

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY**  
**AT MWANZA**  
**MISC. CIVIL APPLICATION NO. 93 OF 2021**

*(Arising from Execution No. 70 of 2020)*

**LIN JIE .....APPLICANT**

versus

**MABULA BALELE SHIGANGA .....1<sup>st</sup> RESPONDENT**

**EAST WEALTH INTERNATIONAL MINING LIMITED.....2<sup>nd</sup> RESPONDENT**

**ROCK CITY TAKERS LIMITED .....3<sup>rd</sup> RESPONDENT**

**JUDGMENT**

10<sup>th</sup> & 30<sup>th</sup> September, 2021

**RUMANYIKA, J.:**

Brought under a certificate of urgency, according to records lodged on 6/8/2021, with respect to the property the application to investigate the claims of Lin Jie (the applicant) under Order XXI Rule 57 (1) and (2) and Section 95 of the Civil Procedure Code Cap 33 RE 2019 it is supported by affidavit of Lin Jie whose contents Mr. Godfrey Martin learned counsel for the applicant adopted during audio teleconference hearing on 10/09/2021.

Mabula Balele Shiganga (the 1<sup>st</sup> respondent) was represented by Mr. Felix James learned counsel. However when the application was called on

for hearing, though duly served, East Wealth International Mining Limited and Rock City Takers limited (the 2<sup>nd</sup> and 3<sup>rd</sup> respondents) respectively they did not appear. As, pursuant to order of 25/8/2021 the latter were, through Uhuru local newspaper served on 1/9/2021, their appearance was dispensed with. Hence, only with respect to the two the expate ruling because whatever the results might be the last 2 respondents would not be affected any way. I heard the applicant and the 1<sup>st</sup> respondent through mobile numbers 0718 754 077 and 0766 342 969 respectively.

Mr. Godfrey Martin learned submitted that although, in favour of the 1<sup>st</sup> respondent an award was only issued against the 2<sup>nd</sup> respondent on 30/9/2020, yet, in its execution on 6/7/2021 this court ordered attachment of the property including 2 mining licences of Rwamugasa Mining in Geita region according to agreement of 10/6/2021 sold by the 2<sup>nd</sup> respondent to the applicant, although on or by 6/7/2021 still the former operated the mining. That is all.

In reply, but having had adopted contents of the counter affidavit of the said Mabula, Mr. Felix James learned counsel submitted that the alleged sale agreement yes, but, according to Section 37 (1) of Law of Contract Act parties were bound by terms and conditions of the contract in

this case Clause 15.1 which set forth a requirement to have had referred the dispute to Arbitrator much as also the alleged immovable/movable property was not specifically mentioned save for the two mining licences.

**Second,** that under Order XX1 Rule 8 of the Code the respondent should have adduced evidence to show that on or by the date of attachment the former had interest in the property being attached but such evidence was never ever given (the case of **Kwiga Masa v. Samwel Mtubatwa (1989) TLR 103 (HC)**).

In his rejoinder, Mr. Godfrey Martin learned counsel submitted that the Arbitration clause yes, but objection proceedings was the best course to take under the circumstances. That is it.

The central issue is whether the applicant has demonstrated his interest in the property for which warrant of attachment was, in execution of the award issued on 6/7/2021 much as, at this stage the applicant's allegations needed not be proved on balance of probabilities. With respect to the property at issue, the applicant and 2<sup>nd</sup> respondent may, or may have had not executed a sale agreement on 10/6/2021 yes, but if at all contrary to clause ..... of the agreement still the vendor (2<sup>nd</sup>

therefore the decree holder 1<sup>st</sup> respondent who had not witnessed it and he wasn't a party to the contract he reasonably had the order of attachment been issued in his favour. Leave alone absence of the evidence that all the movable and immovable property, the 2 mining licences inclusive from the 2<sup>nd</sup> respondent it had not been transferred and registered in the name of the applicant.

The devoid of merits application is dismissed with costs. As now stood the execution should be carried out unconditionally. It is so ordered.

Right of appeal explained.

  
**S.M. RUMANYIKA**  
**JUDGE**  
**23/09/2021**

The ruling delivered under my hand and seal of the court in chambers this 30/09/2021 in the absence of the parties.

  
**S.M. RUMANYIKA**  
**JUDGE**  
**30/09/2021**

