

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

MISC CIVIL APPLICATION NO.49 OF 2021

(Arising from Taxation Cause No.6 of 2018 and Probate and Administration Cause No. 01 of 2016 of the High Court-Bukoba, (DC) Probate and Administration Appeal No.13 of 2014: Original Probate cause No. 10 of 2014 of Kashasha Primary Court)

RASHIDA MUSWADIKU.....APPLICANT

VERSUS

RAYMOND PASTORY.....1ST RESPONDENT

**MAJEMAJE AUCTION MATRT & COURT
BROKERS.....2ND RESPONDENT**

MUSWADIKU PASTORY.....3RD RESPONDENT

RULING

16/09/2021 & 24/09/2021

NGIGWANA, J

This is a ruling on objection proceedings brought by the applicant under certificate of urgency resisting the attachment of a piece of land used for agricultural purposes on the ground that the same is not attachable since it is a matrimonial property and her livelihood is wholly dependent upon the use of such land

The application was preferred by way of chamber summons made under Orde XXI rule 57 (1), rule 59 (1) and section 95 of the Civil Procedure Code Cap 33 R: E 2019 and section 59(1) of

the Law of Marriage Act, Cap 29 R: E 2019. The same is supported by an affidavit duly sworn by the applicant.

~~Brief facts to this application as can be gathered from affidavits~~ of the parties and the records available can be summarized as follows; the 1st respondent vide Probate and Administration Cause No. 20 2014 petitioned for grant of letters of administration of their deceased father estates one Pastory Budomi. He was objected by the 3rd respondent Mswadiku Pastor but the objection was overruled, hence the matter ended in favor of the 1st respondent.

The third respondent was aggrieved hence appealed to the District Court of Muleba, Probate Appeal and Administration Appeal No.13/2014 but the same was dismissed for want of merit. Still dissatisfied, the 3rd respondent appealed to this Court, (PC) Probate and Administration No. 1 of 2016 whereas the appeal was dismissed with costs.

The 1st respondent Pastory Raymond being the Decree Holder filed Taxation Cause No. 06 of 2018 before the Deputy Registrar claiming to be paid costs at a tune of TZS 2,276,990/= being costs for prosecuting Probate cause No. 10 of 2014 of Kashasha Primary Court, Probate and Administration Appeal No.13 of 2014

of Muleba District Court and Probate and Administration Cause No. 01 of 2016 of the High Court-Bukoba.

On 18/02/2019, the taxing officer (Deputy Registrar) taxed the amount at TZS. 1,076,000/=, the rest of the amount was taxed off. The 3rd respondent effected no payment as a result, an application for execution, Application No.6 of 2019 was filed on 26/03/2019 in the form which the subject of this objection proceedings was attached in execution of the court order/decreed.

When the matter was called on for hearing the objector appeared in person and represented by Mr. Derick Zepherine, learned advocate while the 1st and 3rd respondents appeared in person and unrepresented. The 2nd respondent was duly served but entered no appearance therefore the matter against him proceeded ex parte.

Submitting in support of the application, Mr. Zepherine adopted the affidavit of the applicant and stated that the applicant was married by the respondent in 1989 and were blessed with six (6) issues. He added that the first and 3rd respondents had a Probate and Administration Cause which ended with cost, whereas on 18/08/2021 vide Taxation No.06 of 2018 this court issued an order for the attachment of a matrimonial property owned by the

objector which the family livelihood wholly dependent upon for their basic needs, and that since the marriage is still subsisting, the said property is not attachable. The learned counsel made reference to the case of Gabriel **Nimrod Kurwijila versus Theresia Hassan Malongo**, Civil Appeal No.102 of 2018 where a matrimonial property was defined as a property acquired by one or other spouse before or during their marriage, with the intention that there should be continuing provisions for them and their children during their joint lives.

On his side, the 1st respondent submitted that, though the said land is a matrimonial property inherited by the applicant and the 3rd respondent from the late Pastory in 2016, the same is attachable because they have another farm located at Mwiganjura, hence will have another farm to cultivate.

The 3rd respondent on his side admitted that the applicant is his wife since 1989 and the marriage was blessed with 6 issues. He added that the applicant started developing the said attached land since 1989. He went on submitting that, Buyaga Village authority has once allocated to them a farm whose size was a half-acre, but they have already sold it in order to get school fees

for their son. He disputed the allegation that they currently have another piece of land apart from the attached farm.

In rejoinder, Mr. Zepherine said, since the applicant has no any other land for agricultural purposes, if the application will not be granted, she will suffer irreparable loss.

Having heard the rival submissions for and against the objection proceedings, the issue to decide is whether the livelihood of the applicant and her family wholly dependent upon use of the attached land.

Section 48. -(1) of the Civil Procedure Code Cap 33 R: E 2019 Provides;

The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, banknotes, cheque, bills of exchange, promissory notes, Government securities, bonds or other securities for money debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be

held in the name of the judgment debtor or by another person in trust for him or on his behalf:

~~Provided that, the following shall not be liable to such attachment or sale, namely-~~

(a)N/A

(b)N/A

(c)N/A

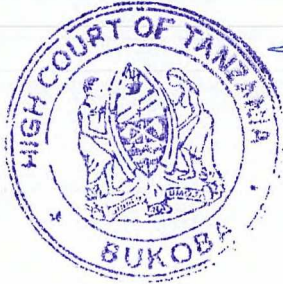
*(d) **any land used for agricultural purposes by a village, an Ujamaa village, a co-operative society, or an individual whose livelihood is wholly dependent upon the use of such land.***

In this application, the burden is on the objector to prove and establish her right to have the attached piece of land released from attachment. Through its investigation the court is satisfied that the applicant has managed to prove and establish that the land located at Bayaga Village, Buhangaza Ward, Muleba District in Kagera Region is a matrimonial property and that her livelihood and her family wholly dependent upon use of it.

For that reason, the application is hereby granted. The attached farm being non-attachable is hereby released from attachment.

The Decree Holder is advised to identify attachable properties of the Judgment debtor so that he can recover the taxed amount.

It is so ordered




E. L. NGIGWANA

JUDGE

24/09/2021

Ruling delivered this 24th day of September, 2021 in the presence of the applicant in person, 1st & 3rd respondents and E. M. Kamaleki, Judges' Law Assistant.




E. L. NGIGWANA

JUDGE

24/09/2021