

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF BUKOBA)

AT BUKOBA

MISC LAND APPLICATION NO. 41 OF 2022

(Arising from High Court of Tanzania, Bukoba District Registry Land Appeals No. 65 of 2018 and Taxation Cause No. 26 of 2020 and Originating from District Land and Housing Tribunal for Karagwe Application No. 3 of 2016)

ALBINA KARUGILA.....APPLICANT

VERSUS

CHARLES GABAGAMBI..... 1ST RESPONDENT

ANDREA MUSHONGI.....2ND RESPONDENT

RULING

Date of Ruling: 26.08.2022

A.Y. Mwenda, J.

This ruling is in respect of the objection proceedings brought by the applicant, ALBINA KARUGILA. It is brought under Order XXI Rule 57 (1) (2) of the Civil Procedure Code. [Cap 33 RE 2019]. What triggered the present application is the attachment order and sale of land issued in Taxation Cause No. 26/2020.

A brief background of the matter is that the first respondent filed Taxation Cause No. 26 of 2020 praying for attachment and sale of the land belonging to the second respondent to execute a decree passed by this court in Land Appeal No. 65 of 2018. After being served with the application papers the 1st respondent contested

it by filing a counter affidavit. On his part the second respondent did not oppose this application.

At the hearing of this application, the applicant and the second respondent appeared in person while the 1st respondent hired the legal services from Mr. Alli Chamani, learned counsel.

When invited to submit in support of her application, the applicant prayed the contents of her affidavit to be adopted to form part of her oral submissions. She went on to stating that the land which is subjected to attachment is her property which she received as a gift from her late father. She added that her affidavit is annexed with a copy of a copy of a Deed of Gift. She thus prayed the present application to be granted.

On his part Mr. Allia Chamani, the learned counsel for the 1st respondent begun by challenging the applicant's affidavit in that it does not support her application for failure to adduce evidence to show that at the date of the attachment she had some interest in the property attached contrary to Order XXI Rule 58 of the Civil Procedure Code, [Cap 33 RE 2022]. In support to that point he cited the case of ONESMO V. JAMES KITINDI, HC PC CIVIL APPEAL NO. 23 OF 2021 at page 24 where conditions for granting objection proceedings were stated. The learned counsel reiterated further to the effect that the applicant's affidavit is not a self-providing evidence as paragraphs 2 and 3 are mere allegations which are not backed by affidavital evidence from those who witnesses the gift awarding

ceremony. On top of that the learned counsel for the first respondent averred that despite the applicant's claims that she has annexed the Deed of Gift in her affidavit, the same is neither visible nor referred to in her affidavit.

With regard to the second applicant's affidavit appearing to support the applicant's application, Mr. Chamani submitted that the said affidavit depict lies as it is sworn by Andrea S/O Mushonge who is now dead. He said as per High Court's, Misc. Land Application No. 40 of 2020, one Hosea Andrea Mushonge who introduced himself as the administrator of the estate of the second respondent informed the court that the 2nd respondent is dead. The learned counsel was of view that the present application is a conspiracy between the applicant and Hosea Andrea Kashongi (her husband) to delay justice against the first respondent. The learned counsel concluded his submission with a prayer that the present application be dismissed with costs.

On his part, Mr. Hosea Andrea Kashongi, (the administrator of the estate of the second respondent) submitted that what is stated by the applicant is true in that the land in question is hers as she was given as a gift by her father. He thus prayed the present application to be granted.

In rejoinder, the applicant submitted that the witnesses who attended the gift awarding ceremony are all dead except her (applicant's) mother. She thus concluded by repeating to her previous prayer that this court be please to grant this application.

Having carefully gone through the rival arguments in support and against the application, the issue for determination is whether or not there are merits with the present objection proceedings.

To provide answers to the issue herein above the court found it pertinent to revisit the law governing applications for objection proceedings. Discussing the said legal position, the court of appeal in *SOSTENES BRUNO AND ANOTHER V. FLORA SHAURI*, CIVIL APPEAL NO. 249 OF 2020 CAT held that the law is covered under the subject, investigation of claims and objections, with a detailed procedure under Order. XXI Rules 57 to 62 of the CPC. The relevant rules provides as follows:

"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.

(2) N/A

58. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

59. Where upon the said investigation the court is satisfied that for that reason stated in the claim or objection such property was not, when attached, in the possession of the judgment debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment debtor at such time, it was so in his possession, not on his own account or as his own property, but on account for or in trust for some other person, or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

60. Where the court is satisfied that the property was, at the time it was attached, in the possession of the judgment debtor as his own property and not on account of any other person or was in possession of some other person in trust from him, or in the occupancy of a tenant

or other person paying rent to him, the court shall disallow the claim.

61. N/A

62. 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, but subject to the result of such suit, if any, the order shall be conclusive."

The above legal positions were also discussed in various decisions of the court. In the case of KATIBU MKUU AMANI FRESH SPORTS CLUB V. DODO UBWA MAMBO AND ANOTHER [2004] TLR 326, the court while discussing rule 50 (1) of Order XXIV of the CPC – Zanzibar which is pari material to Order XXI Rule 57 of CPC stated that;

"Where a claim is preferred or an objection made to the attachment of any property, the court is bound to investigate the claim or objection; and the fact that the appellant was not a party to the suit is all the more reason for the objection proceedings in which it is open for any claimant or objector to prefer a claim or make objection to the attachment of property."

In the case of DORICA KENETH RWAKATARE V. NURDIN ABDALLAH MUSHI AND 5 OTHERS, MISC. APPLICATION NO. 300 OF 2019 (unreported) this court held:

"In objection proceedings the executing court has an obligation of investigating the claim to see the objector has proved to have possession or interest in the subject"

And in the case of KWIGA MASSA V. SAMWEL MTUBATWA [1989] TLR 103 the court held inter alia that;

"Who seeks a remedy must prove the grounds thereof, in which case it is the duty of objector to adduce evidence to show that at the date of attachment he had interest in the property attached."

Based on the authorities cited above it is the duty of the applicant to adduce evidence to prove that she has interest in the attached property.

In the present application, the applicant deponed in her affidavit that the land in question is hers as she received it as a gift from her late father. In her affidavit there is no document annexed to back up her story. During hearing of this application, the applicant submitted that she annexed a proof of a Deed of Gift (letter) to her affidavit to support her point. However, having revisited the applicant's affidavit, this court failed to spot any paragraph supporting her argument, let alone a failure to see the purported Deed of Gift annexed.

As I have stated above, it is the duty of the objector to adduce evidence to show that at the date of attachment she was possessing or had interest in the land in question. Also see EQUITY BANK (T) LIMITED V. PROSPER RWEYENDERA AND TWO OTHERS, MISC. LAND APPLICATION NO. 356 OF 2021 (unreported), PRISCA NELSON KABILA V. EGIDIUS WANDE KASHIMBA AND TWO OTHERS, MISC. CIVIL APPLICATION NO. 34 OF 2019 (unreported).

The objector has not demonstrated any direct, indirect or remote relation with the attached property to justify the objection herein. The averments in the affidavit and in the application are bare.

For the foregoing reasons I disallow the objection, dismiss the proceedings and prayers therein, and allow the attachment and execution to proceed. The objector is to pay costs of these proceedings to the decree holder.

Order accordingly.




A.Y. Mwenda

Judge

26.08.2022

Ruling delivered in chamber under the seal of this court in the presence of the Applicant and in the presence of the 1st Respondent and in the absence of the 2nd Respondent.




A.Y. Mwenda

Judge

26.08.2022