

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**PC. CIVIL APPEAL NO. 31 OF 2018**

*(Arising from Civil Appeal No 102 of 2017 of the District Court of Bariadi originated from  
Civil case No 77 of 2016 of Kalemela Primary Court)*

**ANASTAZIA SOSPETER..... APPELLANT**

**VERSUS**

**MWAJUMA ELIAS.....RESPONDENT**

**JUDGMENT**

*Date of last order: 27.03.2020*

*Date of Judgement: 30.04.2020*

**MKWIZU, J.:**

This is appeal emanates from objection proceedings originating from Kalemela Primary court in civil case No. 31 of 2017. Facts leading to the present appeal are that, the respondent, had a successful claim against the appellant's husband in the above-mentioned case. In the process of executing the courts order, she attached the house of the appellant. Appellant filed objection proceedings resisting the attachment alleging that the house is hers and a matrimonial property and not the property of her husband. The objection proceedings were conducted at the end, the trial court was satisfied that the house belonged to the Objector (now

appellant), respondent was directed to look for another property of the judgement debtor.

Discontented, Respondent appealed to the District court of Bariadi in Civil appeal No. 102 of 2017. The appellate District court found that there was no evidence to prove that the house belonged to the appellant. The objection was just a factory-made to prevent the respondent from enjoying the award. The District Court therefore allowed the appeal, quashed the trial court's decision and ordered the house in dispute to be attached as ordered earlier in civil case No. 31 of 2017.

The appellant who was the respondent in the District court was not satisfied with that decision. She has now come to this court with a petition of appeal containing seven grounds as follow:-

1. It was wrong for the Court to consider the validity of the contract of the purchase of the plot instead of looking as to whether the attached house belonged to the objector or the judgement debtor.
2. The court erred in concluding that lack of the stamp duty or attestation on the contract makes the contract illegal instead of voidable and

therefore takes away appellants right to object to the wrongly attached house.

3. It was wrong for the court to conclude that the appellant was aware of the injunction issued to her husband while she was not part of the suit
4. The court failed to consider that objection proceedings are filed during the attachment and not otherwise.
5. The appellate district court erred in disregarding the decision of the trial court without any reasonable ground
6. It was an error for the district court to conclude that a matrimonial house which is not subject to mortgage can be attached for debt of one spouse.
7. The district court erred in concluding that the appellant has an obligation to make her husband pay the debt.

At the hearing, both parties appeared in person, unrepresented. Arguing in support of her appeal, appellant was very brief. She said, the District court's decision was not fair as it failed to consider that she was not involved anyhow in the proceedings leading to the attachment of her house. She said, she bought the plot by her own money and therefore the respondent should be advised to claim her money from the judgement debtor and not her.

On her part, apart from supporting the decision by the District court, Respondent submitted that the house subject of this appeal belongs to the appellant's husband Mussa Lusesa.

Having analyzed the grounds of appeal plus the party's submissions, I find apposite to start with grounds no 3, 4 and 5 which I will combine them together for they relate. In these three grounds, the appellant challenges the 1<sup>st</sup> appellate court for concluding that the appellant did not act on the injunction issued to her husband which she was aware of and that she ought to have made the husband pay the debt while she was not part of the suit. I should state outrightly and without humor that, appellant had no obligation to make her husband pay the debt, I think, the district

magistrate misdirected himself on this point. I also do not buy the district court's view that appellant could have objected to the injunction order issued against the house in question at the point when the injunction was given and that the filed objection proceedings are an afterthought.

Page 3 of the district Courts' judgement paragraph 3 reads:-

*"Appellant ought to have made her husband be responsible to pay back the debt but not to act as a shield... Admittedly, the house was enjoined by the trial court during the proceedings in civil case no 31/2017 but the respondent did not go to apply to the court to have it lifted if it were her sole property. The current move was an afterthought manufactured to make the appellant fail to enjoy the award obtained by her in the trial court....this court cannot allow it"*

As correctly put by the appellant, objection proceedings are filed during the attachment and not otherwise. My perusal of the entire rules dealing with civil proceedings in the primary court, finds nothing suggesting that a stranger or third party to the proceedings can object an injunction order given by the court. However, **PART III of the Primary Courts Civil**

**procedure Rules Government Notice No. 310 published on 29<sup>th</sup> May, 1964** provides for a procedure. Rule 69 speaks of objection to attachment by a party to the proceedings while Rule 70 provides for objection proceedings by a third party. Since appellant was not part to the proceedings, my consideration will be on the later rule.

According to this provision a person other than a judgement debtor who at the time of the attachment has some interest on the property attached may apply to the court to have the property released from attachment. The Primary court whose objection proceedings has been filed is required to all parties involved namely, a person filing the objection, judgement creditor and judgement debtor on the objection. The rules demand the objection to be investigated and appropriate order given by the court. Sub rule 5 provide specifically that ***"if the court is satisfied that the property or any part of it does not belong to the judgement debtor, it shall make an order releasing it, or such part of it, from the attachment."***

This is what the trial primary court magistrate in this case did. The objection was filed by the appellant and parties were summoned, and upon hearing both parties, the trial magistrate was satisfied that the house in question belonged to the objector. As stated earlier, there was nothing wrong with the procedure taken by appellant in this case or the trial Magistrate. The district court erred in entertaining the opinion that appellant should have objected to the injunction order in the proceedings which she was not a part and that the objection proceedings was an afterthought.

In grounds one and two, the appellant grievances are essentially directed to the views taken by the 1<sup>st</sup> appellate court in considering the validity of the purchase agreement of the plot instead of looking at whether the attached house belonged to the objector or the judgement debtor. The records of the trial courts clearly show that in proving that she owns the plot of the house subject of the attachment, the appellant tendered a sale agreement. It is perfectly true as remarked by the District Court Magistrate that the sale agreement tendered by the appellant at the trial court was not witnessed by an advocate or a magistrate. However, it is not a rule of

the thumb that every agreement should be witnessed by an advocate or a magistrate. The sale agreement under scrutiny was well written and signed by 'kitongoji' chairperson of the respective area. District Magistrates has not told the court whether, the witness to this agreement are excluded by any law from witnessing the agreement. I find no justification whatsoever on the reliance made by the District court on this point in quashing the trial court's decision. The trial courts discharged its duty assigned **under rule 70 (2) and (4)**.

In addition to what the appellant said at the trial that the house belongs to her, the evidence on records reveals that the property is also a matrimonial home where the appellant family resides. **Paragraph 3 (3) (f) of the 4<sup>th</sup> schedule to the Magistrates Court Act**, provisions relating to civil proceedings before the Primary Courts provide categorically that residential house or building, or part of a house or building occupied by the judgment debtor, his wife and dependent children for residential purposes is not subject to attachment. In its judgement the District court stated that the property being a matrimonial house is not a ground for it not to be attached. This was a misdirection on a proper position of the law.



All said and done, this court is satisfied that the trial court properly did what it was required to do. The appeal is therefore allowed, the decision of the District Court is hereby quashed and set aside. And the Primary Court decision is restored with costs.

Order accordingly.

**Dated at Shinyanga** this 30<sup>th</sup> Day of April, 2020

  
**E.Y. MKWIZU**  
**JUDGE**  
**30/4/2020**

**Court:** Right of Appeal Explained.

  
**E.Y. MKWIZU**  
**JUDGE**  
**30/4/2020**