

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**CIVIL REVISION NO. 06 OF 2022**

*(Arising from Civil Revision No. 16 of 2022 and originating Civil Case No. 16 of 2020 in the High Court of Mwanza at Mwanza)*

**G4S SECURE SOLUTION LIMITED..... APPLICANT**

**VERSUS**

**MULTINATIONAL PROCUREMENT SERVICES LTD.1<sup>ST</sup> RESPONDENT**

**SHASHINHALE AUCTION MART &**

**GENERAL TRADING CO. LIMITED.....2<sup>ND</sup> RESPONDENT**

**RULING**

*5<sup>th</sup> July & 15<sup>th</sup> September, 2022*

***Kahyoza, J.:***

This is a ruling in respect of the preliminary objection raised by **Multinational Procurement Services**, the first respondent and the application on merit. **G4s Secure Solutions Limited** were pronounced judgment debtor. **G4s Secure Solutions Limited** did not prefer an appeal. The decree holder **Multinational Procurement Services Limited** applied for execution. The executing court appointed Shashinhale Auction Mart & General Trading Co. Limited to execute the decree. The court broker attached judgment debtor's property. Aggrieved, the judgment debtor

sought to raise the attachment before Geita Resident Magistrate's Court. The court refused. Still dissatisfied, the judgment debtor filed the current application for revision.

Before the application was heard and determined, the decree holder raised a preliminary objection with points of law to the extent that-

- a) Mahakama haina mamlaka.*
- b) Kiapo cha mleta maombi kina mapungufu kwa kutia ndani hoja ya kisheria.*

The decree holder's advocate argued the preliminary objection by way of written submission. I read the submission and reply regarding the preliminary objection, to say the least I could not comprehend them. The decree holder's advocate submitted that rule 3(1) and (2) of Order XXX of the **Civil Procedure Code Act**, [Cap. 33 R.E. 2019] (the CPC) provides that the affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove. He submitted that that the affidavit contained legal arguments. For that reason, the affidavit was defective. He concluded that an affidavit, which is defective should not be acted upon.

To say the least the decree holder's advocate has not convinced me that the affidavit contains extraneous matters. The complaint was raised without reasonable ground.

I took pains to consider a second point of the preliminary objection. Like the arguments for the first limb of the preliminary objection, the second preliminary objection falls short of clarity. I was unable to grasp the preliminary objection. If the decree holder meant that the application cannot be grounded on section 79 of the CPC, I do not find merit in the preliminary objection. I dismiss both preliminary objections.

That done, I will consider the application on merit. The judgment debtor's grounds for revision are basically three-

- 1) that the trial court refused to order the judgment debtor to deposit a bank guarantee;
- 2) the executing court allowed the execution to proceed despite the fact that it contained wrong information as to dates.
- 3) thirdly, that the proclamation of sale was wrongly dated as it seemed it was issued before the warrant of attachment was made.
- 4) the court broker did not issue a 14 days' notice before attaching the judgment debtor's property.
- 5) Lastly, that the advocate who prosecuted the case and filed an application for execution was unqualified advocate.

I wish to state the obvious that submission is not evidence. The evidence is found in the affidavit and the submission explains issues raised in the affidavit. I will therefore not discuss matters not raised in the affidavit. The issue that the application for execution, and the civil case giving rise to

the decree was prosecuted by a person who is not a qualified advocate was not raised in the affidavit. For that reason, I will not consider it.

I will commence with decree's order's first complaint, that the Resident Magistrate Court erred by its failure to order the applicant to deposit a bank guarantee. This is a misplaced argument. The executing court had discretion to order the judgment debtor to deposit security by depositing a bank guarantee or order the execution by attaching the judgment debtor's property to proceed. There is no prove that the court wrongly exercised its discretion. There was no appeal against the decree. It was therefore no reason whatsoever for the executing court to order the judgement debtor to deposit a bank guarantee.

The executing court did not abuse its discretion. It is trite law that an appellate Court should not interfere with the exercise of the discretion of a Judge (magistrate) unless it is satisfied that the Judge (magistrate) in exercising his discretion has misdirected himself and has been clearly wrong in the exercise of the discretion and that as a result, there has been injustice. See the case of **Mbogo & Another versus Shah [1968] E.A. 93**. The first ground of appeal fails. It has no merit.

I now, consider the second and third grounds of complaint jointly. The applicant complained that the warrant of attachment and proclamation of

sale were wrongly dated. He contended that the warrant of attachment shows that the order was issued on 15/12/2021 and therefore, attachment was required to be effected on the 30/12/2021, that is after 14 days. He contended further that the attachment was done on 20/5/2022 that after the expiry of the attachment period.

He also complained that the record showed that the proclamation of sale was issued before the warrant of attachment. He submitted that the warrant of attachment and proclamation of sale were a nullity. He cited the case of **Balozi Abubakari Ibrahim & Another V. Benandys Limited & Others** Civil Revision 6 of 2015.

It is not dispute that the judgment debtor did not appeal against a decreed dated 2/02/2021. Thus, the applicant knew that she was liable to comply with the decree. The applicant had no reason to complain.

It is true that the warrant of attachment and proclamation of sale are wrongly dated. Wrong dates may be result of slip of a pen which would not make the court's decree not enforceable.

The law allows clerical errors to be rectified under section 96 of the CPC. Unless the applicant proved fraud on the part of the trial court, I find the error to be clerical. The applicant had and still has an obligation to satisfy the decreed dated 2/2/2021 which he has not satisfied. The decree is error-

free. Since the warrant of attachment and the proclamation are alleged to be defective, let the applicant comply with the decree which has no errors.

In short, I see no merit in second and third grounds of complaint.

Lastly, I will consider the fourth ground of complaint that is the court broker did not issue a 14 days' notice. It is true that the court Broker and Process Servers (appointment Renumeration and Disciplinary) Rules 2017, GN. No. 363/2017 require a court broker to give 14 days' notice to the judgment debtor to settle the decretal sum before attaching the property. It is true that the court broker did not issue a 14 days' notice. The rationale of issuing a 14 days' notice is issue to put the judgment debtor on notice that if he will not settle the debt within 14 days, his property will be attached. Failure to issue 14 days' notice may lead to a disciplinary action to the court broker. Indeed, the disciplinary Committee will have to consider the matter. However, does the court broker's failure to issue a 14 days' notice to the judgment debtor make the decree unenforceable. The answer is negative, failure to issue a 14 days' notice attracts punishment to the court broker.

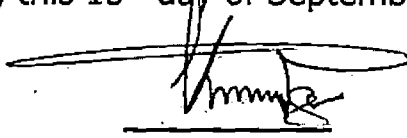
In the circumstance of this case, even if the court broker issued a 14 days' notice to the judgment debtor, judgment debtor would not have settled the debt. I strongly find it true that the court broker erred not to issue a 14 days' notice but the failure did not prejudice the judgment debtor as the

attached property has not been on sold. I dismiss the fourth ground of complaint.

In the end, I dismiss the application for want of merit with costs. The applicant is at liberty to pay in court the amount indicated in the warrant of attachment or else upon obtaining a proclamation of sale from the executing court, the executing officer will be justified to sell the attached motor vehicle.

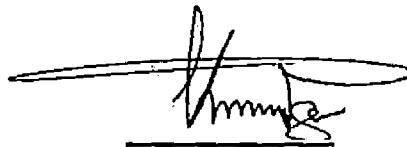
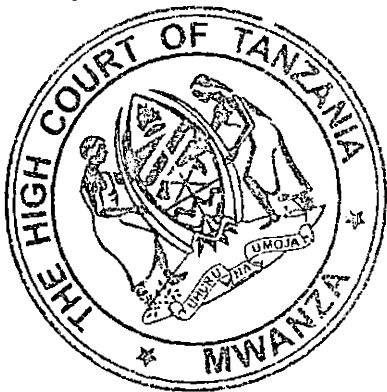
It is ordered accordingly.

Dated at Mwanza, this 15<sup>th</sup> day of September, 2022



John.R.Kahyoza.  
Judge.

**Court:** Ruling delivered in the presence of Ms. Kundy advocate for the applicant and Mr. Nanyaro advocate for the respondent. B/C Jakcline present.



John.R.Kahyoza.  
Judge.  
**15/09/2022**