

TANZANIA / JUDGMENT

Ruling Walangi REVISION

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MANYARA AT BABATI LAND REVISION NO. 29718 OF 2024 (Arising from Misc. Application No.
234 of 2022 in the District Land and Housing Tribunal for Babati at Babati) WALANGI
GINAKU.....APPLICANT VERSUS GIDANYASH
GIDAGWANDU.....RESPONDENT

RULING

11th & 11th December, 2024 Kahyoza, J. Walangi Ginaku is seeking this Court to call and examine for the purpose of satisfying the correctness, legality, regularity, propriety and revise the ruling and the order in Misc. Application No. 234 of 2022 before the district land and housing tribunal for Babati (the tribunal) dated 13 November, 2024. The applicant is simply seeking this court to revise the tribunal's ruling refusing to stay execution on the ground that there was an appeal pending before the Court of Appeal which involves the parties. A brief background is that Gidanyash Gidagwandu sued Walangi Ginaku before the tribunal in Land Application No. 73 of 2020. The tribunal found in favour of Gidanyash Gidagwandu. Aggrieved, Walangi Ginaku appealed to this Court (Hon. Phillip, J.) which upheld the tribunal's decision 1 and dismissed the appeal for want of merit. Walangi applied for leave to appeal to the Court of Appeal, which this Court (Hon. Tiganga, J.) granted. Walangi lodged his appeal to the Court of Appeal. While Walangi was struggling to appeal, Gidanyash was all out to enforce the decree. He finally on 13 November, 2024 obtained an order for execution from the tribunal. It is on record that Walangi not only appealed but he applied for stay of execution to the Court of Appeal. Walangi did not say much about the application for stay of execution before the Court of Appeal. The applicant prays this Court to revise the order of the tribunal or else he will suffer both material, physical and mental disturbances, and irreparable loss. He deponed that the suit property has residential buildings solely occupied by the applicant and his family. He added that part of the suit land contains virgin Land with bushes and variety of trees and filled land. Gidanyash did not file a counter affidavit but prayed to oppose the application by way of written submission. The court did not allow him to file written submission as he gave the prayer after the appellant's advocate submitted orally in support of the application and because he did not file a counter affidavit, thus, he was technically not opposing the application. 2 Mr. Festo advocate appeared for the applicant and the first respondent appeared in person whereas the second respondent was absent. After adopting the applicant's affidavit, the applicant's advocate, submitted that the

tribunal rejected the applicant's objection that the order for execution cannot be issued when there is a pending appeal before the Court of Appeal. He contended that the tribunal proceeded to issue the execution order and appointed the court broker. The application raised one issue, whether the proceedings and ruling of the tribunal delivered on 13 November, 2024 are correct, lawful, regular, and proper. I wish to state the obvious that an appeal to the Court of Appeal is not an automatic stay of execution. A person who wishes to have the execution of the decree stayed must apply and obtain the order staying the execution of the decree from the Court of Appeal. The Court of Appeal held in *Director Tanga Cement Company Limited vs Ephraim Joram* (Civil Application No. 307/18 of 2024) [2024] TZCA 907 (19 September 2024) that- "Before determining the said issue, it is pertinent to point out that an appeal before the Court does not operate as automatic stay of execution of the decree or order appealed from. Thus, it is incumbent on the part of the intending appellant to lodge a notice of 3 motion seeking the indulgence of the Court to stay the decree of the High Court pending the determination of the appeal." (Emphasis is added). In addition, rule 11(3) of the Court of Appeal Rules stipulates that an appeal is not an automatic stay. It states that- "(3) In any civil proceedings, where a notice of appeal has been lodged in accordance with rule 83, an appeal, shall not operate as a stay of execution of the decree or order appealed from nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree or order; but the Court, may upon good cause shown, order stay of execution of such decree or order.

- (4) An application for stay of execution shall be made within fourteen days of service of the notice of execution on the applicant by the executing officer or from the date he is made aware of the existence of an application for execution." If a party aggrieved by the decision of the High Court does not apply and obtain the Court of Appeal's order staying the execution cannot complain against execution of the decree of the High Court. The decree of the High Court referred to, may be the decree in appeal or in the original proceedings. Indisputably, Walangi has not produced an order of the Court of Appeal staying the execution of the decree. In the absence of such an order I hesitate to interfere with the execution orders issued by the tribunal. It is 4 settled that a decree holder has a right to enjoy the fruits of his decree unless the judgment debtor has obtained an order staying execution of the decree. In addition, there is no dispute that the applicant and the first respondent have an appeal pending in the Court of Appeal. The applicant lodged a notice of appeal and deposed that he has already lodged the memorandum of appeal. It is trite law that once a party has lodged a notice of appeal to the Court of Appeal, the High Court ceases to have jurisdiction on that particular proceedings. The Court of Appeal reiterated its position in a number of its decision, one of them being in *Mohamed Enterprises Tanzania Ltd V. The Chief Harbour Master and The Tanzania Ports Authority* Civil Appeal No.24/2015 CAT (unreported). The Court of Appeal stated that- "the institution of a notice of appeal deprives the High Court its power to entertain the proceedings giving rise to the notice of appeal." (emphasis supplied) Yet in another case of *Matsushita Electric Co. Ltd V Charles George t/a C.G. Travers*, Civil Appl.No.71 of 2001 (unreported), the Court of Appeal stated, thus- 5 "Once a Notice of Appeal is filed under Rule 76 (now Rule 83 (1) of the Rules) then

this Court [the Court of Appeal] is seized of the matter in exclusion of the High Court except for applications specifically provided for, such as leave to appeal or provision of a certificate of law". In *Aero Helicopter Limited V. F.N. Jensen* [1990] TLR 142 the Court of Appeal pronounced itself regarding the jurisdiction of the High Court to entertain an application for stay of execution after the institution of a notice of appeal. It decided that - "Once appeal proceedings to this Court have been commenced by filing notice of appeal, the High Court has no inherent jurisdiction under section 95 of the Civil Procedure Code to order stay of execution pending appeal to this Court". Given the above position of the law, after the applicant filed the notice of appeal to the Court of Appeal, this Court and tribunal ceased to have jurisdiction to entertain an application for stay of execution. The High Court or the subordinate courts and tribunal may execute a decree but may not stay it. A party who wish to apply for stay should apply to the Court of Appeal under rule 11 of the Tanzania Court of Appeal Rules, 2009 (the Rules) and satisfy the conditions before the order of stay may be granted. The applicant 6 deposed that he has already instituted the application for stay in the Court of Appeal, he is advised to pursue it vigorously. In the end, I find that there the proceedings, the ruling, and the order of the tribunal to execute the decree is not illegal, irregular, or inappropriate for this Court to interfere by way of revision. Consequently, I find the application for revision meritless and dismiss it with costs. I order accordingly. Dated at Babati this 11th day of December, 2024. John R. Kahyoza Judge Court: Ruling delivered in the presence of the applicant and the first respondent. Mr. Shadrack (RMA) present. John R. Kahyoza Judge 11.12.2024 7

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