

TANZANIA / JUDGMENT

CIVIL APPLICATION NO 38 OF 15 OF 2025 MOHSIN GULAM HUSSEIN A3 OTHERS VS FOUM BARUA ALI

COURT
TANZLIIDECIDED
1 January 2025

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IN THE COURT OF APPEAL OF TANZANIA AT PAR ES SALAAM CIVIL APPLICATION NO. 38/15 OF 2025 MOHSIN GULAM HUSSEIN.....1st APPLICANT HAJI ALI JAKU.....2 nd APPLICANT JAKU ALI JAKU..... 3RDAPPLICANT JUMA MKADAMU..... 4TM APPLICANT VERSUS FOUM BARUA ALI..... RESPONDENT (Application for Stay of Execution of the Ruling and Drawn Order of the High Court of Zanzibar at Tunguu, Zanzibar) (MohamejLi) dated 29th day of November, 2024 in Civil Reference No. 04 of 2024

RULING

18th & 26th March, 2025 FIKIRINI. J.A.: The applicants moved this Court by way of notice of motion in terms of rules 11(3), (4), (4A), (6), (7) (a)(b)(c) and (d) of the Tanzania Court of Appeal Rules, 2009 (the Rules) praying for stay of execution of the drawn order of the High Court at Tuntjjuu, Zanzibar in Application for Reference No. 04 of 2024. The application is supported by an affidavit affirmed by Mohsin Gulam Hussein, the 1st applicant and on behalf of Haji Ali Jaku, 2nd applicant; Jaku Ali Jaku, 3rd applicant and Juma Mukadam, 4th applicant. Contesting the grant of the application, Mr. Karume Mrisho, learned advocate, deponed an affidavit in reply on behalf of Foum Barua Ali, the respondent. The background to this application can briefly be stated as follows: the 1st applicant bought a piece of land (suit land) from the 2nd and 3rd applicants, and Mboja Mkadam Juma, who is not a party to this application way back in 2010 through a deed of sale. The landed property was registered and effectively transferred into the 1st applicant's name on 14th July, 2011 and had been paying yearly rent In 2013, the respondent filed a suit before the Land Tribunal at Vuga Zanzibar registered as Civil Case No. 10 of 2013. He tost and preferred an appeal to the High Court of Zanzibar in Civil Appeal No. 12 of 2017. The said High Court of Zanzibar decision dated 22nd January, 2019 is stated to be ambiguous resulting in failure to execute the decree thereof twice on 2nd May, 2024 and 4th November, 2024. The challenge prompted the respondent to file Civil Reference No. 04 of 2024 to seek interpretation and clarification of the otherwise ambiguous decision stemming from Civil Appeal No. 12 of 2017.

The outcome of the reference dated 29th November, 2024 favoured the respondent. Aggrieved, the applicants have preferred an appeal by lodging a notice of appeal and, upon being served with a notice of execution, filed this application seeking a stay of execution. At the hearing of the application present were Messrs. Salum Bushiri Khamis and Karume Haji Mrisho, both learned advocates featuring their respective parties. Mr. Khamis adopted the notice of motion and the affidavit in support of the application prior to imploring the Court to grant the stay of execution sought as all the requirements were satisfied. This includes compliance with rules 11 (3), 11 (7) (a),(b), (c) and (d), plus an explanation of the substantial loss that would be suffered if the stay of execution is not granted. He further contended that the applicants are ready to deposit security for the due performance as would be determined and ordered by the Court. Closing his submission, the learned counsel urged the Court to grant the stay for execution as prayed. Mr. Mrisho, besides adopting the contents of the affidavit in reply was straight to the point opposing the grant of the application. Premising his objection on the fact that the applicants have failed to satisfy the requirements as stipulated in rules 11 (3) and 11 (7) (a) of the Rules. The 11 (7) (a) of the Rules requires that there must exist a notice of appeal prior to seeking and granting application for stay of execution, that notice of appeal in respect to Civil Appeal No. 12 of 2017, did not exist on record making the application incompetent. The learned counsel went on referring to paragraphs 8, 9, 10 and 11 of the affidavit in reply contending that the application for execution was in regard to Civil Appeal No. 12 of 2017 and not that of Civil Reference No. 04 of 2024. His reasons for stating so were that the execution found on pages 130-131 refers to the decree subject of the execution, which was dated 22nd January 2019. Moreover, the title of the execution refers to both the decree in Civil Appeal No. 12 of 2017 and the drawn order that resulted from Civil Reference No. 04 of 2024. Under the circumstances the execution should be that in reference to the decree from Civil Appeal No. 12 of 2017 and not drawn order dated 29th November, 2024. The learned counsel wound up his submission by praying for the application to be declined to pave the way for the respondent to enjoy the fruits of the judgment in his favour. Rejoining, Mr. Khamis reiterated his earlier submissions and prayer that the appeal is not against the decree in Civil Appeal No. 12 of 2017 but the outcome in Civil Reference No. 04 of 2024. Since all the requirements were met, he thus prayed for the application to be granted. I have carefully perused the notice of motion, affidavits for and against the application, and the learned counsel's for the parties oral submissions. The issue for consideration is whether the application has satisfied the conditions attached to granting of stay of execution of the decree set forth under rule 11(4) (5) (a) (b) and (7)(a) (b) (c) and (d) of the Rules. However, upon careful review of the documents on record, I noted that the notice of appeal on page 107 pertains to Civil Reference No. 04 of 2024. The decree in reference was the one subject to execution is from Civil Appeal No. 12 of 2017, whereas there is no notice of appeal regarding the said case. Taking into consideration that the application involves a landed property, a sensitive matter that requires thorough consideration, I find the sound decision would be not to grant the application for stay of execution. Instead, in accordance with Rule 60 (1) of the Rules, refer the matter to the Court for further guidance and determination. The hearing of the application is, therefore, adjourned to a date to be fixed by the Registrar. It is so ordered. DATED at DAR ES SALAAM this 25th day of March, 2025. P. S. FIKIRINI JUSTICE OF APPEAL Ruling delivered this 26th day of March, 2025 in

the presence of Mr. Salum Bushiri Khamis, learned Advocate for the Applicants and Mr. Fedison Musiba, learned advocate for the Respondent via video conference from High Court of Zanzibar, Tunguu, is hereby certified as a true copy of the original. R. W. CHAUNGU DEPUTY REGISTRAR
COURT OF APPEAL

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/mohsin-gulam-hussein-v-foum-barua-ali-StayofExecution-tanzlii-2025--6a3ea52e3b1caa912982715e

Prepared on 13 October 2026 · Esheria