

**IN THE HIGH COURT OF ZANZIBAR
HELD AT VUGA**

**CIVIL APPEAL 12 OF 2015 FROM CIVIL APPEAL 23 OF 2014 OF
THE APPELLANT KADHI COURT WHICH MADE RISE FROM
ORIGINAL CIVIL CASE 947 OF 2012 OF DISTRICT KADHI
COURT OF MWANAKWEREKWE**

**ALI SHAABAN ABDALLA AND
THREE OTHERS.....APPLICANT**

VERSUS

**SAID MAHMOUD AND
ELEVEN OTHER.....RESPONDENT**

RULING

HON. SEPETU J

This ruling from chamber application filed by advocate Ali Omar under Order XXIV Rule 22 (1), 25, 80 (1) (a) and 81 (1) of Civil Procedure Decree Chapter 8 (Cap 8) of the Laws of Zanzibar and section 7(iii) of the Kadhi's Court Act 3 of 1985 and section 42 (1) and 44 (1) (2) of the Wakf and Trust Commission Act 2 of 2007 and any other enabling provision of the law. In this chamber application advocate Ali Omar has prayed for this court for following written in Kiswahili Language:-

- a) Mahakama itoe Amri ya kuzuia kutekelezwa Hukumu ya Rufaa ya Madai No. 12/2015 iliyotolewa Hukumu tarehe 4/7/2016 hadi Waombaji watakaposikilizwa na kutolewa Uamuzi Maombi yatakayowasilishwa Mahakam Kuu, juu ya Maombi ya Mapitio ya Hukumu ya Rufaa.
- b) Mahakama itoe Amri ya zuio la uuzaji, kukamilisha malipo ya Fedha dhisi ya Mpinga Maombi No. 12 pamoja na Mnunuzi KARIM KANJI kuhusiana na Nyumba No. 103 iliyopo Shangani Wilaya ya Mjini.

- c) Waobaji waendeleo kutumia Nyumba No. 103 hio hadi watakapowasilisha ombi la Mapitio na kutolewa Uamuzi na Mahakama Kuu.
- d) Gharama za Mahakama ziwe juu ya Wapinga Maombi.
- e) Amri nyengine halali na yenye Maslahi na Waombaji.

During hearing advocate Ali Omar argued this court that they have file application for stay of execution as they intend to file application for review and if this application will not be granted then whole intention of applicants to file the said review will have no meaning. Furthermore his clients are objecting to the order related with house number 103 situated at Shangani. Applicants pray for order of stay of execution on completion of payments of the house as under section 10 (3) Act 3 of 1985 direct appeals to High Court will be final. Considering that applicants have only one chance which is to file application for review and this court is not bind by procedures laid out in Cap 8.

To this regard advocate Ali Omar cited case of **Sabiha Idrisa Ali v/s Mwanamanga+1 Civil Appeal 24/2010 (unreported) HC of Zanzibar**. At the final stage applicant advocate yet still prayed for this application for stay of execution to be allowed and for the said house not to be handover to Karim Kanji. On the other hand 1st respondent on behalf of whom he represents objected to all stated by advocate Ali Omar as the same has no merit. While in relation to sale of that house 103 situated at Shangani execution should proceed and not stayed. At the same time 10th respondent on behalf of whom she represents in totality agreed with all stated by 1st respondent. As well object to all what advocate Ali Omar has submitted before this court as she strongly believe that all orders were correct made since day one when this case commenced.

On his part Mr. Asaa on behalf of 12th respondent object for stay of execution as under Order XXIV rule 22 of Cap 8 one has to have reason in order for court to grant such stay. Applicants have not given any reason in their filed affidavit and one among those reasons is to show that there is a possibility to win in their review. Applicants in their filled affidavit still have mentioned issues which have been already determined by this court and issue here is inheritance and the said house number 103 situated at Shangani has already been sold. And money from the sale is there to be

divided therefore there is no issue of damages or ownership due to that there is no need to order stay of execution.

At the same time Mr. Asaa pointed out that from their side they have complied with order of this court as they had written to buyer to complete payment. However there is no legal justification of why such stay of execution shall be granted and cited case is irrelevant with what is before this court.

In rejoined advocate Ali Omar said section 7 (iii) of Act 3 of 1985 is very clear and there are some matters which applicants are not satisfied with. And applicants will show in their application of where failure of justice occurred. And there is no application for execution file as they have not been served with any and under Order XXIV rule 26, 27 (1), 28 (1) and 29 (1) (4) of Cap 8 have not been complied with. As this court has not order for execution to take place therefore it was illegal act done by 12th respondent contrary to section 42 (1) (2) of Act 2 of 2007.

At the same time applicant advocate pointed out that 1st and 10th respondents have not given reasons for their objection and their (applicants) concern is on house 103 situated at Shangani. Upon such turn advocate Ali Omar prayed for this court to grant this application for stay of execution.

Before going any deeper into this filled chamber application together with arguments adduced by both counsels respectively let us look if this court has been properly moved. On the other hand application filed has been accompanied by a defective affidavit as it does not show in the jurat of attestation at what place it has been made or taken it is contrary to section 7 of the **Notary Public Decree Chapter 29 (Cap 29) of the Laws of Zanzibar** which provide that:-

7. Every Notary Public before whom any oath or affidavit is taken or made under this Decree shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.
(Underline is mine)

Indeed with naked eyes is seen that affidavit in support to this application has not met mandatory requirements of above mentioned provisions of the law therefore it is incompetent. To this regard I will refer to case of **MOHAMED I. A. ABDULHUSSEIN V/S PITA KEMPAP LIMITED TLR 2005** at page 383 whereby Court of appeal of Tanzania among other matters held that:-

- (i) *An affidavit which does not state, in the jurat of attestation, the place here it was taken is defective;*
- (ii) *The stamp impression of the attesting Notary Public and Commission for Oath placed at the foot of the applicant's affidavit is not part of the jurat of the said Affidavit;*
- (iii) *An application which is supported by a defective affidavit lacks the necessary support and is incompetent;*

Therefore after seen all these irregularities this court find there is no necessity to waste its time and go deep into submissions and records of this court respectively as application so filled is incompetent to be entertained. It follows therefore that this application is hereby dismissed with an order as to costs and execution proceedings shall continue.

Application dismissed with costs.

Sgd: Mkusa I. Sepetu – J
Date: 1/11/2016

I certify that this is a true copy of the original.


**REGISTRAR,
HIGH COURT ZANZIBAR.**

