

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**MISCELLANEOUS CIVIL APPLICATION NO. 146 OF 2020**

*(arising from Execution No. 15 of 2020 which Arises from Bill of Costs No. 15 of 2020  
and Land Case No. 22 of 2017)*

**LETSHEGO BANK (TANZANIA) LIMITED..... APPLICANT**

**VERSUS**

**BANK OF AFRICA & 2 OTHERS.....1<sup>ST</sup> RESPONDENT**

**MABUNDA AUCTION MART CO. LTD.....2<sup>ND</sup> RESPONDENT**

**MZALENDO AUCTION MART CO. LTD.....3<sup>RD</sup> RESPONDENT**

**EMMY EPHRON NGOWI .....4<sup>TH</sup> RESPONDENT**

**JOSEPHINE SAMSON KIWIA.....5<sup>TH</sup> RESPONDENT**

**RULING**

**Date of Last order: 22/07/2021**

**Date of Ruling: 29/07/2021**

**F. K. MANYANDA, J.**

This matter concern objection proceeding filed under Order XXI Rules 57(1), 58 and 59 and Order XLIII Rule 2 of the Civil Procedure Code, [Cap. 33 R.E. 2019] hereafter referred to as the CPC. The objection proceedings



have been preferred by the Applicant, Letshego Bank (T) Ltd on ground that a landed property situated on Plot No. 3484 Block "LL" Kiloleli Area in Ilemela Municipality earmarked for attachment and sell in execution No. 15 of 2020 be released or excluded, if not yet attached. The reason advanced is that the said property is not liable to attachment and sale having been legally mortgaged by the judgment debtor to the objector for the loan to the tune of Tsh 30,000,000/= and has not yet discharged. The Applicant also prays for an order to the decree holder to seek for an alternative property for the attachment.

The objection has not been contested by the Respondent despite been dully served. This Court takes wholly that the application has been constructively accepted by all Respondents.

The only question before this Court is for verification whether the Applicant has established to have interest in the subject matter. The affidavit sworn by Hezron Malyasa, a principal Officer of the Applicant gives the grounds of the application that on 20/05/2019, the Applicant advanced a loan of Tshs 30,000,000/= to the 4<sup>th</sup> Respondent the same to be repaid in two years time with inters of 4% per month.

That to secure the said loan, the 4<sup>th</sup> Respondent mortgaged a house situated a house situated at Plot No. 3484 Block "LL" Kiloleli Area in Ilemela Municipality Mwanza. That todate the 4<sup>th</sup> Respondent has not yet repaid the loan which now stands at Tshs. 29,632,932.60. That in November, 2020 the Applicant become aware that the said house in issue has been advertised to be attached and sold in recovery of a loan of Tshs. 8,000,000/= as decreed by this Court in another case.

It is a concern by the Applicant that in case the house, in which she has vested interest, is attached and sold will not be able to recover her money, hence, will suffer irreparable loss because she has no any other property from which to recover her money.

This Court has gone through a Loan Agreement attached as Annexure "A" to the affidavit and found that it is true the Applicant advanced the loan to the 4<sup>th</sup> Respondent to the tune of Tsh 30,000,000/= on 20/05/2019.

This fact been uncontested when taken together with and the averment that the 4<sup>th</sup> Respondent has never repaid the said loan, which she

secured it with the house in issue, makes this Court find that the Applicant has vested interest in the said house in issue.

The law in objection proceeding is provided under Order XXI Rules 57, 58 and 59 of the Civil Procedure Code, [Cap. 33 R. E. 2019]. For ease of reference I hereby reproduce verbatim:-

*"57.-(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit:*

*Provided that, no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed.*

*(2) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection.*

*58. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.*

*59. Where upon the said investigation the court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment."*

These provisions were visited by the courts in several decisions; as follows:-

First of all, in the case of **Katibu Mkuu Amani Fresh Sports Club vs. Dodo Umbwa Mamboya And Another** [2004] TLR 326 where the Court of Appeal of Tanzania considered the provisions of rule 50(1) of Order XXIV of the Civil Procedure Decree of Zanzibar, which is in *pari materia* with Order XXI Rule 57 of the Civil Procedure Code, stated that:

*"where a claim is preferred or an objection made to the attachment of any property, the Court is bound to investigate the claim or objection; and the fact that the appellant was not a party to the suit is all the more reason for the objection proceedings in which it is open for any claimant or objector to prefer a claim or make objection to the attachment of property."*

Second, the case of **Kwiga Masa vs. Samweli Mtubatwa** [1989] TLR 103 where it was held *inter alia* that:-

*"who seeks a remedy must prove the grounds thereof, in which case it is the duty of objector to adduce evidence to show that at the date of attachment he had some interest in the property attached"*

Third, in the case of **Dorice Keneth Rwakatare vs. Nurdin Abdallah Mushi and 5 Others**, Miscellaneous Application No. 300 of 2019 (unreported) the High Court held:

*"In an objection proceedings the executing court has an obligation of investigating the claims to see the objector has proved to have possession or interest in the attached property."*

From the thread of authorities above, it is the duty of the Applicant to adduce evidence to prove that her or she has interest in the attached property. Also it is a duty of the Court to investigate such a claim.

In this matter it is evident as stated above that this Court after investigating the claims by the Applicant through the evidence she has adduced is satisfied that she has vested interest in the subject matter, the house in issue.

From that findings, I have only way forward, that is to make an order releasing the property in issue wholly. I say so because the Respondents did not come to Court to establish their rights in attachment of house in issue if any.

Consequently, I do hereby order that the application is granted, the house situated on Plot No. 3484 Block "LL" Kiloleli Area in Ilemela Municipality be released and excluded from attachment in Execution No. 15 of 2020.



Secondly, the decree holder is hereby ordered to look for alternative property of the judgment debtor for the attachment.

Thirdly, costs of the application will be borne out by the Respondents.

Order accordingly.



A handwritten signature in blue ink, appearing to read "F. K. Manyanda".

**F. K. MANYANDA**  
**JUDGE**  
**29/07/2021**