

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND REVISION NO 12 OF 2020

BETWEEN

MAGRETH ELIAS MATHIAS \_\_\_\_\_ APPLICANT

VERSUS

1. JACOB CHACHA RANGE \_\_\_\_\_ 1<sup>ST</sup> RESPONDENT
2. NYANDEGE JOSEPH CHACHA \_\_\_\_\_ 2<sup>ND</sup> RESPONDENT
3. DOMMY ATHUMAN JUMA \_\_\_\_\_ 3<sup>RD</sup> RESPONDENT
4. MAX MARWA MASASE \_\_\_\_\_ 4<sup>TH</sup> RESPONDENT
5. ALEX MUGABO \_\_\_\_\_ 5<sup>TH</sup> RESPONDENT
6. JOHN MWIKWABE \_\_\_\_\_ 6<sup>TH</sup> RESPONDENT

JUDGEMENT

*11<sup>th</sup> & 29<sup>th</sup> January 2021*

**GALEBA, J.**

What happened in this matter is like a movie. Its background is more complicated than the actual dispute this court intends to get its hands on and sort out. Because the participants involved are numerous, I will refer to them by their first names.

On 18.08.2013 at the Full Gospel Bible Fellowship Church in Tarime town **Nyandege** married **Magreth**. Four years went by and on 03.08.2017 **Nyandege** borrowed Tshs 21,406,000/= from **Jacob**, which amount

would be repaid in one week, but that was not done up to 08.11.2017, when **Jacob** filed civil case no 83 of 2017 in the urban primary court at Tarime. When the matter was called up on 09.11.2017, **Nyandege** readily admitted **Jacob's** debt.

The judgment debt was not settled and on 01.06.2018 **Jacob** prayed to attach **Nyandege's** account no. 015038833300 or 212 herds of cattle in order to realize the judgment debt, but as the account was dormant and there were no herds of cattle, the order did not work. On 14.06.2018, **Jacob** prayed for attachment and sale of a house located **on Plot 247 (High Density) Block 'A' Ronsoti area in Tarime Township** and **Dommy** as a court broker was appointed to implement the order and he attached the house on 27.06.2018. After the attachment on 20.07.2018 **Magreth** filed civil application no. 5 of 2018 in the same primary court, objecting to the attachment and sale on grounds that the house attached was her family home and that she stays in the house with her husband, **Nyandege** and their two children. As **Magreth** did not appear on several occasions, to prosecute her objection, on 27.07.2018, the court made **ex parte** orders that execution should continue and that the house be sold on 05.08.2018.

Indeed the house was sold on that day to **Max** by **Dommy**. It appears **Magreth** complained to the District Court *vide* a letter of 17.08.2018 so the objection proceedings which had been determined *ex parte* was heard *inter partes* before Hon. Bukumbi RM but still he dismissed the objection.

**Magreth** filed civil appeal no. 27 of 2018 in the District court challenging the decision of Hon. Bukumbi. The court (Hon. Mugendi RM), set aside the decision of Hon. Bukumbi ordering that objection proceedings to be filed in the same file as civil case no 83 of 2017. **Magreth** went back to the primary court with the same objection proceedings for hearing in civil case no 83 of 2017. This time she was heard by Hon. Ngowi RM who lifted the sale after holding that the house was a matrimonial home because **Magreth** was **Nyandege's** wife residing in the sold house. The Court advised **Jacob** to look for other assets to attach and sell in order to recover his judgment debt. **Jacob** was not at all happy with that ruling and advice; he filed civil appeal no. 25 of 2019 to the district court. The appeal was heard by Hon. Kubyo RM of the district court at Tarime. By the judgment of that court, (Hon. Kubyo RM) dated 18.11.2019, the decision of the primary court that had lifted the attachment and sale was quashed,

because the decision of the primary court in the objection proceedings was wrong as, it was meant to benefit **Magreth** who was not a party to the case. **Nyendege** filed Miscellaneous Application no 29 of 2019 to set aside that decision because it was heard *ex parte* him, but Hon. Kubyo RM dismissed that application with costs.

It appears at this time, quite justifiably, **Magreth** lost hope and faith in the main stream judiciary so she decided, to go to the District Land and Housing Tribunal at Tarime (the DLHT) and filed land application no 16 of 2020 and miscellaneous application no 52 of 2020 for temporary reliefs where she obtained an injunction on 28.02.2020 restraining **Nyandege, Jacob** and a Court Broker called **S. L. Isangi Auction Mart** or their agents from evicting her from the house until when the matter in the DLHT would be determined.

Between February and June 2020 **S. L. Isangi Auction Mart** failed to evict **Magreth**, because the Police demonstrated courage and wisdom by denying the court broker security and protection during eviction by advising **Isangi** that there was an injunction from the tribunal, which they were not prepared to offend.

Despite the police denial of security, during the pendency of the injunction from the DLHT, on 09.06.2020, the primary court appointed another court broker called **Alex Mugabo** to evict **Nyandege** from the house. In pursuance of that order, **Magreth** was evicted by **Alex** from the house on 17.08.2020 in the presence of local leaders of the area. **Magreth** was at loss because all this happened when she was in possession of the injunction from the DLHT restraining anybody from evicting her.

Realizing that even the land court system would not assist her, on 18.08.2020 **Magreth** lodged a formal complaint and addressed it to the Judge Incharge of this Court complaining about the conduct of Hon. Chana RM of the urban primary court at Tarime for issuing an eviction order while knowing that there was an equally lawful injunction. An administrative decision was made to call all the files mentioned above and see what happened. From the perspective of this court, an order was made that a revision *suo motto* be made and parties be summoned.

On 06.11.2020, orders were made that this matter be argued by way of written submissions addressing the court on a single issue namely;

***'Whether the execution process that resulted in the sale of the house located on Plot 247 Block 'A' Ronsoti area in Tarime was lawful.'***

In response to that order written submissions were duly filed. The applicant was represented by Mr. Paul Obwana learned advocate and the submissions on behalf of all respondents were drawn and signed by Mr. Daud Mahemba learned advocate.

The relevant submission of Mr. Obwana to the issue framed was that in terms of **paragraph 3(3)(f) of the 4<sup>th</sup> Schedule to the Magistrates' Courts Act [Cap 11 RE 2019]** (the MCA), the house was not supposed to be attached or sold in execution of a court decree and he cited a decision of this court in **Anastazia Sospiter v Mwajuma Elias;** PC Civil Appeal No 31 of 2018 (Mkwizu J, High Court at Shinyanga, (Unreported). On his part Mr. Mahemba repeated the whole background to the matter as detailed in this judgment without arguing anything, and finally he prayed that the application be dismissed with costs.

In my view the 4<sup>th</sup> schedule to the MCA is the relevant law providing for civil jurisdiction of primary courts especially paragraph 3(2) and 3(3)(f) of that schedule which provides as follows;

**'3(1) N/A**

***(2) Any amount, including compensation or costs, awarded by a primary court under this paragraph may be ordered to be paid at such***

*time or times or by such installments or in kind or otherwise as the court shall think just and, in default of the payment of any such amount or any installment of the same when due, the court may order that such amount or such installment, as the case may be, shall be levied by attachment and sale of any attachable property belonging to and any salary accrued or to become due to the person against whom the order was made.*

*(3) For the purposes of this paragraph, "attachable property" shall not be deemed to include—*

*(f) any residential house or building, or part of a house or building occupied by the judgment debtor, his wife and dependent children for residential purposes.'*

The same spirit is echoed in **rule 63(1)(b) of the Magistrates' Courts (Civil Procedure in Primary Courts) Rules** which provides as follows;

*'63(1) On receipt of an application for attachment, the court shall, if satisfied that the award or order has not been satisfied and that the property specified in the application is attachable, issue a warrant of attachment;*

*Provided that no warrant of attachment shall be issued in respect of;*

*(b) any residential house or building occupied by the judgment debtor, his wife or dependent children for residential purposes.'*

In all matters detailed in this judgment there was no dispute that **Magreth** is the wife of **Nyandege** and that they were living together in

the house that was attached, which means the house which was attached was being occupied by the judgment debtor his wife and children. Such a house is disqualified by law for purposes of attachment. It is not an attachable property. In this case this court associates itself with the decision of this court in **Anastazia Sospiter v Mwajuma Elias** that a primary court cannot legally issue attachment orders in respect of a house occupied by a spouse and children of the judgment debtor.

That means, the execution process from issuance of the orders of attachment, sale and eviction of Magreth or her children from the house located on Plot 247 (High Density) Block 'A' Ronsoti area in Tarime Township in respect of a consent decree of the primary court in civil case no 83 of 2017 were all illegal.

Consequent to the above finding, this court makes the following orders;

1. The attachment order that was issued on 16.04.2018 and approved by the district court on 25.06.2018 or any subsequent order that might have been issued to the same effect in respect of a house located on Plot 247 (High Density) Block 'A' Ronsoti area in Tarime



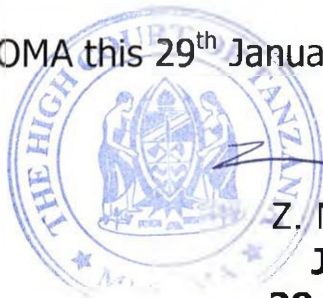
Township in enforcement of the decree issued in civil case no 83 of 2017 is hereby nullified.

2. The actual act of attachment of the house erected on Plot 247 (High Density) Block 'A' Ronsoti area in Tarime Township that was effected by the 1<sup>st</sup> respondent, **Dommy Athuman Juma** is a nullity.
3. Sale of the said house on Plot 247 (High Density) Block 'A' Ronsoti area in Tarime Township by the 3<sup>rd</sup> respondent, **Dommy Athuman Juma** to the 4<sup>th</sup> respondent, **Max Marwa Masase** and a certificate of absolute sale issued in that respect are hereby set aside.
4. The eviction order dated 09.06.2020 is illegal and the same is hereby quashed.
5. The actual act of evicting the applicant, **Magreth Elias Mathias** by the 5<sup>th</sup> respondent **Alex Mugabo**, is hereby declared a void exercise.
6. The applicant, **Magreth Elias Mathias** is entitled to restoration and vacant possession of the house on Plot 247 (High Density) Block 'A' Ronsoti area in Tarime Township.

7. The 4<sup>th</sup> respondent, **Max Marwa Masase** or the 6<sup>th</sup> respondent, **John Mwikwabe** or any other person in occupancy of the house on Plot 247 (High Density) Block 'A' Ronsoti area in Tarime Township is hereby ordered to peacefully vacate it and deliver occupancy to the applicant, **Magreth Elias Mathias**.
8. If indeed, the 6<sup>th</sup> respondent **John Mwikwabe** bought the house on Plot 247 (High Density) Block 'A' Ronsoti area in Tarime Township from the 4<sup>th</sup> respondent, **Max Marwa Masase** then he (**John Mwikwabe**) has a legal right to recover whatever he paid to **Max Marwa Masase** for the alleged sale of the house because that sale (if any) between the two is hereby declared *void ab initio*.
9. The 1<sup>st</sup> respondent, **Jacob Chacha Range** still has a right to apply to the primary court for attachment of any other attachable properties owned by the 2<sup>nd</sup> respondent **Nyandege Joseph Chacha** in order to make good the decree he obtained in civil case no. 83 of 2017.
10. The 3<sup>rd</sup> respondent, **Dommy Athuman Juma** is directed to give details of the person to whom he gave the money that he received from the 4<sup>th</sup> respondent, **Max Marwa Masase** to the latter.

11. The 4<sup>th</sup> respondent, **Max Marwa Masase** has a right to recover the money he paid to the 3<sup>rd</sup> respondent **Dommy Athuman Juma** from whoever he (**Dommy Athuman Juma**) gave that money.
12. Any decision or orders to be made in land application no 16 of 2020 and miscellaneous application no 52 of 2020 pending at the District Land and Housing Tribunal in Tarime should take into account the orders made in this application.
13. Because this matter was initiated *suo mottu*, this court makes no orders as to costs, and
14. Finally the Deputy Registrar of the High Court is directed to remit the files brought up for purposes of this application to the respective courts from where they were procured. Each such file should have a copy of this judgement.

DATED at MUSOMA this 29<sup>th</sup> January 2021



  
Z. N. Galeba  
**JUDGE**  
**29.01.2021**