

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA AT ARUSHA

(PC) CIVIL APPEAL NO. 40 OF 2021

(C/f Civil Revision No.8 of 2021 at the District Court of Karatu, Original Civil Case No. 34 of 2020 at the Primary Court of karatu)

GINADA DUNDURDA.....APPELLANT

Vs

SELESTINA PETRO.....RESPONDENT

JUDGMENT

Date of last Order: 25-5-2022

Date of Judgment: 16-6-2022

B.K.PHILLIP,J

The respondent herein sued the appellant at the Primary Court of Karatu claiming for payment of Tshs 810,000/=, being the refund of the money she paid to the respondent for purchasing the respondent's land, but the respondent failed to hand over to her the said land as agreed. The case was heard inter-parties. The primary Court entered judgment in favour of the respondent and ordered the appellant to pay to the respondent a sum of Tshs 810,000/= .The appellant promised to pay to the respondent the decretal sum but did not fulfill his promise. Finally, the respondent decided to move the wheels of execution into motion. The appellant was summoned before the primary Court to show cause on why the execution of the Court decree should not proceed . The appellant

appeared before the Primary Court and requested to be given time to pay the decretal sum . He was granted time to pay the decretal sum but did not do so. Finally, the Court was compelled to proceed with the execution of the Court decree .A court broker was appointed to auction the respondent's land located Gendaa area, Qurus ward in order to obtain the decretal sum. In his endeavour to stop the attachment of his land, the respondent filed complaints at the trial Court objecting to the attachment of his land on the ground that the attachment was unlawful because the Court broker attached his residential houses contrary to the Court Order. The trial Court heard the appellant's objection and made a finding that the same had no merit. It dismissed it. Aggrieved by the decision of the trial Court the appellant lodged an application for Revision at the District Court of Karatu which was not successful. It was dismissed with costs. Undaunted, the appellant has lodged this appeal on the following grounds;

- i) That the District Court erred in law and fact to determine the merit of the objection proceedings filed in the trial Court before parties were heard on the said objection.
- ii) That the District court grossly erred on law and fact for failure to find that the Appellant's right to be heard by the trial Court on the objection to attachment of his properties was infringed.
- iii) That the District Court grossly erred in law and fact to decide that the said five houses are not residential houses before the appellant was allowed to prove his claim /objection.

- iv) That the District Court erred in law and fact for failure to consider and determine on the irregularities on the attachment and order of the sale.
- v) That the District Court grossly erred in law and fact to rely on the Court broker's statement that the residential houses were not attached contrary to the documents and order of the trial Court.
- vi) That the Resident Magistrate misdirected himself to hold that the proper procedure was to file an application for stay of execution .

In this appeal the appellant prays for the following orders;

- i) That the appeal be allowed with costs, the ruling of the District Court be quashed and its orders set aside.
- ii) The trial Court be directed to hear and determine the appellant's objection against the attachment.
- iii) Any other relief this Court deems fit and just to grant.

Both parties were unrepresented. They appeared in person. The appellant submitted for all points of appeal cumulatively. He argued that the District Court erred to disregard his application in which he was challenging the way the Primary Court handled his objection/complaints which he lodged at the Primary Court to challenge the attachment of his properties (five houses) because the court broker attached his houses wrongly. The Primary Court Order indicated that the land subject to attachment in the execution of the Court decree was undeveloped while there are five houses built therein. He contended that the Primary Court did not give him opportunity to be heard and proceeded to order that the execution of the

Court decree should proceed. He filed an application for Revision at the District Court ,but the District Court did not accord him the opportunity to be heard and ruled that the attachment of his houses was proper.

In rebuttal, the respondent argued that this appeal has no merit. It is filed purposely as a delaying technique in order to frustrate the execution of the Primary Court Order in which the appellant was ordered to pay her a sum of Tshs 810,000/=. She told this Court that the appellant has not appealed against the judgment of the Primary. He was granted time to pay the decretal sum but did not do so, instead he kept on raising unfounded excuses .The appellant's objection filed at the Primary Court was heard. The Court made a fair decision because the appellant does not want to pay the decretal sum for no good reason. Thus ,the only available option is to auction his land so as to obtain the decretal sum. She insisted that the land attached for execution of the Court Order is undeveloped. There are no houses therein as claimed by the appellant.

In rejoinder, the appellant insisted that he willing to pay the decretal sum to a tune of Tshs 810,000/=. Also, he admitted that he requested for time to pay the decretal sum before the Primary Court and his prayer was granted but he has not managed to do because of financial constraints.

Having perused the Court's records Court , I have noted that the appellant lodged his objection against the attachment of his land at the Primary Court following the Court order for attachment of his land located at Gendaa area, in Qurus ward, so as to satisfy the Court Decree for the payment of Tshs 810,000/=.The Court records reveal that on 1st

day of June 2021, the appellant's objection was heard on merit. The appellant was accorded opportunity to be heard. The Court broker was also summoned. He entered appearance and told the Court that there is no any house in the land attached in execution of the Court Decree. The Primary Court ordered the execution of the decree to proceed accordingly. From the foregoing, it is not true that the appellant's objection was not heard on merit.

With the regard to the proceedings in the District Court, the same also reveal that the applicant's application for revision was heard by way of written submissions. On 21st June 2021, the Court issued the schedule for filing the written submissions, in which the applicant was ordered to file his submission on or before 28th June 2021, reply by the respondent was ordered to be filed on or before 8th July 2021, rejoinder if any by the appellant herein was order to be filed on or before 15th July 2021. Both parties filed their submissions as ordered by the Court and at the end of the day the District Court dismissed the application for lack of merit. Hence it is not true that the appellant was not accorded the right to be heard by the District Court.

As admitted by the appellant in his submission, there is a Court decree in favour of the respondent which has not yet been satisfied. Looking at the Court's records, it is the finding of this Court that the order for attachment of the appellant's land is proper. The appellant failed to point out any irregularity committed in attachment his land. After all, he conceded before this Court that the Court decree has not been satisfied . The Court broker confirmed before the Primary Court that the land which is attached

in undeveloped. There are no houses built therein. It is just adjacent to the appellant's house. There is no any evidence adduced at the trial Court to challenge the assertion made by the Court broker. Under the circumstances, I do not see any plausible reasons to fault the decision of the lower Courts. It is also noteworthy that decree holder is entitled to enjoy the fruits of the judgment of the Court, otherwise it defeats the end of justice for the decree holder to end up having a Court decree which cannot be executed.

In the upshot, execution of the Court decree should proceed. This appeal is dismissed with costs.

Dated this 16th day of June 2022



A handwritten signature in black ink, appearing to read "B.K. PHILLIP", written over a circular stamp.

B.K.PHILLIP

JUDGE