

TANZANIA / JUDGMENT

samson chacha vs sinda geteba

2021 tzhc 7044 10 november 2021

COURT
TZHCDECIDED
10 November 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF
MUSOMA AT MUSOMA MISC. CIVIL APPLICATION NO. 41 OF 2021 SAMSON
CHACHA..... APPLICANT VERSUS SINDA
GETEBA..... RESPONDENT (Application for stay of execution of the
decree of the District Court of Tarime in Petition No. 1 of 2020)

RULING

9th and 10th November, 2021 KISANYA, J.: This is an application for stay of execution in pending the hearing of Civil Appeal No. 18 of 2021 filed in this Court by the applicant, Samson Chacha, to challenge the judgment and decree of the District Court of Tarime at Tarime in Petition No. 1 of 2020. It has been brought by way of chamber summons preferred under Order XXXIX, Rule 5(1) and (3) of the Civil Procedure Code, Cap. 33, R.E. 2019 (the CPC). The chamber summons is supported by an affidavit sworn by Samson Chacha on 13th August, 2021. i When this application was called on for hearing, the applicant was represented by Mr. Paul Obwana, learned advocate whereas, Mr. Juma David Mwita, learned advocate appeared for the respondent. Mr. Obwana adopted the chamber summons and supporting affidavit as part of his oral submission. He briefly submitted that the respondent has applied to execute the decree of the District Court of Tarime in Petition Appeal No. 1 of 2020 by way of attachment of the applicant house. Mr. Obwana argued that if this application will not be granted, the applicant stands to suffer an irreparable loss and that the appeal pending before this Court against the judgment and decree subject to the execution will be nugatory. He thus, prayed for the application to be granted with costs. Responding, Mr. Mwita did not object the application. He asked me to grant the prayers sought by the applicant but with no order as to costs. Having gone through the chamber summons and the supporting affidavit and after hearing the submission by the learned counsel for the applicant and the respondent, I hold the view that this application deserves consideration. It meets the legal requirements set out under Order XXXIX, Rule 5(3) of the CPC, which provides as follows: 2 "(3) No order for stay of execution shall be made under sub- rule (1) or sub-rule (2) unless the High Court or the court making it is satisfied that-

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him. ” In the present case, the judgment and decree subject to execution were delivered on 2nd July, 2021. The supporting affidavit shows that the petition of appeal against the said judgment and decree was filed in this Court on 26th July,

2021. It is on record that the pending appeal is scheduled for hearing on 25th November, 2021. Further to this, the application was lodged on 19th August, 2021. Thus, the application has been made without undue delay. The applicant deposed further that he will suffer an irreparable loss if the execution is not stayed. He accounted that the house subject to attachment is matrimonial home and that, the pending appeal will be nugatory if the application is not granted. Having considered further that the respondent did not contest the application, I am of the view that, the respondent will not be inconvenienced by a 3 grant of the application than will the applicant if the order for stay of execution is not granted. In view thereof, I grant the application and order for stay of execution of the decree of the District Court of Tarime at Tarime in Petition No. 1 of 2020 pending the hearing of the Civil Appeal No. 18 of 2021 before the Court. Costs of this application to be in the main case. It is so ordered. DATED this 10th November, 2021. E. S. Kisanya JUDGE COURT: Ruling delivered this 10th day of November, 2021 in the presence of Mr. Paul Obwana, learned advocate for the applicant and Mr. Dominic Chacha, learned advocate for the respondent. B/C Jovian present. E. S. Kisanya JUDGE 10/11/2021 4

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