

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 350 OF 2021**

**WAMAJIRA INDUSTRIES (T) LTD ..... APPLICANT**

***VERSUS***

**TANZANIA AIRPORTS AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**UNITED TANZANIA AERONAUTICS COLLEGE ..... 2<sup>ND</sup> RESPONDENT**

**LEGIT AUCTION MART ..... 3<sup>RD</sup> RESPONDENT**

***(Arising from the decision of this Court in Execution No. 105 of 2020)***

**RULING**

25<sup>th</sup> October & 29<sup>th</sup> November, 2022

**KISANYA, J.:**

By way of chamber summons made under the provisions of Order XXI Rules 57 (1) and (2) of the Civil Procedure Code, Cap. 33 R.E. 2019, Wamajira Industries (T) Ltd is praying for the following orders:

- 1. That this Honourable Court be pleased to raise/lift the attachment and sale order of the applicant's land which contain buildings located at Vigazwa Village within Chalinze which has been attached by the 1<sup>st</sup> respondent through the service of the appointed court broker who is the 3<sup>rd</sup> Respondent, to execute order emanated from Misc. Civil Execution No. 105/2020 which the applicant was not a part to Civil Case No. 42 of 2012.*

- 2. That this Honourable Court be pleased to allow the objection of the applicant to object her property attached in execution of the ward/decreed in Misc. Application No. 105/2020 emanated from Civil Case No. 42/2012 on the ground that such property is not liable to such attachment and sale.*
- 3. That this Honourable Court be pleased to determine the matter in the manner it considers appropriate and give any other order or relief it considers just to grant.*
- 4. Costs to abide the event.*

Supporting the application is an affidavit sworn by Mrs. Tasimbora Ruttagah who introduced herself as the principal officer of the applicant. The applicant's contention in the supporting affidavit is to the effect that the attached property (buildings located at Vigwaza Village, Chalinze in Bagamoyo Region) in Execution No. 105 of 2020 does not belong to the judgment debtor (the 1<sup>st</sup> respondent) in Civil Case No. 42 of 2012. It is her contention that the attached property was legally transferred to the applicant by the Vigwaza Village Council vide the Customary Right of Occupancy dated 26<sup>th</sup> August, 2014. The applicant further states that she was not a party to Civil Case No. 42 of 2012 and Execution No. 105 of 2020 in which the order for attachment and sale of the property in question was issued.

In a counter-affidavit filed in rebuttal of the application, the 1<sup>st</sup> respondent disputes the applicant's claim. The 1<sup>st</sup> respondent contends that the attached property is legally owned by the 2<sup>nd</sup> respondent. On the other hand, Mr. Luke Luttagah who filed a counter affidavit on behalf of the 2<sup>nd</sup> respondent admits that the attached property is not owned by the 2<sup>nd</sup> respondent.

At the hearing of the application, the applicant was represented by Mr. Godian Mugusi, learned advocate, whereas the 1<sup>st</sup> respondent enjoyed the legal service of Mr. Alhar Mbena, learned State Attorney and the 2<sup>nd</sup> respondent was represented by her director, Mr. Luke Ruttagah. The hearing proceeded in the absence of the 3<sup>rd</sup> respondent who neither filed a counter affidavit nor appeared before the Court.

In his submission in chief, Mr. Mugusi commenced by contending that the applicant is a company limited by share and the lawful owner of the attached property. To support his contention, the learned counsel availed the Court with a Customary Certificate of Occupancy which was also appended to the supporting affidavit. He went on to submit that the applicant leased the attached property to the 2<sup>nd</sup> respondent. According to Mr. Mugusi, the applicant was surprised to receive the 3<sup>rd</sup> respondent's

notice to sale the attached property while the former was not a party to Civil Case No. 42 of 2012 and Execution No. 105 of 2020 which gave rise to the attachment order. On that account, Mr. Mugusi asked the Court to grant the application. To bolster his submission, the learned counsel relied on the case of **Katibu Mkuu Amani Fresh Sports Club vs Dodo Umbara Mamboya**, [2004] TLR 326.

In response, the 1<sup>st</sup> respondent's counsel, Mr. Mbeni opposed the application. He started by adopting the 1<sup>st</sup> respondent's counter affidavit. It was his argument that the applicant had not produced the lease agreement. The learned State Attorney further contended that the applicant was aware of Civil Case No. 42 of 2012. His contention was based on the fact that, Certificate of Title tendered by the applicant shows that, the attached property is owned by the applicant, 2<sup>nd</sup> respondent and Tasimbora Rutaggah. The learned counsel held the view that the case of **Katibu Mkuu Amani Fresh Sports Club** (supra) is distinguishable from the case at hand on the ground that the attached property thereto was a matrimonial property.

Mr. Mbeni went on to contend that the 1<sup>st</sup> respondent's search with the BRELA revealed that the 2<sup>nd</sup> respondent is owned by the

applicant. It was also his submission that the applicant's shareholders are Luke Rutaggah and Tasimbora Ruttagah who represent the 2<sup>nd</sup> respondent and applicant, respectively. On that account, Mr. Mbena submitted that the applicant and the 2<sup>nd</sup> respondent is one and the same person. That being the case, he was of the view that this Court is enjoined to lift the corporate veil of the applicant. To reinforce his submission, he cited the cases of **Johns vs Lipman** [1962] All ER 442, **Littlewoods Meil Roder Stores Ltd vs England Revenue** [1969] WKL 241.

That said, the learned State Attorney prayed that the application be dismissed.

On his part, Mr. Rutaggah who appeared for the 2<sup>nd</sup> respondent supported the application. He submitted that the 2<sup>nd</sup> respondent is the lessee to the attached property as per the lease agreement appended to his counter affidavit. Mr. Rutaggah further submitted that the 2<sup>nd</sup> respondent is an independent company and not a subsidiary company of the applicant.

Rejoining, Mr. Mugusi reiterated his submission in chief that the attached property belongs to the applicant. It was also his submission that the persons named by the learned State Attorney are not owners.

He further reiterated his submission that the applicant was not a party to the case which led the attachment of the property subject to this application.

I have gone through chamber summons, supporting affidavit and counter affidavits and considered the contending submission from the applicant and 2<sup>nd</sup> respondent on one hand and the 1<sup>st</sup> respondent on the other hand. It is clear that the main issue for determination is whether the application is meritorious

At the outset, the objection proceedings is governed by the provisions cited in the application read together Order XXI, Rules 58 and 59 of the CPC which empower the court to admit evidence in the course of investigating the objectors' claim. During the objection proceedings, the role of the Court is to satisfy itself whether the objector was in possession of the property subject to attachment when the execution is being made. The said provisions stipulate:

*"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) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone pending the investigation of the claim or objection.*

*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 the 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 of 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."*

In the case of **Amani Fresh Sports Club** (supra) referred to by Mr. Mugusi, the Court of Appeal considered the provisions of rule 50 (1) of Order XXIV of the Civil Procedure Code of Zanzibar which are in *pari materia* with the above cited provision. It went on to hold as follows:

*"As a matter of law, it is necessary for the court to investigate claims and objections raised. Under the provisions of rule 50 (1) of Order XXIV of the Civil Procedure Decree, where a claim is preferred or an objection made to the attachment of any property, the court shall proceed to investigate the claim or objection. On the other hand, Rule 51 provides to the effect that the claimant or objector must adduce evidence to show that at the time of the attachment he was in possession of or had an interest in the property."*

In the light of the position of law, the application for objection proceedings succeeds upon meeting these conditions: *One*, there must be an attachment order in respect of the property in question made by the decree holder but the attachment has not touched the property in question; *two*, the attachment order must have been issued in the



execution proceedings; and, *three*, the objection proceedings is preferred by a person who was not a party to the suit. [See **Abdallah Salum Lukemo & 18 Others v. Sifuni A. Mbwambo & 208 Others**, HC-Misc. Land Case Application No. 507 of 2019 (DSM-unreported)]

Having examined the pleadings and documents appended thereto, I am of the view that the conditions warranting grant of objection proceedings have been met. This is because parties are at one that there is an attachment order issued by this Court. It is also evident that the 3<sup>rd</sup> respondent has served the applicant with a notice to sale the attached property. As if that is not enough, it is common ground that the attachment order was in the execution proceedings (Execution No. 105 of 2020) of the decree of this Court in Civil Case No. 42 of 2012. As for the last condition, the application speaks that the applicant was not a party to the Civil Case No. 42 of 2012 and Execution No. 105 of 2020 in which the 1<sup>st</sup> and 2<sup>nd</sup> respondents are judgment holder and judgment debtor respectively.

I was then inclined to consider the evidence adduced by the parties. Reading from the supporting affidavit and counter affidavit of the 2<sup>nd</sup> respondent, it is clear that the applicant is a lawful owner of the attached

property. This fact is also proved by the Customary Certificate of Title issued the Bagomoyo District Council on 26<sup>th</sup> August, 2014 and appended to the supporting affidavit. The 1<sup>st</sup> respondent did not produce evidence to support the averment that the attached property belongs to the applicant. It is also deduced from the lease agreement appended to the counter affidavit of the 1<sup>st</sup> respondent that the applicant leased the attached property to the 2<sup>nd</sup> respondent.

With regard to Mr. Mbena's contention that the applicant and 2<sup>nd</sup> respondent are one and the same person, I have intimated herein that the said contention was based on the search alleged to have made with BRELA. However, the facts supporting that contention was not deposed in the counter affidavit of the 2<sup>nd</sup> respondent. That being the case, such fact cannot be considered by this Court.

It follows therefore that the applicant has proved that she has interest in the attached property. Such evidence is sufficient to warrant release, from judgment debtor, the property in respect which the orders for attachment and sale were issued. This is so when it considered that the 1<sup>st</sup> respondent has not proved that the attached property belongs to the applicant.

For the stated reasons, the application is hereby granted. The applicant's property (land located at Vigazwa Village, Chalinze Bagamoyo) attached in Execution No. 105 of 2020 is hereby released from attachment. The 1<sup>st</sup> respondent is advised to identify attachable properties of the judgment debtor in order to execute her decree. Each party is ordered to bear its own costs.

**DATED** at **DAR ES SALAAM** this 29<sup>th</sup> day of November, 2022.



S.E. KISANYA  
**JUDGE**  
29/11/2022