

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
COMMERCIAL DIVISION**

AT DAR ES SALAAM

**MISCELLANEOUS COMMERCIAL APPLICATION NO. 8555 OF
2026**

(Arising from Execution No. 24064 of 2024)

BAKHITA MATHIAS MANGA.....1ST APPLICANT

THE M & FIVE B HOTELS

AND TOURS LIMITED.....2ND APPLICANT

BAKHITA MATHIAS MANGA

(AS AN ADMINSTRATRIX OF THE ESTATE OF

THE LATE MATHIAS ERASTO MANGA)3RD APPLICANT

BELINDA MATHIAS MANGA.....4TH APPLICANT

VERSUS

EXIM BANK TANZANIA LIMITED.....1ST RESPONDENT

COHERENT COMPANY LIMITED.....2ND RESPONDENT

RULING

Date of Last Hearing: 10/04/2026

Date of Ruling: 13/04/2026

MKEHA,J:

The second applicant had executed a mortgage in respect of the disputed property in favour of the first respondent. After the first respondent had obtained a decree in her favour, she commenced execution proceedings in view of recovering the loan amount and interest which the second applicant had defaulted repaying.

Public auction aimed at disposing the mortgaged property is scheduled to be conducted on 15/04/2026. When the judgment debtors became aware of the scheduled public auction, they allegedly perused for the court's order for sale in vain. And upon conducting search in respect of the property to be sold, search report indicated that the term of the Right of Occupancy for the disputed property had expired even before issuance of the court's prohibitory order.

The applicants opted to move the executing court under section 44 of the Civil Procedure Code asking it to determine two important questions which arose in the course of executing a decree in Commercial Case No. 109 of 2016. The two questions are as follows: Firstly, whether it is proper to continue holding a public auction in respect of a property which has now reverted to the President of the United Republic of Tanzania after expiry of term of a Right of Occupancy in respect of Plot No. 7 Block 'E' Ngalenaro Area within Arusha City. Secondly, whether it is proper to hold a public auction of the judgment debtor's property in the absence of a formal order for Proclamation of Sale in the court record.

Mr. Saghan learned advocate for the applicants submitted that, sale of the property which is in the name of the President would be impracticable. According to the learned advocate, the fact that renewal

might be refused raised a serious question to be considered by the executing court. Regarding conducting sale in the absence of an order for Proclamation of Sale in the court record, it was submitted that, such an endeavour was fatal for breach of Order XXI Rule 69 of the Civil Procedure Code. The learned advocate condemned the executing court for having secretly issued Proclamation Order.

Mr. Nyika learned advocate for the respondents did not contest the fact that the alleged Certificate of Occupancy had indeed expired. He however held a firm view that, as the President was not part to the civil suit whose decree was under execution, the applicants had no right of speaking on behalf of the Government. The learned advocate submitted that, expiry of the Right of Occupancy could not in any case take away the automatic right of renewal under section 32(3) of the Land Act as the second applicant's right and the encumbrance (mortgage) retained legal recognition on expiry of the right of occupancy. It was submitted for the respondents that, the second applicant's saleable interest, the basis of execution of decree against the disputed property, was still intact. Regarding absence of an order for Proclamation of Sale, the learned advocate referred to the court's order dated 30th May 2025 which in essence, was a prohibitory order.

I am in agreement with the submissions by Mr. Nyika learned advocate that if right of renewal is to be exercised in respect of the expired right of occupancy the former occupier ranks the first to be considered. However, for the first ranking to be exercised in favour of the former occupier, the said person should have complied with the terms and conditions of that right of occupancy in a satisfactory manner and, it should be practical so to do. Sub section (4) of section 132 of the Land Act is to the effect that, the provisions of sub section (3) shall not preclude the Government, local authority or other public body from causing the land occupied under the right of occupancy to which sub section (3) refers to be developed or redeveloped in such a way that it is impractical to grant a right of occupancy of that land to the former holder of that right of occupancy and where such development or redevelopment takes place, the former holder of the right of occupancy shall not be entitled to any compensation for the loss of any expectation created by the provisions of sub section (3). The substance of the provisions of sub sections (3) and (4) of section 132 of the Land Act is to the effect that, former occupier of a right of occupancy is not entitled to take for granted that, once a specific term formerly granted to him expires, he should expect as of right, renewal of the expired term in his favour. It follows therefore that, once a term of a right of occupancy expires in a mid of execution proceedings,

it is wise to halt the execution process so that, execution orders should be allowed to be implemented against a definite property in the name of the actual judgment debtor or his guarantor after the renewal process is successfully conducted.

As correctly submitted by Mr. Saghan learned advocate, the record pertaining to Execution No. 24064 of 2024 does not indicate there having been issuance of formal order for Proclamation of Sale. The position of the law is that, after a successful attachment and where no objection proceedings are preferred or if preferred, they are disallowed, the executing court may proceed, upon application by the decree holder (rule 67(3), to order the sale of the property under rule 65. Where the court decides to sell such property, it must make a formal order in the court record. Where the sale is ordered to be by public auction, the executing court should cause a proclamation of the intended sale to be made in the language of the court after a proper notice to the decree holder and the judgment debtor stating the time and place of sale.

It would appear that, the learned Deputy Registrar relied upon the court broker's report on attachment of the property. Through the said report, a request was made for issuance of Proclamation of Sale. The Deputy Registrar proceeded to issue the requested processes without

there being an application (oral application suffices) on the court record and the formal court order to that effect. That was wrong. In so doing, the execution process was allowed to proceed in contravention of Order XXI rule 67(3) of the Civil Procedure Code. See **BALOZI ABUBAKARI IBRAHIM & ANOTHER VS MS. BENANDYS LIMITED & TWO OTHERS, CIVIL REVISION NO. 6 OF 2015.**

For the foregoing reasoning, I hereby order suspension of the public auction scheduled to be conducted on 15/04/2026 pending successful completion of the renewal of the expired right of occupancy in respect of the attached property and procuring formal order for Proclamation of Sale. It is so held. I make no order as to costs.

DATED at DAR ES SALAAM this 13th day of APRIL 2026.



C.P. MKEHA

JUDGE

13/04/2026

COURT: Ruling is delivered in the presence of Mr. Emmanuel Saghan learned advocate for the applicants and Ms. Edna Mwankenja learned advocate for the respondents.



C.P. MKEHA

JUDGE

13/04/2026