

IN THE HIGH COURT OF TANZANIA
COMMERCIAL DIVISION
AT DAR ES SALAAM

CIVIL APPLICATION NO 17 OF 2005

BETWEEN

BAHADUR EBRAHIM SHAMJI -----PLAINTIFF /DECREE HOLDER

VERSUS

ALNOOR SHARIFF JAMAL -----DEFENDANT/JUDGMENT DEBTOR

RULING

Date of hearing; 1/10/2015
Date of Ruling; 16/11/2015

SONGORO, J

Bahadur Ebrahim Shamji, the Applicant is a Decree Holder in Misc Commercial Cause No 17 of 2005 which aroused from Arbitral Award. In view of the Arbitration Award, the Decree holder filed the instant application for execution of his Court Decree of USD 5,628,634 dated 8th May, 2008, The Judgment Debtor is Alnoor Sharif Jamal the Judgment Debtor.

On the Mode of Execution on which the Decree holder is seeking assistance is attachment and sale of landed properties which are

- 1. Property situated at Land Reference No 209/6512/5 Title No I.R.27980 in the name of the Judgment Debtor situated in Off Riverside Drive 0200, Nairobi City, Kenya, and Land Survey Plan No 93730.*

2. *Title No 186025/5/ in the name of the New Africa Hotel (1993) Limited of P.O.Box 9314, situated in Ilala Municipality , Dar Es Salaam , Tanzania*
3. *Title No 186054/38 in the name of Tanganyika Motors Limited situated in Ilala Municipality Dar es Salaam.*
4. *Title No 15786 in the name of Tanganyika Motors Limited of P.O.Box 1526, Kinondoni Municipality Dar Es Salaam.*

In support of his Application, the Decree holder also annexed a copy of certificate of title and 3 Official Searches which shows ownership of properties which he wants to be attached. The Annexed Certificate of Titles is;

1. *Certificate of Title L.R.27980 of **Rambhai and Company Limited** of a house situated at Riverside Drive, 0200, Nairobi City, Kenya on a survey Plan No 93730.*
2. *An official Search of Title No 186025/5/ from Registrar of Titles dated 6/11/2014 which shows the Title holder to be New African Hotel (1993) Limited of P.O.Box 9314, Dar es Salaam. . The search further revealed that, the Property is mortgaged to National Bank of Commerce.*
3. *An official Search of Title No 186054/38 from Registrar of Titles dated 26/8/2014 which shows the Title holder to be Tanganyika Motors Limited of Dar es Salaam. . The search further revealed that, the Property is mortgaged to Microfinance Bank PLC.*
4. *An official Search of Title No 15786 from Registrar of Titles dated 26/8/2014 which shows the Title holder to be Tanganyika Motors Limited of P.O.Box 1526, Dar es Salaam. . The search further revealed that, the Property is mortgaged to Microfinance Bank PLC.*

In addition, the Judgment Creditor annexed to his application for execution of a copy of Drawn Order of this Court and the Ruling by Hon Werema J which ordered that, the Arbitration Award be filed, and Registered and be executed as if it is the Judgment and Order of this Court.

In response to the Application for attachment, Mr. Kilindu, Learned Advocate for Judgment Debtor, opposed the application, by raising an objection that, there is no Court Decree which was passed.

Further, in paragraph 6 of the Counter Affidavit, the Counsel stated that, the matter was settled between the parties and there is a Deed of Settlement in which the Decree holder was paid a sum of USD 3,250,000.

Furthermore, on the attachment of landed properties, the Counsel for a Judgment Debtor opposed it on the ground that, the landed properties intended to be attached, do not belong to Judgment Debtor. He insisted that, the properties to be attached belonged to third parties who were not even involved in the court proceedings. .

In response to the "**Judgment Debtor's**" Counter Affidavit, Bahadur Ebrahim Shamji "the Judgment Creditor" he maintained that, in paragraph 8 of his counter affidavit that, he was paid USD 3,557,874 by the Judgment debtor. He then clarified that, payment were made in connection with the "Deed **of Settlement**" which was agreed upon at the Court of Appeal. He firmly denied that, the settlement was not in relation to the Arbitral Award of USD 4,167,236 which was endorsed by this court.

On the properties to be attached, the Judgment Creditor stated in paragraph 16 of his affidavit that, he has listed assets which belongs to companies and a property which is in the name of the Judgment Debtor, held under the Land Reference Number 209/6512/5 Title Number I.R 279780 situated in Nairobi City , Off Riverside, Drive. Therefore the Decree holder insisted that, the he is justifiable in lodging the Application.

The Court has carefully considered the Applicant application, respondent's counter affidavit and arguments from both side it found and Under Order XX1 Rule 15 of the Civil Procedure Code, Cap 33 R.E 2002, the Court before granting an application for execution and attachment of properties like the Present one, and sanction the mode of execution, it has a legal duty of satisfying itself on the correctness, and mode of execution of the Court Decree which is being applied for. Indeed Order XX1 Rule 15 insists that;

On receiving an application for the execution of a decree as provided by rule 10, sub-rule (2), the court shall ascertain whether such of the requirements or rules 10 to 12 as may be applicable to the case have been complied with; and, if they have not been complied with, the court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

And, Rule 12(1) and (2) of Order XX1 of the Civil Procedure Code Cap 33 [R.E.2002], cited above requires, an attachment of any immovable property belonging to a judgment debtor, to contain (a) description of such property, (b) title number under the **Land Registration**

Act, (3) a proof of an official search issued under section 97(2) of that, Act relating to the said plot.

Now reading from the wording of Rule 12 of Order XX1 cited above, and what is stated in three landed properties situated at Dar es Salaam which are be to attached, it is obvious none of the listed properties is registered under the name of Judgment Debtor.

Also the perusal a photocopy of Title No I.R.27980 of the Property situates at Off Riverside Drive 0200, Nairobi City, and shows the property once belong to **Rambhai and Company Limited of P.O.Box 41328 Nairobi. On entry No 11 at its back, shows that, it** was transferred to **Alnoor Sharif Jamal** on the 18/8/1992. The issue whether or not the landed property in Nairobi is still in the ownership of the Judgment debtor was not well established, because there was no recent official search from the Registrar of Title of Kenya was furnished to the Court to shows if the Property still belongs to Judgment Creditor.

Other Properties situated at Title No 186025/5/ its proprietor is the New Africa Hotel (1993), and not the Judgment debtor.

Regarding the property on the Title No 186054/38 and I find its Proprietor is Tanganyika Motors Limited also is not the Judgment debtor.

Also, the Property on the No 15786 I find from the title its proprietor is Tanganyika Motors Limited who is not the Judgment Debtor.

Having considered the fact that, some properties belong to companies I revisited Rule 12 of Order XX1 of the Civil Procedure Code, [Cap.33 R.E 2002] which governs attachment of immovable property, and noted that, it insist that, the immovable property to be attached, has to be property registered under the name of the "Judgment Debtor" or the court has to be satisfied that, it belong to the Judgment Debtor.

Also, under Rule 12 (2) of the Civil Procedure Code, it allows the court to require of official search where it is necessary in ascertaining ownership of the landed property

In view of the above, the court has noted that, three landed properties situated in Dar es Salaam which the applicant wants to be attached, their official search shows, are **not properties which belongs to the Judgment debtor, but to companies as explained above.** In respect of the landed property situated at Nairobi, the Court is of the view that, , a photocopy of the Title which was furnished to the Court was supposed to be accompanied by "official search" issued from the relevant authorities as envisaged by Order XX1 Rule 12 (2) of the Civil Procedure Code, Cap 33 [R.E 2002].

For the reasons which I have explained above, I find the Applicant's application, for execution did not meet the requirements of Rule 12 of Order XX1 of the Civil Procedure Code Cap.33 R.E 2002 which requires a proof that, landed properties to be attached are properties of Judgment Debtor, and that, has to be established by tendering of the Title and official search from the relevant Land Registry.

It is important to state that, rationale of Rule 12 of Order XX1 of the Civil Procedure Code, is to maintain that, only properties of Judgment Debtor are attached and to do away with risks, and danger of attaching landed properties which do not belong to Judgment Debtor.

After, the court finding that, the application did not meet the requirement of Order XX1 Rule 12, I see no plausible reasons to go into other objection, and technicalities which were raised in the application.

For reason explained above I decline, to grant the application for attachment of the said properties which do not belong to Judgment Debtor. That, point alone is sufficient enough to disposal the instant application.

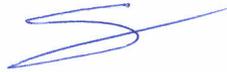
Judgment Creditor, subject to the laid down procedure is at liberty to file another application which complies with the requirement of law.

Dated at Dar es Salaam on this 16th day of November, 2015



H.T. SONGORO
JUDGE

Delivered at Dar es Salaam on this 16th November 2015



H.T. SONGORO
JUDGE

Ruling was Delivered in the Presence of Alay Tawa, Learned Advocate for the Decree holder and Mr. Kilindu, Learned Advocate for the Decree Debtor.

