

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)**

AT ARUSHA

MISC. CIVIL APPLICATION NO. 34 OF 2021

(CF in the High Court of the United Republic of Tanzania at District Registry of Arusha on Civil Case No. 19 of 2017 and the Application for Execution thereto)

DONAK SAFARIS LIMITED.....APPLICANT

VERSUS

IT STARTED IN AFRICA LIMITED.....1ST RESPONDENT

BARAJA BENARD KANGOMA2ND RESPONDENT

RULING

31/10/2021 § 05/11/2021

GWAE, J

The respondents, IT Started in Africa Limited and Baraja Bernard Kangoma successfully filed a civil in this court vide Civil Case No. 19 of 2017. Having obtained judgment and decree entered in their favour, the respondents applied for enforcement by attachment and sale of properties (motor vehicles) allegedly owned by the applicant, Donak Safaris Limited and judgment debtor.

The applicant has now moved the court by citing section 57 (1) of the Civil Procedure Code Cap 33 Revised Edition praying for investigation as to ownership of the motor vehicles intended for attachment and sale in

the satisfaction of the respondents' decree and release of the same on the ground that the applicant who is a registered owner of the motor vehicles and she was not a party to the respondents' suit.

This application is seriously resisted by the respondents through their joint counter affidavit solemnly affirmed by Mr. Baraja Bernard Kangoma, the 1st respondent's Managing Director. The respondent's counter affidavit is to the effect that the applicant and judgment debtor/Soul of Tanzania in the said civil suit are partners in business and that the judgment debtor is doing business with the applicant secretly.

The applicant and respondents were duly represented by learned advocates notably; Mr. Charle Adiel Abraham and Mr. Fridolin Bwemelo respectively. With consensus, this application was argued by way of written submission.

When I carefully passed through the applicant's application, I have noted some anomalies which would not conveniently enable me to justly determine this matter on merit, the noted anomalies are; **firstly**, that, no copy of the judgment or decree that is attached to this application thought this could be cured by tracing the file since or retrieving the judgment and

decree since the same were issued by this court, **secondly**, that, no copy of an execution order made by the Deputy Registrar for said attachment and sale as well as a list of the motor vehicles which were attached and **thirdly**, that, it is even worse to have this application without being backed by citation, a number of the asserted Application for Execution.

That, being the observations of the court, the parties' advocates were to be entertained nevertheless since they did not enter appearance without notice of their absence, in that premise, I proceed to consider the observation as I am shortage of time and of course for the interest justice of both parties.

It is judicial principle that, if a number of a case or an application is ~~referred in an appeal or an application like the present application and that~~ case or application, as the case may be, was heard and determined by the same court, no requirement of annexing copies of decisions or orders and decrees or drawn orders. However, for the convenience, the same may be attached. Nevertheless, this court is of the considered view, that, it is worse and absurd on the part of the applicant to omit citing a registered number of the application for execution subject matter of this application.

Equally, the applicant's omission to attach the execution order together with the alleged list of the motor vehicles intended to be attached and sold cannot be considered as a minor error but a serious and incurable defect. The applicant had endeavored to move this court by citing

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.

Presently, it is clear that, the applicant has not cited the case number for the application for execution nor has he annexed an execution order of the decree of the court. Therefore, this kind of laxity or negligence cannot be entertained by the court. In **Paul Mgana v. Managing Director Tanzania Coffee Board**, Civil Appeal No. 82 of 2001 (unreported), where the Court of Appeal rightly stated;

"It is common knowledge that rules of procedure being handmaids of justice, should be complied with by each and everybody.....whether the case involved a constitutional right as the as the appellant urged or not, so long as the provision of Rules (1) are mandatory going to the root of matter, there is no way in which the appellant could be exempted from complying with the rule".

I am of the settled mind that, the applicant, ought to have annexed the execution order, if any, so that he could enable the court to certainly know whether there was an order for execution, as asserted by him, that was made by the Deputy Registrar or not and whether there was an order as to attachment and sale was issued or not by the executing officer and if in affirmative, a list of properties which were sought by the decree holders to be attached.

In the premises, I cannot therefore issue an order raising the alleged attachment and sale without any proof that, the impugned order for the sought attachment and sale was actually issued by the executing officer. In the absence of the said necessary documents unescapably renders the application incompetent as the defects, in my opinion, cannot be salvaged by the overriding objective.

Consequently, this application is struck out with costs

It is so ordered



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

**M. R. GWAE,
JUDGE
5/11/2021**