Tribunal for Singida. It was applicant's further averment that circumstances would require this Court's intervention to stay the execution pending determination of the pending appeal before this Court. Further, the applicant stated that it is in the interest of justice for this Court to entertain and grant the application for stay of execution as if the same is not granted the applicant is likely to suffer irreparably and rights of the parties on appeal be prejudiced. The applicant concluded by stating that there are overwhelming chances of success in the appeal before the High Court thus this stay would be proper and legally valid. On 12/2/2024 when the matter came for hearing the parties appeared in person. Mr. Bernado Stephano Nkuwi with full registered powers of attorney was the first to argue the matter. He submitted that the respondent has continued trying to execute the impugned decision/decree/drawn order. It was further argued that there are disparities on the size of the land from 4 acres in ex parte judgement to 8 acres in execution application. It 3 | Page was his prayer that the respondent should be stopped from execution of the drawn order /decree of the District Land and Housing Tribunal pending this Court's determination of the matter for both parties to be heard. The grant of stay would allow the rights of the parties to be properly adjudicated in case the appeal is successfully. On the other hand, the respondent was of the view that having the two decisions in his favour there was nothing to prevent him for execution of the decree of the Tribunal. The respondent, however, noted that since there is pending appeal before this Court, he has not executed the decree of the District Land and Housing Tribunal which was entered in his favour. Having heard submissions of both parties, I am tasked to determine whether in the circumstances of the matter there is a need to order stay of execution. The procedure for determination of land matters and execution of the decree thereof are governed mainly by the Land Disputes Courts Act, Cap 216 R.E 2019 and the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 GN No. 174 dated 27/6/2003 as amended by GN No. 171 dated 17/3/ 2023. 4 | Page The first aspect is whether once an appeal is preferred before the High Court against a decision of District Land and Housing Tribunal, such appeal automatically stays the execution of the decree of the District Land and Housing Tribunal. My perusal of the existing legal framework reveals that the answer is in the negative. An appeal to the High Court is not an automatic stay of execution of the decree or order of the Tribunal. This is reflected under Regulation 24 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, GN No 174 dated 27/6/2003. It states as follows: Any party who aggrieved by the decision of the Tribunal shaii subject to the provisions of the Act, have the right to appeal to the High Court: Provided that, an appeal shall not be a bar to the execution of decree or order of the Tribunal. The proviso to this Regulation indicates that preferring an appeal alone cannot stop the execution processes of a decree or order of the Tribunal. It means that a party may

appeal to the High Court against the order or decree of the Tribunal, but execution can continue if that party does not take necessary steps to ensure that such decree or order is not executed. It is on that account that Regulation 25 of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations allows the Tribunal to determine an application for stay of execution pending the appeal. 5(Page 4 Given that an appeal against the ruling and order of the District Land and Housing Tribunal for Singida in Mise Land Application No. 35 of 2022 was already challenged by way an appeal to the High Court since 17/3/2023, it was pertinent for the applicant to take necessary steps to prevent the execution of decree pending the determination of appeal. As the procedure applicable before the High Court is regulated by the Civil Procedure Code, Cap 33 R.E. 2019 by virtue of section 51(1) of the Land Disputes Courts Act, Cap 216 R.E. 2019, the application for stay of execution was properly instituted under the provision of Order XXI Rule 24(1) of the Code. That provision provides an avenue where a judgment debtor as the applicant in this case to apply for stay of execution at the court/tribunal that granted such decree or the appellate Court. In the case of Tanzania Electric Supply Company Limited vs Dowans Holdings (Costa Rica) & Another (Civil Application 142 of

- 2012) [2013] TZCA 437 (27 March 2013), the Court of Appeal stated that: It goes without saying, therefore, that it wiii need an amendment to the Act to confer jurisdiction to the High Court to entertain matters reiating to stay of execution once a notice of appeal has been du/ y lodged. All said and done, we have found ourselves constrained to hold that although the High Court still retains its inherent powers to grant stay orders pending appeals to this Court, it ceases 6| Page to have such powers or Jurisdiction once a notice ofappeai is lodged in accordance with the governing provisions of the Rules. It was, therefore, legally wrong for the applicant to seek a stay order in the High Court, under Rules 11 (2)
- (b) of the Rules, which incidentally do not apply there, after it had lodged the notice ofappeai. According to this decision the powers of the High Court is application for stay of execution is limited to circumstances where the appeal is not initiated at the Court of Appeal. In cases where the appeal is already preferred by initiating a notice of appeal, the powers to stay execution of decree shall be vested in the Court of Appeal. In the same parameters, the appeal being already filed with the High Court of Tanzania it was necessary for the applicant to apply for stay of execution at this Court pending the determination of appeal as it is the Court versed with jurisdiction to determine the pending appeal. For an application of stay of execution to be granted the applicant must show that a good cause exists to warrant such exercise of discretionary powers of the Court. In the case of Laurent Kavishe vs Enely Hezron (Civil Application 5 of 2012) [2013] TZCA 365 (3 May 2013), the Court of Appeal emphasized on the need to show good cause on the part of the applicant. It stated that: 7| Page A We are satisfied that no good cause is shown where the application for stay is shown to be the offending party. The powers under Rule 11 (2) (b) are discretionary and equitable, and one can go to equity only with clean hands. We are thus constrained to find that the application for stay of execution has no merit. I am satisfied that the applicant has shown good cause that there is a necessity to stay execution of the decree /order. The applicant

indicated that such decree /order was procured improperly through ex parte judgment without affording the applicant the constitutionally protected right of fair hearing by allowing the applicant to be heard by the Tribunal. I am prepared to grant this application for stay of execution against the Application for Execution No 37 of 2022 before the District Land and Housing Tribunal of Singida concerning the two parties namely Albino Theodory Ghumpi as the decree holder and Honoratha Stephano Nkuwi as the judgment debtor. However, given the fact that this application was heard and determined at the same time as the then impending appeal, it is pertinent to state that the findings in the Land Appeal No 32 of 2023 might have implications on this application for stay of execution. 8 | Page In the circumstances, the application for stay of execution in Application for Execution No. 32 of 2022 between Albino Theodory Ghumpi (as decree holder) and Honoratha Stephano Nkuwi (as judgment debtor) is hereby granted subject to compliance with the outcome in the Land Appeal No 32 of 2023. The application for stay of execution stands granted with no orders as to costs. It is so ordered. DATED at DODOMA this 26th day of February 2024. M0« E.E LOli PA JUDGE I 26/02/2024 9 | Page

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