

**IN THE HIGH COURT OF TANZANIA
(AT DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

**CIVIL REVISION NO. 18 OF 2004
(Original Civil Case No. 207 of 2003)**

PASCAL ELIAS MALYA.....APPLICANT/INTERESTED PARTY

VERSUS

**THE BUILDING CENTER ESTABLISHMENT....1ST RESPONDENT
BATHROMEO SAEN.....2ND RESPONDENT
ALLY SHABAN SEMINDU.....3RD RESPONDENT
SAEN INVESTMENT & CONSTRUCTION.....4TH RESPONDENT**

RULING

KALEGEYA, J.:

The applicant has two main prayers:

- "1.court be pleased to allow the Applicant be joined as an interested party or the Respondent in these provisional proceedings.

2.court be pleased to declare that the applicant/interested party is a bonafide purchaser for value without notice of any effect and that he should not be jeopardized in owning the said house by any decision between the parties to this revision....."

A background thereof is as follows.

The 4th Respondent/Interested Party failed to service a loan facility extended by the 1st Respondent and secured by a legal mortgage over the 3rd Respondent's house erected on Plot No. 661, Block E, LD 50338, Sinza Area with Certificate of Title No. 24206. in consequence thereof, the mortgaged property was sold to the Applicant by Unyangara Auction Mart, Ltd. Court Brokers at a public auction. The main matter before the Court is an application for an order calling for record of the lower Court for examination and reversal of the ruling of Mwakandi, RM dated 4/2/2004. The Applicant's concern is that if he is not joined as an interested party his rights might be prejudiced.

Regarding the present Application, only the Applicant put in his supporting affidavit. The Respondent's did not file any Counter-affidavit.

Apart from the above stated facts, in his submissions, the Applicant stated further that after the sale at the public auction the legal process was duly executed and the property title was changed

into his name; that he proceeded and demolished the old structure and constructed a new one worth shs. 70 million.

In their very brief submission the Respondents did not challenge the 1st prayer but they vigorously contested the 2nd prayer.

Without going into the merits regarding whatever order that led to the auction and sale of the mortgaged property, on the facts of this case, I am persuaded that indeed the Applicant is an interested party who, in the interest of justice, cannot be shut away from the controversy at hand. This is so because a decision may subsequently be reached that may directly affect his interests.

As for the 2nd prayer, that can only be decided when the merits of the main application are being determined.

For reasons explained above, the application succeeds in part. The application to have the Applicant joined as an interested party stands allowed.

DATED at DAR ES SALAAM this 11th day of March, 2009.


L. B. KAGEGEYA
JUDGE