

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

**PC CIVIL APPEAL NO. 69 OF 2016**

**(Arising from the decision of the Ilala District Court at  
Samora in Inspection No. 17 of 2015. Originating from the  
decision of Buguruni Primary Court in Civil Case No. 50 of  
2013)**

**ISMAIL OMARY.....APPELLANT**

**Versus**

**JUMA SEMBAGI.....RESPONDENT**

**JUDGMENT**

**B.R. MUTUNGI, J.**

The appellant at hand is dissatisfied with the decision of Ilala District Court at Samora in Inspection No. 17 of 2015. The appellant has raised two grounds of appeal which are as follows:

- 1. That the lower courts erred in law and facts to hold the decision that the attached property for execution was not the property of the respondent*

while the respondent or any owner of the attached property did not object the attachment for execution according to the law of the land.

2. Generally, the evidence in record differs from the finding and conclusion reached by the lower courts.

On 27/2/2018 when the appeal was called for hearing, it was only the appellant who had made appearance. The court subsequently ordered the appeal proceeds ex parte.

The appellant narrated that, he being the decree holder in Civil Case No. 50 of 2015 (Ukonga Primary Court) had complained to the District Court that, the house subject of attachment in the execution process had been deemed not the property of the respondent (the judgment debtor). This was despite concrete available evidence to prove its ownership. In the end, the District Court after inspecting the said file, held the same opinion and advised him to identify another property free from encumbrances to satisfy the decree of the trial court,. The appellant herein still aggrieved has now come to this court through the window of appeal.

The appellant before this court insisted that, the attached property indeed belonged to the respondent hence the execution should proceed to take place. The appellant prayed the appeal be allowed.

The issue here is whether the disputed property subject of the execution is the respondent's property (judgment debtor).

From the outset, upon my objective perusal of the court record, I find the appeal has no merits. The reason being that, what the District Court had to do is to inspect and see if justice had been done. In the inspection note the Honourable District Magistrate had inspected the lower court's record and found the court had properly and accurately so found that, there was strong evidence from the Tambaza Auction Mart officers that the property subject of execution was not the respondent's property.

Satisfied with the above finding the District Magistrate had no other option other than to concur with the primary court's findings. The District Court as did the trial court invoked its wisdom and advised the appellant rightly so, that he should identify a different property belonging to the respondent. The reason therefore advanced by the

appellant that the respondent or any other person had not raised any objection, does not hold water. The trial court was availed with relevant documents and upon scrutiny was satisfied beyond doubt that the attached property did not belong to the respondent.

The second ground raised by the appellant that, there is contradicting evidence in the lower courts, this point was not submitted upon by the appellant. The court in such circumstances could not follow the basis of the said contention, hence this ground is found void of merits.

In view of the foregoing, the court upholds both lower court's findings and proceeds to dismiss the appeal for lack of merits.

It is so ordered.

  
**B.R. MUTUNGI**

**JUDGE**

**13/4/2018**

Right of Appeal Explained.

  
**B.R. MUTUNGI**

**JUDGE**

**13/4/2018**

Read this day of 13/4/2018 in the presence of the appellant  
and in absence of the respondent.

  
**B.R. MUTUNGI**

**JUDGE**

**13/4/2018**

**ORIGINAL**