

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPLICATION NO. 26 OF 2020

(Arising from Execution Case No 23 of 2017 Originating from Land Case No. 23 of 2011
at Mwanza)

MAGWEIGA CHACHA MAGEREAPPLICANT

VERSUS

- 1. MARTHA MANUMBU**
- 2. MANUMBU JOHN**
- 3. RAIDEN YAKOBO KINAGE**
- @ ZAKAYO ATHANAS RAIMOND**
- 4. S. L. ISANGI t/a COURT BROKER**

.....RESPONDENTS

RULING

26 & 29/05/2020

RUMANYIKA, J.:

When the application, for this court investigate on title over a house situate on Plot No. 31 Block "O" Unguja street Mwanza city (the house) and to lift warrant of attachment issued by the Taxing Officer was called on for hearing on 26/5/2020, with respect to a 4 limb preliminary point of objection (the p.o) formally raised on 30/4/2020 by Mr. E. John advocate, by way of Audio Teleconferencing (through mobile numbers 0742 533 235 and 0657 306 924) respectively I had to hear Messrs V.

Kiburika and E. John learned counsel for the applicant and the last two respondents respectively.

Having heard the learned counsel, but given scope and nature of the p.o I found that the absentees 1st and 2nd respondents would not adversely be affected, by order of 26/5/2020 the latter's appearance therefore was dispensed with.

Ms. E. John learned counsel submitted; **(1)** that as it was filed under nonexistent and therefore wrong provisions of the Civil Procedure Code Cap 33 RE. 2002 no doubts the court was improperly moved therefore the application was liable to be struck out. **(2)** that with all what was deposed in paragraph 4 of the supporting affidavit the application was time barred, the mandatory 60 days having expired on 11/2/2018 as through the 14 day notice affixed onto his door therefore the applicant became aware of the impugned taxing officer's orders of attachment on 13/12/2018 **(3)** that the application wasn't tenable as the applicant had withdrawn it without leave to file it again. **(4)** That this court had no jurisdiction much as following the warrant of attachment, already the 3rd respondent was since April, 2020 in possession of the house therefore long ago the application overtaken by events the principles of overriding objectives notwithstanding because the principles didn't intend to repeal laws.

Mr. V. Kiburika learned counsel submitted that; **(a)** substantive justice demanded that there was no longer issue of wrong citation of enabling provisions of the law but rather whether the substantive orders being sought were grantable by the court. That it was not legal technicalities but substantive justice that counted (case of **Yacobo**

the name even for the sake of it Mr. E. John learned counsel did not even attempt one. The 3rd limb of the p.o is overruled.

As for the 4th point, the issue whether or not the application was long over taken by events, namely the applicant having had taken over the house, again purely that one was a point of fact (not of law) which needed evidence for proof. Like Mr. V. Kiburika submitted, the p.o was not worth the name. Even assuming that indeed the point wa a p.o, the issue of it having been overtaken by events it should not have been raised because the issue would have been whether transfer of the title if any it was both proper and lawful. Unless certain provisions of law were repealed or amended no law could over taken by events. The point is also overruled.

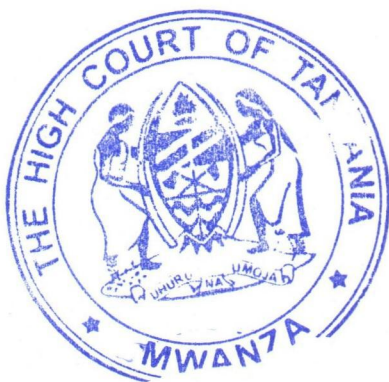
In the up short, the hopelessly time barred application is dismissed with costs. However, now that as against the other parties he claimed title over the house, which title by way of evidence he could not have in this application established, the applicant is at liberty to sue the 1st three respondents among others with a view to recover the house. It is ordered accordingly.

Right of appeal explained.




S. M. RUMANYIKA
JUDGE
27/05/2020

It is delivered under my hand and seal of the court in chambers this
29/5/2020 absence in of the parties with notice.



S. M. Rumanyika
JUDGE
29/05/2020