IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: BWANA, J.A., MASSATI, J.A., And JUMA, J.A.)

CIVIL REVISION NO. 1 OF 2013

JINGLANG LI..... ..... APPLICANT
VERSUS

1. **NATIONAL HOUSING CORPORATION.....**
2. **LARS ERIC HULSTROM**

RESPONDENTS

(Application for Revision of the Decision of the Land Division of the High Court at Dar es Salaam)

(Fikirini, J.,)

dated the 13th day of December 2012
in
Miscellaneous Civil Application No. 168 of 2012

RULING OF THE COURT

16th April, 2nd May & 17th May, 2013

JUMA, J.A.:

This revision was initiated *suo motu* by this Court. It follows the decision by the Land Division of the High Court (Fikirini, J.) to refuse to interpret a Ruling of this Court. The learned Judge believed that any attempt on her part, to interpret the Ruling of this Court, was an assumption of power, belonging to the Court of Appeal only. Learned Judge stated, on page 6, that:

> *"It is against this position I have refrained from discussing the application* ***[Misc Civil Application No. 168 of 2012]*** *further including the procedural aspect challenged and responded to by the counsel for the applicant. I am afraid by doing so I will be interfering and assuming the powers which were not conferred to this court. However, I admit that the ruling needs clarification and further direction on what should be done. Only the Court of Appeal can do that and no other court subordinate to it."* [Emphasis added]

Some background facts are necessary in order to understand why a decision was taken by this Court to initiate a revision proceeding. It all begun in the Land Division of the High Court of Tanzania (Land Case No. 129 of 2006) where, the applicant Mrs. JIANGLANG LI (hereinafter referred to as Mrs. Li) sued the first respondent, the NATIONAL HOUSING CORPORATION (hereinafter referred to as NHC) for unlawful eviction, and also the second respondent, Mr. LARS ERIC HULSTROM (hereinafter referred to as Mr. Hulstrom) as a new tenant following the eviction of Mrs. Li. On 27th April 2012 the Land Division of the High Court (Ngwala, J.) entered a judgment in favour of Mrs. Li.

Having lost the Land Case No. 129 of 2006, both the NHC and Mr. Hulstrom, filed separate appeals to this Court. They additionally

applied for a stay of execution of the decree. The two applications for stay of execution were consolidated to become CONSOLIDATED CIVIL APPLICATIONS NOS 61 AND 71 OF 2012, and were heard first. In a Ruling dated 30th July 2012, this Court ordered the execution of the High Court decree in Land Case No. 129 of 2006 to be stayed pending the determination of the appeals to this Court. That 30th July 2012 order of stay, had a condition, requiring Mr. Hulstrom and the NHC each to deposit a Bank's guarantee in the sum of shillings Two Hundred Million (200,000,000) within two weeks of the delivery of the Ruling. The two weeks expired on 21st August, 2012. Only the NHC had deposited a Bank's guarantee. The following day, on 22nd August 2012, Mr. Hulstrom who had not as yet deposited a Bank's guarantee, filed a Notice of Motion (CIVIL APPLICATION NO. 123 OF 2012) in this Court. He sought an indulgence of this Court to allow him to deposit in court cash money, instead of the Bank's guarantee. Mr. Hulstrom did not succeed for on 19th September 2012, his application was dismissed for want of merit.

With dismissal of Mr. Hulstrom's Notice of Motion (CIVIL APPLICATION NO. 123 OF 2012), Mrs. Li felt that she was free to go

back to the High Court to execute the decree arising from Land Case No. 129 of 2006. When Mrs Li faced difficulties in her quest to execute the decree, Ms Fatma Karume wrote a letter of complaint to the Hon. Chief Justice to draw his attention to the difficulties Mrs. Li was facing. The substance of Mrs. Li's complaints were expounded in the written submissions which Ms Karume filed on 15th April 2013, which was a day before this proceeding was set down for hearing.

When this revision proceeding came up for hearing on 16th April 2013, Mr. Edward Chuwa, learned counsel appeared for the NHC whereas the other two learned counsel, Ms Karume and Mr. Moses Kaluwa respectively appeared for Mrs. Li and Mr. Hulstrom. Mr. Chua and Mr. Kaluwa asked for time to file their reply submissions. We granted two weeks (up to 30th April 2013) to the respondents after their counsel requested for time to file their submissions in reply. When the matter finally came up for hearing on 2nd May 2013, it was Ms Samah Salah, learned counsel, who appeared for Mrs. Li. Mr. Chua and Mr. Kaluwa appeared respectively for the NHC and Mr. Hulstrom.

It was submitted on behalf of Mrs. Li that the failure by Mr. Hulstrom, to fulfill his part of the conditional stay of execution meant that an order of stay of execution by this Court (in CONSOLIDATED CIVIL APPLICATIONS NOS 61 AND 71 OF 2012) has lapsed and as a result nothing prevents her from proceeding with the execution of the decree at the High Court. We were also urged by Ms Salah, to find that it was not proper for the NHC to move the High Court (Misc Civil Application No. 168 of 2012) under Rule 57 of Order XXI for the determination whether apartments belonging to the NHC were attachable for purposes of the execution of the decree of the Land Division of the High Court.

We were also urged to look into and revise what Ms. Salah described as administrative obstacles that prevented Mrs. Li from executing the decree. It was submitted that while on 5/2/2013 the Deputy Registrar gave a Ruling, directing the execution of the judgment and decree to proceed; this execution could not proceed because the Registrar intervened to stop the Court Broker on specific instruction of the Judge in Charge. According to Ms Karume and Ms Salah, a decree of the High Court should not have been so stayed by

an administrative letter because the power of the High Court to stay execution is judicial power exercisable under Order XXXIX Rule 5 or under Order XXI Rule 24 of CPC.

In their written submission, the learned counsel representing Mrs. Li also questioned why Fikirini, J. was keen to decline to exercise the constitutional and statutory provisions vesting jurisdiction on the High Court to decide Misc Civil Application No. 168 of 2012 that was before her. The learned counsel were further concerned that the learned judge declined to take up jurisdiction without citing any law supporting her conclusion that the High Court lacked jurisdiction to interpret a Ruling of the Court of Appeal. The learned counsel submitted that jurisdiction of the High Court in civil and criminal matters can only be limited by written law but not by submissions of any of the learned counsel who the learned Judge agreed with. They submitted that the learned Judge should not have shifted to the Court of Appeal, the jurisdiction of the High Court to interpret a Ruling of this Court.

In his reply submissions, Mr. Chuwa believed that the order of this Court in CONSOLIDATED CIVIL APPLICATIONS NOS 61 AND 71

OF 2012, staying the execution of the decree was still intact despite the dismissal of Mr. Hulstrom's application (CIVIL APPLICATION NO. 123 OF 2012) that had sought for a variation of the conditions in the order of stay of execution of the Judgment of the Land Division of the High Court (Land Case No. 129 of 2006). According to the learned counsel, Mrs. Li still lacked legal basis for going back to the High Court to initiate execution proceedings. Mr. Kaluwa agreed as much with Mr. Chuwa that Fikirini, J. was correct to refuse to interpret the Ruling of this Court. According to Mr. Kaluwa, instead of asking the High Court to interpret the Ruling of this Court, Mrs. Li should request for a review of the decision of this Court.

Mr. Chuwa also expressed his deep dissatisfaction with the way the Deputy Registrar of the Land Division of the High Court (S.M. Chikoyo) dealt with Mrs. Li's application for execution. The learned counsel submitted that instead of hearing the parties, who had presented themselves for hearing, the Deputy Registrar delivered a Ruling without affording the parties any hearing. Mr. Chuwa believes that the Deputy Registrar erred when she allowed the execution to proceed without according the parties a hearing.

Mr. Chuwa defended the administrative measures which the Judge in Charge had taken to overturn the decision of the Deputy Registrar to allow Mrs. Li to continue with the execution because; the decision of the Deputy Registrar could not be appealed against in this Court. Mr. Chuwa conceded that it was his letter of complaint against the decision of the Deputy Registrar, which led to the administrative intervention by the Registrar (Mr. L.M. Mlacha) and the Judge in Charge. In Mr. Chuwa's view, the intervention was correctly issued.

From submissions of the learned counsel, the main question for our determination is whether there is anything in the record of the trial Land Division of the High Court, which calls for revision by this Court. Parameters of the powers of revision of this Court under Section 4 (2) and (3) of the Appellate Jurisdiction Act, 1979 has been discussed in many of our past decisions. This Court is vested with power of revision to rectify any errors, illegalities or impropriety in decisions or proceedings of the High Court which come, or are brought to its attention: **see** CIVIL APPLICATION NO. 3 "A" OF 2006, 1. DOMINIC NKYA and 2. OMARI ABDALLAH KIZARO VS 1. CECILIA MVUNGI, 2. PRESIDENTIAL PARASTATAL SECTOR REFORM

COMMISSION 3. FAX AUCTION MART LIMITED (CAT- at Tanga unreported).

Learned Counsel for the NHC, namely, Mr. Chuwa strenuously supports the stance taken by Fikirini, J. to decline to interpret the Ruling of the Court of Appeal. In his own words, Mr. Chuwa contends that, **"courts do not interpret decision of superior courts, but they are bound to apply them."** With due respect, we have had some difficulty in appreciating Mr. Chuwa's suggestion that in our legal system the High Court cannot interpret the Ruling of this Court. The doctrine of *stare decisis* applies to courts in Tanzania, which means that courts subordinate to the Court of Appeal are required to maintain what has been decided by the Court of Appeal and not alter that which this has established by the Court of Appeal to be law. In order to determine whether a given decision of this Court is binding or not, the High Court and all other subordinate courts, inevitably have to interpret principles of law enunciated by the Court of Appeal.

We do not see how Fikirini, J. can avoid to read and to establish by interpreting decisions of this Court to determine whether such decisions are binding or not. Trial judges and magistrates

inevitably receive evidence from which they outline facts which they consider proved. Judges and Magistrates then have to apply the law to the proven facts before arriving at their decisions, for which they give their reasons (*ratio decidendi*). The law which judges apply to the proven facts may be statutory law or principles of law propounded down by this Court. This process, whereby a Judge appreciates whether a decision is binding or not is "interpretation". We think that Fikirini, J. misconstrued the plain meaning of the words-"to interpret". Plainly speaking, "to interpret a Ruling of the Court of Appeal" is to read that Ruling and to understand the meaning or implication of the Ruling concerned. After understanding, to determine whether the principles enunciated furnishes any binding guide on matters pending before courts subordinate to that superior court.

By declining to assume its jurisdiction on the explanation that it cannot "interpret" the Ruling of this Court, the learned Judge in effect failed to answer several issues that were presented under Misc Civil Application No. 168 of 2012 for her determination. **First,** there was the issue raised by the NHC whether *"Apartment No. 103 Plots*

Nos 3, 5, 7 and 8 along Haile Selassie Road in Oyster bay Dar es Salaam, is liable for attachment or even execution." **Second,** whether execution of the decree could still proceed where the NHC had complied with the conditions for stay of execution which this Court had imposed, while Mr. Hulstrom had not. **Thirdly,** Ms Karume had similarly raised a related issue contending that the failure by Mr. Hulstrom to fulfil his part of the conditional stay meant that there was no order of stay preventing the execution of the decree. These three questions could only be answered by the High Court, but not this Court. The learned Judge clearly erred by abdicating her duty to determine these questions.

Powers of courts that are subordinate to this Court, to freely interpret the applicability of legal principles we pronounce, cannot be surrendered back to this Court. If every ruling, judgment and order we make were to be returned back for our interpretation before being applied to matters before subordinate courts, our legal system will grind to a screeching halt. If Mrs. Li could interpret our Ruling in CIVIL APPLICATION NO 123 OF 2012 and conclude that there was no longer a stay of execution, we saw nothing in this Ruling which could

prevent Fikirini, J. from reading, understanding and determining, its applicability to matters requiring her determination. This Ruling on page 6 had plainly stated that:

> *"...the applicant [Mr. Hulstrom] had to deposit a Bank guarantee as already shown. The applicant failed totally to meet this condition precedent.* ***As a result, the life span of the stay order expired on 21st August, 2012. That was before this application was lodged."*** [Emphasis added]

On page 7, this Court went further:

> *"...In view of this fact,* ***our only logical and acceptable answer, then, to the prayer of the applicant is that we cannot grant the order sought because there is no Court order before us to vary in the terms dictated.*** *May be we would have been persuaded by the applicant's pleas, all things being equal, had we been moved before 21st August, 2012. On this ground alone we would be justified in rejecting the application."* [Emphasis added]

From the above-cited quote, we clearly stated that there was no order of stay of execution of decree arising from Land Case No. 129 of 2006 which was still in existence after 21st August 2012. This

is the legal premise from which the learned Judge should have proceeded to determine the execution proceedings filed by Mrs. Li, and objection proceedings initiated by the NHC. The learned judge had a duty to also interpret that Ruling (CIVIL APPLICATION NO 123 OF 2012) and come to her own conclusion. The learned Judge did not. This was an error apparent on the record of the Land Division of the High Court.

We propose next to deal with the submission that execution of a decree being a judicial act should not have been stayed administratively. It is of interest to note that the concern over the modality of the execution of the decree was expressed by both Ms Karume and Mr. Chuwa. Ms Karume contended that administrative decisions should never have been employed by the Judge in Charge and the Registrar, to defeat execution of a decree which is essentially a judicial matter. Mr. Chuwa on the other hand blames the Deputy Registrar for allowing execution to proceed without according the NHC a hearing. The letter dated 13 February 2013, which Ms Karume has described to be administrative in material particulars; is titled ***"KUSITISHA UTEKELEZAJI WA HUKUMU KESI YA ARDHI NA.***

129/2006" (staying the execution of Land Case No. 129 of 2006). It directs a stay of execution because the relevant High Court case file had been sent to this Court.

Ms Karume has with due respect, correctly articulated the law to the effect that the execution of court decrees is in its essence a judicial and not administrative function of courts. In her letter of complaint to the Principal Judge, Ms Karume also faults the existence of two Notices to Show Cause in relation to a single application for execution. Indeed, our perusal of the copies of documents included in written submissions bears out this complaint. There were two Notices to Show Cause which were filed after we had on 19th September 2012 delivered our Ruling in CIVIL APPLICATION NO 123 of 2012.

The first Notice was filed on 1st October, 2012 by Mrs. Li seeking for the execution of the decree. This application was heard by S.M. CHIKOYO (Deputy Registrar). After reading our decision in CIVIL APPLICATION NO 123 OF 2012 that had declined to vary the conditions in the stay of execution of the decree, the learned Deputy Registrar appointed GENES DANIEL ASSEY T/A PROPERTY

INTERNATIONAL LTD to evict Mr. Hulstrom and restore the suit premises. Decision of the learned Deputy Registrar was delivered on 5th January, 2013. A second Notice to Show Cause issued on 14th December 2012 inviting the parties to appear on 17th December 2012.

But while all these two Notices to Show Cause were being litigated, as we saw above, on 13th December 2012 Fikirini, J. had delivered her Ruling declining to make any decision on Misc. Civil Application No. 168 of 2012 that was before her. But unlike Fikirini, J. who declined to interpret our Ruling, the Deputy Registrar (S.M. Chikoyo), in her Ruling while determining a Notice to Show Cause, actually interpreted that Ruling when she stated on page 1:

> *"..My perusal of the records shows that there is a pending appeal in the Court of Appeal. The Court of Appeal in its decision has given conditions for stay of execution and the second defendant LARS ERIC HULSTROM has failed to comply."*

Matters were complicated further when the Judge in Charge of the Land Division and the Registrar, entered into the fray on 13th February 2013 when they administratively stopped the on-going execution of the decree.

We think existence of two Notices to Show Cause relating to one application for execution, coupled with the decision to administratively stop the execution process, amounts to a serious irregularity, impropriety and unseemliness for the same Land Division of the High Court. It does not augur well for a Deputy Registrar on one hand to feel free to interpret a Ruling of this Court, while on the other hand, for the learned Judge to decline to interpret that same Ruling on the mistaken belief that to do so the High Court would be venturing outside the mandate of the High Court.

For all the reasons we have set out above, we find it appropriate to invoke this Court's powers of revision under sub-section (3) of section 4 of the Appellate Jurisdiction Act. We quash and set aside the proceedings and the Ruling made by Fikirini, J. in Land Division (MISCELLANEOUS CIVIL APPLICATION NO. 168 OF 2012) dated 13th December, 2012. We similarly quash and set aside all execution proceedings that arose from the two Notices to Show Cause together with the administrative letter directing a stay of execution. The applicant is free to initiate fresh execution

proceedings in accordance with the applicable law. We make no order regarding the costs.

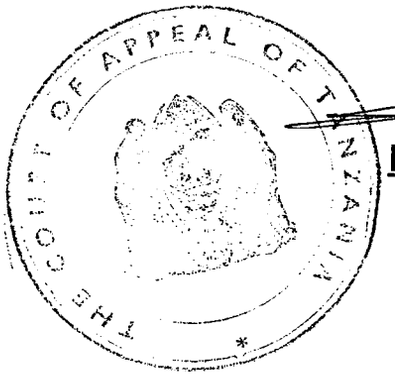
DATED at **DAR ES SALAAM** this 14 day of May, 2013.

S.J. BWANA
JUSTICE OF APPEAL

S.A. MASSATI
JUSTICE OF APPEAL

I. JUMA
JUSTICE OF APPEAL

I certify that is a true copy of the original.



E.Y. Mkwizu
DEPUTY REGISTRAR
COURT OF APPEAL