

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(LABOUR DIVISION)
AT MBEYA**

MISC. LABOUR APPLICATION NO. 05 OF 2022

(From Labour Execution No. 12 of 2021 in the High Court of Tanzania at Mbeya.)

ACCESS BANK TANZANIA LIMITED.....APPLICANT

VERSUS

RASHID NDITI.....1ST RESPONDENT

MLIMA MBEYA VIEW ACADEMY t/a HIGH SCHOOL.....2ND RESPONDENT

RULING

Date of Hearing: 01/06/2022
Date of Ruling : 01/07/2022

MONGELLA, J.

The application at hand has been filed for purposes of moving this Court to issue an order restraining the 1st Respondent and or its agents from executing the order dated 2nd December 2021 on the ground that the property with Title No. 4222-MBYLR, Block "M" Forest area in Mbeya City, is not liable for attachment and sale since it is a security pledged by the 2nd respondent to the applicant and the same be released. The application is brought under Rule 24(1), (2)(a)(b)(c)(d)(e)(f); and (3)(a)(b)(c)(d); (11), Rule 55(1) and (2) of the Labour Court Rules, 2007 G.N. No. 106 of 2007;

and Order XXI Rule 57(1) and (2) of the Civil Procedure Code, Cap 33 R.E. 2019. It is supported by the affidavit of one, **Amedeus Mallya**, the applicant's legal counsel.

What led to the application at hand is the execution application by the 1st respondent against the 2nd respondent in this Court in Labour Execution No. 12 of 2021 under which the 1st respondent was permitted to attach and sale the 2nd respondent's property with Title No. 4222-MBYLR, situated at Block "M" Forest area in Mbeya City. The basis of the applicant's claims is the banker customer relationship between the applicant and the 2nd respondent under which the applicant advanced a loan to the tune of T.shs. 50,000,000/- to the 2nd respondent. The loan advanced was secured by the property in question and the 2nd respondent defaulted in repaying the loan leading the debt to reach T.shs. 60,295,962.47.

All respondents were duly served. As per the affidavit of the process server, the 2nd respondent's principal officers refused to accept summons. The Court thus fixed the date for hearing, that is, on 01st June 2022 with an order that the matter shall proceed *ex parte* against the 2nd respondent if she shall fail to enter appearance. On the particular date, the 2nd respondent never entered appearance and the matter proceeded *ex parte* as ordered by the Court. It was argued orally.

The 1st respondent filed no counter affidavit. On attendance to the court he informed the Court that he intended to file no counter affidavit as he supported the application. It was therefore Mr. Mallya who addressed the Court on the application.



Mr. Mallya argued that the applicant wishes for the Court to examine so as to realise his rights in accordance with Order XXI Rule 57 (1) and (2). He submitted that the applicant and the 2nd respondent have a banker-customer relationship which was born on 24th July 2017 through a loan agreement No. 1207100038331. He said in the agreement, the 2nd applicant obtained a loan to the tune of T.shs. 50,000,000/- with conditions enshrined in the loan agreement. He referred the loan agreement attached to the supporting affidavit marked as "annexture AMBT1." He said that the loan was secured by collateral with right of occupancy with Title No. 4222 MBYLR Plot No. 1350 Block "M". The collateral agreement was attached as "annexture AMBT2." He said that up to the date of hearing, the 2nd respondent had not repaid the loan and the status of loan as extracted from the Bank of Tanzania Credit Bureau (attached as annexture "AMBT3") showed the debt to be at T.shs. 60,295,962.47.

Mr. Mallya further submitted that they got information about the collateral being in the process of being sold under a court order from the 1st respondent in January 2022 through a phone call to one of the Bank officers through mobile phone number 0767 660 881. The caller was one Mwalimu Nditi (the 1st respondent), who requested the Bank to cooperate with him through a court broker named Fagio Brokers to sell the property as he knew that the title deed was with the Bank.

He said that after getting information, the applicant made follow up through perusal through Judiciary of Tanzania Mobile application and found that it was true that Execution Application No. 12 of 2021 was filed in this Court on 14th July 2021 with reference number 30467128. He said



that in the said execution application, the 1st respondent had sought for this Court to issue an order to attach and sale the property of the 2nd respondent with Title No. 4222 MBYLR. He added that on 27th October 2021 this Court through the Registrar gave an order to attach the property and the 2nd respondent was instructed to pay a debt of T.shs. 41,668,461.50 so as to satisfy the court decree and court broker fees.

He submitted that, given the situation, the applicant made efforts to inform the Court of his interests on the property ordered to be attached on account of the loan advanced to the 2nd respondent, hence the application at hand, which was filed on 10th February 2022. He said that in accordance with **Order XXI Rule 57 (1) and (2) of the Civil procedure Code**, the applicant prays for this Court to examine her claims and interests because if the property shall be sold, the applicant shall fail to recover the loan advanced to the 2nd respondent, thereby getting loss.

In support of his prayer, he cited the case of ***Katibu Mkuu Aman Fresh Club vs. Dodo Ubwa Mamboya & Hamisi Machano***, Civil Case No. 88 of 2002 in which it was held that where there are objection proceedings, the duty of the court is to investigate the rights of the objector. He added that the court has legal authority, after investigation, to order that even if the property is sold, part of the money should be paid to the objector. To that effect he cited **Order XXI Rule 63 of the Civil Procedure Code**.

He concluded by reiterating his prayer that this Court intervenes and investigates the right of the applicant on the ground that the debt of the 2nd respondent still accrues on overdue payment in the credit bureau. He



further prayed for the court to declare the interests of the applicant on the property with Certificate of Title No. 4222 MBYLR on plot no. 1350 Block "M" Forest area in Mbeya City, charged as security for loan by the 2nd respondent in favour of the applicant.

I have considered the application at hand and the submission by Mr. Mallya. It is clear on record that the application at hand follows execution of a decree in a labour matter. The Labour Court Rules, G.N. No. 106 of 2007 bear no specific provisions guiding on the situation at hand whereby a creditor seeks to be part of the execution process in a labour matter to recover its money advanced to a judgment debtor or to restrain execution over a property charged as security for a loan issued by it to a judgment debtor in a labour matter. As such **Rules 55 (1) and (2) of the Labour Court Rules** becomes applicable whereby the Court is permitted to adopt any procedure it deems appropriate to meet the ends of justice. Under **Rule 48 (3) of the Labour Court Rules**, the provisions of **Order XXI of the Civil Procedure Code** are applicable in execution matters.

As argued by Mr. Mallya, **Order XXI Rule 57 (1) and (2) of the Civil Procedure Code** empowers the Court to investigate on claims or objections to attachment of any property attached in execution of a decree on the ground that the said property is not liable to such attachment and make appropriate orders including postponement of sale of the attached property if the same has already been advertised for sale.



After examining and considering the submission by Mr. Mallya and the documents attached to the supporting affidavit, I find it clear that the 2nd respondent is indebted to the applicant for the loan advanced to him. It is clear that he charged the property in his name situated at Plot No. 1350 Block "M" Forest area in Mbeya City as security for the loan. In the premises, the applicant Bank has an interest over the property which has to be safeguarded for him to recover the loan advanced to the 2nd applicant.

In the application, the applicant prayed for the 1st respondent to be restrained from attaching and selling the property. However, **Order XXI Rule 63 of the Civil Procedure Code** empowers the Court to order the property attached to be sold and proceeds to be paid to the person entitled. It provides:

"Any court executing a decree may order that any property attached by it and liable to sale or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same."

Considering the rights of the 1st respondent, I find it plausible to order for the execution to proceed. However, the rights of the applicant shall be realised first before those of the 1st respondent and in accordance with the laws.

Dated at Mbeya on this 01st day of July 2022.


L. M. MONGELLA
JUDGE

Court: Ruling delivered in Mbeya in Chambers on this 01st day of July 2022 in the presence of the applicant's counsel, Mr. Amedeus Mallya.




L. M. MONGELLA
JUDGE