

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**LAND CASE NO. 8 OF 2020**

**BETWEEN**

**OLGA WILLIAM MWAMYALLA .....PLAINTIFF**

**VERSUS**

**MOGAS TANZANIA LIMITED (formerly known as**

**MGS INTERATIONAL (T) LIMITED.....1<sup>st</sup> DEFENDANT**

**MAMBA AUCTION MART (COURT BORKER).....2<sup>nd</sup> DEFENDANT**

**RULING**

**MRUMA,J.**

The plaintiff Olga William Mwamyalla instituted a suit against the Defendants namely MOGAS Tanzania Limited (formerly known as MGS International (T) Limited) and Mamba Auction Mart (Court Broker) for a declaration that the Defendants act of attaching for sale the Plaintiff's residential matrimonial property known as Plot No. 2159 Block E Kunduchi RTD area Kinondoni Municipality in Dar es salaam Region was unlawful as the same was not liable for attachment and sale.

In her plaint the Plaintiff stated that she was married to one Richard Nehemia Gwau (deceased) since 2004 and that during the subsistence of their marriage they acquired a residential house on Plot No. 2159 Block E Kunduchi RTD area within Kinondoni Municipality in Dar es salaam Region, among other properties. It was further statement of the Plaintiff that on 26<sup>th</sup> January 2011 her late husband Richard Nehemia Gwao filed Civil Suit No.11 of 2011 claiming inter alia for payment of less than 150,000,000/= as damages, declaratory order that the defendant had breached the terms of a contract for supply of fuel, and an interest at the rate of 12% (court's rate and costs. According to the Plaintiff the suit between her late husband and the 1<sup>st</sup> Defendant was amicably settled by filing a deed of settlement, from which a consent decree was passed on 6<sup>th</sup> September 2011.

It was further statement of the Plaintiff that the decree issued by this court listed properties of the Plaintiff's late husband which were to be attached in case he defaulted the terms of the deed of settlement and that her residential matrimonial house was not among the properties which were listed. Lately the plaintiff states that she realized that that property was in the process of being sold through an advertisement published in the Mwananchi Newspaper, she filed Miscellaneous Civil

Application No. 636 of 2017 objecting the sale. The Application was struck out by this court (Ebrahim J) on 6<sup>th</sup> March 2020.

I have given a look on the Miscellaneous Application No. 636 of 2017. It reveals that actually it was not an objection proceedings but an application to postpone the sale. An objection proceeding was filed way back in 2014 and it was registered as Miscellaneous Civil Application No. 407 of 2014 which was dismissed by this court (Mruke,J) for Want of prosecution. It is this dismissal order that gave rise to the present preliminary objection which is to the effect that this suit is misconceived and abuse of court processes.

Without wasting much time of the court I agree with the Defendant's Counsel that the filing of the present case constitutes an abuse of process of the Court. It is an attempt to delay the course of Justice by Judicial processes. Abuse of court processes can be defined as something so unfair or wrong that the court should not allow a prosecutor to proceed with what is in all other respect a regular. **Blacks Law Dictionary** 10<sup>th</sup> Edition by Bryan A. Garner pg 12 defines abuse of Court process as:

The improper and tortious use of a legitimately issued court process to obtain result that is either lawful or beyond the process scope.

An abuse of court or legal process occurs where a party employs legal process for some unlawful object not for the purpose which is intended by the law. It is deliberate misuse of Court process that is not justified by the underlying Civil (or even Criminal) legal action. Thus, abuse of court process would generally refers to frivolous proceedings as a result of deliberate use of court proceedings to oppress or disturb another party without any legal justification.

In the present proceedings after the dismissal order in Miscellaneous Civil Application No.407 of 2014, the remedy available to the plaintiff was to have the dismissal order be set aside. After setting aside the dismissal order, the Plaintiff would have a forum for her objection proceedings to be determined on merits. In terms of Rule 62 of Order XXI of CPC it is only after the determination of an objection proceedings that a party claiming interest in the attached property may have the right to institute a suit. The said law says:

*"Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, subject to the result of such suit if any the order shall be conclusive."*

In the present proceedings, an objection to the attachment was preferred but it was not conclusively determined as it was dismissed for want of prosecution. Thus, the Plaintiff cannot have the right to institute a suit without first having the objection proceedings be determined.

For those reason, I sustain the preliminary objection raised by the Defendant's counsel and strike out Land case No. 8 of 2020 for being an abuse of court processes. That 1<sup>st</sup> Defendant will have her costs.



  
A. R. Mruma

**Judge**

**18/7/2022**

**18/7/2022**

Coram: Hon. A. R. Mruma,J

For the Plaintiff: Hatme Pemba for the Plaintiff

For the 1<sup>st</sup> Defendant:

For the 2<sup>nd</sup> Defendant

Cc: Delphina

Court: Ruling delivered.



A. R. Mruma

**Judge**

**18/7/2022**