

IN THE HIGH COURT OF TANZANIA

AT SUMBAWANGA

MISC. CIVIL APPLICATION NO. 2 OF 2007

**From High Court of Tanzania at Mbeya Dc Civil Appeal No. 13
of 2003**

(Original Civil Case No.11/2003 of Sumbawanga District Court)

SUMBAWANGA MUNICIPAL COUNCIL.....APPLICANT

VERSUS

1. ALFRED NGAO

2. SINGO NZINYANGWA

}**RESPONDENTS**

RULING

11.2007 & 12.11.2007

W.P.DYANSOBERA, DR.

The two respondents namely Alfred Ngao and Nsingo Nzinyangwa are decree holders in DC Civil appeal No.13 of 2003 which was determined on 23.10.2006. On 13.08.2007 their bills of costs were taxed each at Shs.2, 089,000.00 and Shs.2, 811,500.00, respectively. In a bid to execute the decree passed in their favour the two respondents had two motor vehicles that is SM 2218 and SM 2850 the property of the applicant, Sumbawanga Municipal Council attached.

The applicant was aggrieved by that attachment order and is seeking to challenge it by way of a chamber summons filed under a certificate of urgency. The chamber summons seeks for the following orders:

1. That this Honourable court be pleased to set aside the attachment order against the applicant's property, SM 2218 and SM 2850 delivered on 29 September 2007
2. Any other relief (s) this Honourable court may deem fit and just to grant.

The applicant is being represented by Miss Rhoda Ngole who has also filed her affidavit in support of the chamber summons. The main reason advanced in support of the application is found under paragraph 3 of the said affidavit which runs as follows:-

3. That as to the Local Government Laws (Miscellaneous Amendments) Act No.8 of 2006, Section 22 stipulates that no execution or attachment or process of that nature shall be issued against the property of the Council. A copy of the said law is annexed hereto marked SMC 1 the leave is craved to this honourable court to refer to it and form part of this affidavit.

The respondents are not resisting this application but are in actual fact praying that their payments should be made within reasonable time and that their interests should be protected as the main case has taken almost five years.

In her oral submission, Miss Ngole told this court that on 27.09.2007 this Honourable court issued attachment order in respect of two motor vehicles. It was her argument that the order went contrary to the Local Government Laws (Miscellaneous Amendments) Act No.8 of 2006 section 22 in particular. She submitted that as the law shows it is illegal to attach the property of the judgment debtor hence her prayer to have the warrant of attachment raised. It was her further argument that the applicant's

Director recognizes the respondent's claims and will pay according to law that is from the council's revenue. She said the word shall has been used to mean that payments cannot be but through council's revenue and that the first respondent has already been informed in writing that the applicant is making efforts to pay and in case it is successful the first respondent would be informed. Miss Ngole stressed that the Director is incapable to make decision on his own but all committees which have their own meeting schedules have to be involved and that t is what they did. She wound up her submission by stating that the applicant's finance committee has deliberated on the matter and decided that the respondents will be paid by installment which cannot be less than ten months due to the council's ability in revenue collection. She urged the respondent's to direct their claims to the Director and they will be informed how they are going to be paid.

Section 109B of the **Local Government (Urban Authorities) Act**, as amended by section 22 of the **Local Government Laws (Miscellaneous Amendments) Act No.8 of 2006** provides:-

“109B. Where any decree or order is granted or obtained against the Urban Council, no execution, attachment or process of that nature shall be issued against the property of the Council, except that the Urban Council Director shall cause to be paid out of the revenue of the Council such amount as may by judgment, or order be awarded against the Council to the person entitled to it.”

(Emphasis supplied)

As the marginal notes clearly show, the amendment brought to the provisions of section 109B of the Local Government (Urban Authorities) Act, Cap. 258 R.E.2002 is aimed at protecting the assets and properties of the Councils. But I think the law does not end there as it goes on also to protect the interests of the decree holders by putting the obligation on *“the Council’s Director to cause to be paid out of the revenue of the Council such amount as may by judgment, or order be awarded against the Council to the person entitled to it”* as to hold otherwise would have amounted to bring untold injustice and thwart the smooth administration of justice which, fortunately, the Parliament has avoided.

Section 53 (2) of the **Interpretation of Laws Act** (Cap 1 of R.E.2002) leaves no doubt as to the effect of the word “shall”.

“53. - (1)..... . (Not relevant)

(2) Where in a written law the word shall is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed “

In the instant matter the law is clear that the applicant’s Director must cause to be paid out of the revenue of the Council the amount awarded to the two respondents.

In the end result, the application is granted and the attachment of the two motor vehicles belonging to the applicant is raised .In tandem with that justice demand that the respondents be paid their entitlement within reasonable time. Unfortunately both the chamber application and the affidavit are silent on this. In the circumstances, I order that the applicant’s Director should cause to be paid out of the revenue of the

Council the amount awarded to the two respondents by 29th February, 2008.

Each part to bear its own costs.

Order accordingly.



W.P. Dyansobera

District Registrar

(Taxing Officer)

12.11.2007



The ruling has been delivered today in the presence of Miss Ngole for the applicant and in the presence of the 2nd respondent.

W.P. Dyansobera

District Registrar

(Taxing Officer)

12.11.2007