

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC CIVIL APPEL NO. 41 OF 2019

(Arising from DC Civil Revision No. 2/2019, Original PC Civil Case No. 535 of 2017)

LOYCE ISACK MAIGA APPELLANT

VERSUS

JOHN ISACK 1ST RESPONDENT

**BUJORA INTERNATIONAL CO.LTD
(MLENGELA RICHARD MLENGELA)2ND RESPONDENT**

JUDGMENT

30/04 & 13/05/2020

RUMANYIKA, J.:

The appeal is against a decision of 23/04/2019 of the District Court of Nyamagana which upheld decision of 25/04/2017 of the Urban Primary Court Mwanza refusing, with respect to order of attachment and sale of a motor vehicle Reg. T421 AYQ Make MITSUBISHI Pajero objection proceedings filed by Loyce Isack Maiga (the present appellant). Bujora International Co. Ltd (herein the 2nd respondent) having had admitted claims of shs. 4.50 million of John Isack (presently the 1st respondent) essentially but due to their (the 2nd respondents) economic down fall and or unforeseen misfortunes.

The only ground of appeal reads: **The district magistrate grossly erred in law and facts by holding that there were illegalities and improprieties or incorrectness in the proceedings of the trial court.**

When the appeal was called on 29/04/2020 for hearing, following the global outbreak of Coronavirus pandemic, and on that basis pursuant to my order 31/03/2020 the parties were online present except the 2nd respondent (equally served) whose appearance therefore I dispensed with. Trough mobile numbers 0768686281 and 0746259629 parties present were heard by way of Audio Teleconferencing.

Mr. Heri Emanuel learned counsel submitted that the impugned decision was tainted with illegalities namely the appellant, whose motor vehicle was attached she was stranger to the impugned proceedings and order. That according to the material motor vehicle registration card record (Exhibit "A") it belonged not to any one of the company's directors but personal to the appellant therefore free of attachment and sale. That the 2nd respondent company may have been bankrupt yes but the declaration was premature and the local leaders had no jurisdiction to declare one as such. That with respect to the motor vehicle's registration card the issue of fraud wasn't there. It was a criminal complaint which also needed be proved in criminal proceedings. The learned counsel further contended that according to TRA's records, the motor vehicle at issue actually belonged to the 90⁰/₀ majority shareholder company's director one the 2nd respondent not personal to the appellant much as institution, the company had nothing left to attach. If anything, transfer of the motor vehicle to the appellant it

was done only following the order and warrant of attachment therefore fraudulently effected. The 1st respondent rounded up his point. That is all.

The issue is whether attachment for sale of the motor vehicle was lawful and proper.

According to the registration card (Exhibit "A") with effect from 18/02/2009 the motor vehicle (make of 1995) may have been property of the appellant as initial owner yes! Save for the "masjala ya magari" stamp of 17/01/2019 affixed thereto. **Secondly**, the registration card suggested that as at 18/02/2009 with respect to the 1995 make motor vehicle there hadn't been any previous owners. With respect to the appellant's claims therefore, the registration card left a million questions. The impugned judgment and decree were dated 2018, and purported transfer was made on 2019 what a coincidence? Moreover, the appellant's letter of complaints is of 01/01/2019 against attachment of 22/01/2019 !

Now that with regard to who owned it the motor vehicle registration card left much to be desired, like the trial court did, any reasonable tribunal should have resorted to attaching property of anyone of the company's directors much as the judgment debtor was a Limited Company and neither the Memorandum and Articles of Association were produced in court nor did the appellant disown the fact that she was the company's majority shareholder much as also it was not clearly establish whether the 2nd respondent was a company limited by shares or by liability. In other words if the company was limited by shares one should have stated so in the respective objection proceedings. Precisely so I my considered opinion the

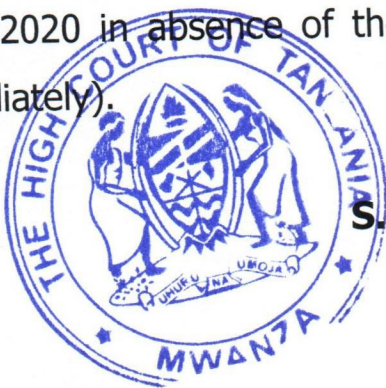
revision court decided that under the circumstances the lift of the corporate veil was timeous and proper. Whether or not the procedure was short circuited it is immaterial in my view. The principles of overriding objective demand that substantive justice was courts' priority number one.

Whether or not with respect to the contract between them and CRDB Band Ltd the motor vehicle had been registered collateral it was immaterial and irrelevant in my view so much so that now the property was at any creditor's disposal. Moreover, whether or not the motor vehicle could be attached for a decree of Shs. 4,500,000/=only it wasn't any one's complaint. I will therefore take the same course.

The appeal is dismissed with costs. It is ordered accordingly.

S. M. RUMANYIKA
JUDGE
09/05/2020

It is delivered under hand and seal of the court in chambers this 13/05/2020 in absence of the parties with notice (copies to be supplied immediately).



S. M. RUMANYIKA
JUDGE
13/05/2020