

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT TANGA

Misc. LAND CASE APPLICATION No. 29 OF 2021

VIMISHA JAYANTILAL DHARAMSHI ----- APPLICANT

Versus

1. I & M BANK LIMITED

2. HITENDRA ZAVERCHAND BABU

3. YONO AUCTION MART & CO LTD

----- RESPONDENTS

RULING

13.08.2021 & 13.08.2021

F.H. Mtulya, J.:

On 18th July 2021 a Public Auction Notice (the Notice) was displayed in the Sunday News Paper under the instruction of **Yono Auction Mart & Co. Ltd** (the Third Respondent). The Notice shows that the Third Respondent was acting on behalf of **I & M Bank Limited** (the First Respondent) to auction various landed properties of the defaulted clients of the First Respondent, including properties under the name of the **Hitendra Zaverchand Babu** (the Second Respondent).

Following the Notice, the wife of the Second Respondent Vimisha Jayantilal Dharamshi (the Applicant) approached the legal services of Ms. Deborah Msaki, learned counsel and instructed her to file **Misc. Land Case Application No. 29 of 2021** (the Application) under a certificate of urgency to pray for an interim order of temporary injunction (the injunction order) to restrain the First, Second and Third Respondents from attaching and auctioning several properties mentioned in the 3rd, 5th and 6th paragraphs of the Applicant's Affidavit, pending hearing and determination **Land Case No. 12 of 2021** (the case) filed in this court.

The suit proceeded *ex-parte* as against the First and Third Respondents as they declined to enter their presence as per court order to file Counter Affidavit issued today at morning hours. During the hearing of the Application, Ms. Msaki briefly submitted that the Respondents intend to attach and auction the properties mentioned in the Affidavit by Monday, next week 16th August 2021 and today is Friday 12th August 2021 noon hours and that the properties are family properties of the Applicant, Second Respondent and their children and that it is part of matrimonial property jointly acquired by the Applicant and the Second Respondent.

Ms. Msaki submitted further that the properties were subjected to loan agreement entered by the Second and First Respondents without consent of the Applicant, which is a violation of section 59 of the **Law of Marriage Act** [Cap. 29 R.E. 2019] (the Act). Finally, Ms. Msaki submitted that if the application is not granted, it will prejudice the Applicant from irreparable loss to herself and her family members.

This court during proceedings noted discrepancies of facts in the properties mentioned in the Notice and those mentioned in the Affidavit, and as part of the right to be heard enshrined in article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002, this court invited Ms. Msaki to explain of the inconsistencies.

In replying to the matter, Ms. Msaki submitted that the name of the Second Respondent is reflected in the property named **Plot No. 7 Block 36 with CT No. 2680 located at Ngamiani Street in Tanga City**, and the other properties are in the name of the company named **Z.B Mining Ltd**, which the Second Respondent has shares and the Applicant has interest as a wife under section 59 of the Act.

However, this argument was not supported by any law or precedent of this court or Court of Appeal.

In my opinion, I think, in absence of interpretation of the law in section 59 of the Act with regard to shares owned by one of the spouses in companies to be considered as part of matrimonial properties jointly acquired during subsistence of marriage, this court will not buy the interpretation from learned counsel, Ms. Deborah Msaki. Accepting the argument would cause mischief in persons owning individual shares in companies and would deny persons in marriage to own individual properties. I do not think the enactment in section 59 of the Act was intended to capture each and every properties acquired by spouses during subsistence of marriage.

Having said so, and noting the property under the name of the second Respondent is only one depicted in the Notice as: **A property on Plot No. 7 Block 36, CT No. 2680 located at Ngamian Street, Tanga City**, and considering the existence of the suit filed in this court in **Land Case No. 12 of 2021** between the parties, I have formed an opinion to grant the prayer of an order of temporary injunction to restrain all the Respondents in this Application from attaching, auctioning or doing any other process in detriment of the property named: **Plot no. 7 Block 36 with CT. No. 2680 located at**

Ngamiani Street, in Tanga City, until and unless the suit in **Land Case No. 12 of 2021** filed in this court involving the parties in this application is determined to the finality.

I award no costs, in this application as the First and Third Respondents declined to enter their presence in protest of the Application and the Second Respondent is the husband to the Applicant and this court encourages harmony in family homes.

It is so ordered.




F.H. Mtulya,

Judge

13.08.2021

This Ruling is delivered in Chambers under the seal of this court in the presence of the Applicant, Vimisha Jayantilal Dharamshi, Second Respondent, Hitendra Zaverchand Babu and in the presence of learned minds, Mr. Christopher Wantora for the First and Third Respondents and Ms. Deborah Msaki for the Applicant.




F.H. Mtulya,

Judge

13.08.2021