

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HIGH COURT MATRIMONIAL APPEAL NO. 14 OF 2020

(Appeal from the execution ruling of Ilemela District Court Civil Application No. 9 of dated 05/05/2020)

SPECIOZA N. JOHN BUZILE 1ST APPELLANT

JOSEPHAT MTALEMWA 2ND APPELLANT

VERSUS

JOHN BUZILE BUCHARD RESPONDENT

JUDGMENT

06 & 10/07/2020

RUMANYIKA, J.:

The appeal is against an order of 05/05/2020 of Ilemela district court, with respect to the landed property-Plot No. 6 Block "E" Nyegezi (the plot) of which at execution stage the court raised warrant of attachment on the ground that it wasn't the actual property referred in the impugned original judgment and decree and the same hadn't been matrimonial but personally acquired by John Buzile Buchard (the respondent). Specioza N. John Buzile (the appellant) appeared in person while Mr. C. Mutalemwa learned counsel appeared for the respondent.

The verbal and lengthy 8 grounds of appeal mainly revolve around **one** point- that with regard to the plot the learned Resident magistrate misapprehended and or improperly evaluated the evidence on record.

When the appeal was called on 06/07/2020 for hearing, and pursuant to my order of 24/06/2020 following the global outbreak of Coronavirus the parties were by way of audio teleconferencing heard through mobile numbers 0623371122 and 0784274133 respectively.

In the beginning the appellant had nothing additional to her petition of appeal.

Mr. C. Mutalemwa learned counsel submitted that according to official search and following revocation, with effect from 19/06/2020 the plot having had belonged to the respondent but now to the president of the United Republic of Tanzania courts therefore not only they don't grant titles on land, but also no court had jurisdiction to treat it the plot as matrimonial property any further (case of **Amina Maulidi Ambali and 2 Others V. Ramadhani Juma**, Civil Appeal No. 35 of 2019 (CA) at Mwanza (unreported) leave alone the court powers to order re division of the assets suffices the point to dispose of the appeal. The learned counsel further contended. Leave alone the fact that the impugned order was not appealable as the order formed no part of the list under Order XL of the Civil Procedure Code Cap 33 R.E. 2019 (the code) much as also, the application raising to the impugned order had been filed under Sections 38 and 95 of the code and the plot had not been referred to in the impugned judgment and decree. That is all.

the court ordered division of the matrimonial property **(b)** on such basis the spouses may have had owned two different plots yes, but as said, the appellant only meant the plot at issue whether or not it was industrial/residential/commercial plot it is immaterial in my considered opinion. Having been legal wife of the respondent, and it was not disputed for a couple of years, the appellant could not have reasonably expected to mistake the plot for others **(c)** the issue whether or not the plot was matrimonial or personally acquired by the respondent it is afterthought because the respondent did not sufficiently raise it until at the execution stage in which case therefore, the executing court was no forum in which one to establish ownership much as the respondent had not appealed against it **(d)** If at all equally matrimonial Plot No. 6 Block "E" Nyegezi Nyaghingh Street was different from Plot No. 6 Block "E" Nyegezi service Industrial area which is not the case here, the respondent should have been blamed for having concealed the fact **(e)** was the 2 plots not one and the same one should have gone back to court for correction of the errors. Else the respondent may wish to take Plot No. 6 Block "E" Nyaghingh for himself if at all it was a distinct plot.

I think objection proceedings which was for the first time at execution stage raised by the judgment debtor/divorcee, and from the beginning the property subject of the objection it formed part of the records, not only it shall be afterthought but also the objection shall amount to a day light abuse of the court process and on that one the court shall be entitled to draw adverse inference.

Whether or not the plot was no longer individual's but for some reasons now in the name of the President of the United Republic of Tanzania (as per copy of official search), that one had nothing to do with the respondent because, like the appellant precisely so in my view argued, now with a copy of court order she may wish to apply for renewal of the right and terms of occupancy and transfer of the title much as by way of the judgment and decree dated 04/04/2018 she had been declared the owner of the plot.

Had the learned resident magistrate considered all the foregoing issues and the evidence on record with respect to the plot she should not have waived the warrant of attachment. Appeal is allowed. Each party shall bear their costs. It is ordered accordingly.

Right of appeal explained.



S. M. RUMANYIKA
JUDGE

07/07/2020

Judgment delivered under my hand and seal of the court this 10/07/2020 in chambers in absence of the parties with notice.



S. M. RUMANYIKA
JUDGE

10/07/2020