

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

PC. CIVIL APPEAL No. 07 OF 2022

*(Arising from Civil Appeal No. 14/2021 of Karagwe District Court and Originating from Misc.
Civil Case No. 01/2021 of Mabira Primary Court)*

SHALON JANSONAPPELLANT

VERSUS

SANGULO GAUDIN.....1ST RESPONDENT

JASON ANDREA.....2ND RESPONDENT

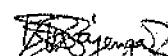
MAJEMAJE AUCTION MART BROKERS LTD.....3RD RESPONDENT

JUDGMENT

28th October & 28th October 2022

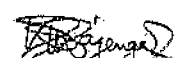
Kilekamajenga, J.

This brief judgment is in respect of PC Civil Appeal No. 07 of 2022 which was lodged by the appellant before this Court. The brief background of the dispute is as follows: The second respondent owed Tshs. 1,730,000/= to the first respondent. The dispute was determined by the Primary Court which finally led to the attachment and sale of the appellant's residential house. The appellant, who is married to the second respondent, was shocked to find her residential house attached for the debt of her husband while she was not a party to the previous case nor did she know the dealings between the first and second respondent. In the Primary Court of Karagwe at Mabira, she objected the attachment and sale of her residential house vide Misc. Civil Application No. 01 of 2021. However, the appellant's objection in the Primary Court to was not



successful. She appealed to the District Court of Karagwe where she, again, lost the case hence this appeal. When the parties appeared before this Court on 22/09/2022, the first respondent, through the legal services of the learned advocate, Mr. Frank Karoli, was willing to settle the matter if the payment of the decretal amount was fully paid by the second respondent. On the other hand, the learned advocate for the appellant, Mr. Dickson Laurent, was also willing to settle the matter if the debt is paid by the second respondent. This Court adjourned the case to allow the parties settle the matter. On 28/10/2022, the parties appeared before this Court; the counsel for the first respondent informed the Court that the amount of Tshs. 1,730,000/= has been deposited by the second respondent to settle the debt he owed to the first respondent. The appellant was also thankful on the way the matter has been settled. The second respondent confirmed that he paid Tshs. 1,730,000/= into the account of the advocate for the first respondent. The receipts of payment were filed in this Court as an evidence of payment.

In this case, I am also satisfied that the evidence of payment of Tshs. 1,730,000/= has been filed in with a receipt No. 868133042545061. I further insist that, it was wrong to attach and sale the appellant's residential house to settle the debt of her husband (second respondent).



However, the attachment and sale on the appellant's residential house was null and void for contravening **Rule 3 (f) of the fourth schedule to the Magistrate's Court Act, Cap. 11 RE 2019** which provides that:

(3) for the purposes of this paragraph "attachable property" shall not be deemed to include:

(f) any residential house or building, or part of a house or building occupied by the judgment debtor, his wife and dependent children for residential purposes".

See also, **section 48 (1) (e) of the Civil procedure Code, Cap. 33 RE 2019**. Based on the facts stated above, I hereby mark the matter settled by payment of the debt. The appellant's residential house should be returned to the appellant as soon as possible. As the error was occasioned by the court, each party to bear his/her own costs. It is so ordered


Ntemi N. Kilekamajenga

JUDGE

28/10/2022

Court:

Judgment delivered this 28th October 2022 in the presence of the appellant who is present in person; also, in the presence of the first respondent and his advocate, Mr. Frank John Karoli and the second respondent present in person. Right of appeal explained to the parties.




Ntemi N. Kilekamajenga

JUDGE

28/10/2022

