

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT ARUSHA**

MISC. LABOUR APPLICATION NO 13 OF 2023

(C/f CMA/ ARS/ARS/348/19 and in the High Court of the United
Republic of Tanzania at Labour Division in Labour Execution No 29 of 2021)

ILBORU SAFARI LODGE APPLICANT/OBJECTOR

VERSUS

ISAYA RASHID MLANGIDA RESPONDENT

RULING

17th July & 29th September 2023

KAMUZORA, J.

Under certificate of urgency, the Applicant brought this application seeking for this court to investigate on the attachment of the Applicant's properties. The Applicant alleged that the Respondent while acting under the order of this court has wrongful attached the Applicant's properties; a motor vehicle with registration number T114 BXT and one Generator make Atlas Copco with model No. QAS 108 PDAMF. He urged this court to restrain the Respondent from proceeding to act under the instruction of the warrant of attachment to serve the Applicant's properties from being wasted.

The brief fact of the matter leading to the current application as can be easily grasped from the parties' pleadings is that, the Respondent being a decree holder against the Applicant in Employment Labour Dispute No. CMA/ARS/ARS/348/19 was awarded Tshs 15,000,000/= to be paid by the Applicant. The Respondent approached this court for purpose of executing the award vide Labour Execution No. 29 of 2021. The mode of execution sought by the Respondent was by attachment and sale of the Applicant's properties named above. This court granted the Respondent's prayer by ordering for attachment and sale of the Applicant's properties and a court broker was appointed thereafter to effect the said order. It is on that respect that the current application was brought under Order XXI Rule 57 of the Civil Procedure Code Cap. 33 R.E 2019. The same is also supported by an affidavit deposed by the Applicant's Managing Director one Mike Lotalakwaki Metili.

The application was opposed by the Respondent through counter affidavit deposed by Emmanuel Sood, the Respondent's advocate. Along with the counter affidavit, the Respondent also filed a notice of preliminary objection on two points of law that;

1) The Applicant has no locus standi to file this application.

2) *The application is bad in law for the same is improperly brought under Order XXI, Rule 57(1) of the Civil Procedure Code, Cap 33 R.E 2019*

The Applicant absconded after the preliminary objection was filed and this court ordered hearing of objection to proceed ex-parte and by way of written submissions. The Respondent enjoyed the service of Advocates from Faith Attorneys.

Arguing in support of the first point of objection, the counsel for the Respondent submitted that the Applicant has no locus stand to bring this application, He explained that law requires objection proceeding to be instituted by a third party who was not part to the suit and who has an interest in the property attached. He supported his submission with the case of **Dawson Swai Vs. Perfect Perfect Peter SAO (as administrator of estate of the late Peter V X SAO) and 7 others**, Misc. Land Case No 652 HC at DSM(Unreported), **Katibu Mkuu Amani Fresh Sports Club Vs. Dodo Umbwa Mamboya and Khamis Machano Keis**, Civil Appeal No 88 of 2022 CAT at Zanzibar (Unreported).

He was of the view that, since the Applicant was a party to the case at the CMA and the property attached belong to her as per the facts from the affidavit, the principle of *nemo judex in Causa Sua* applies.

That, since no one can be a judge to his own case, the applicant is has no locus stand to instate an application to object the attachment arising from the dispute to which he was party. The Respondent prays for the application to be dismissed.

Arguing for the second point of objection, the counsel for the Respondent submitted that the application is bad in law for being brought under Order XXI Rule 57 (1) of the Civil procedure which requires objection to be raised where the property is not liable for attachment. Reference was made to the case of **Dorice Keneth Rwakatare Vs. Nurdin Abdallah Mushi and 5 others**, Misc. Land Application No. 3000 of 2019 HC Land Division at DSM(Unreported). He insisted that the Applicant has failed to prove that his property is not liable to attachment. The Respondent maintained his prayer that the application be dismissed with costs.

In considering the record and submission by the counsel for the Respondent, I will deliberate jointly to all points of objection raised by the Respondent. There is no doubt that this application was brought under the provision of Order XXI Rule 57(1) of the CPC Cap 33 R.E 2019. The said provision read: -

"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.”

The wording of the above provision is clear that a party seeking for investigation must show that the property is not subject to attachment. Basically, a party raising such claim must show that the property was not related to the main suit or the owner of the property was not a party to suit resulting to an order for attachment.

In the matter at there is no doubt that the dispute before the CMA involved the Applicant and the Respondent. In the affidavit in support of application, the Applicant did not deny being the owner of properties listed for attachment. What was raised as reason for investigating the attachment is that, the Applicant was not aware of the dispute filed before the CMA and that, the Applicant had no relationship whatsoever with the Respondent. I think that is not an issue to be determined by the court in an objection proceeding. Whether the Applicant was wrongly made a party to the dispute that was instituted before the CMA, it has nothing to do with an application for execution. The decision

imposing liability to the Applicant to pay the Respondent cannot be challenged by objection proceedings. Since that decision stands unchallenged, the claim that the Applicant and the Respondent have no employer and employee relationship is baseless.

I therefore agree with the argument by the Respondent's counsel that Order XXI Rule 57(1) of the CPC Cap 33 R.E 2019 is applicable for objection proceedings. The provision is intended to serve the property which was not the subject matter of the dispute or assist the person (objector) not a party to the suit whose property has been attached in satisfaction of a decree. In other words, the provision set out the requirement to investigate on the claims and objections presented before the court by a third party who is adversely affected by attachment arising out of a decree and proceedings to which he was not a party to. For this, see the case of **Katibu Mkuu Amani Fresh Sports Club**(supra) where it was insisted that the fact that 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 the property. Thus, a party to suit cannot seek refuge under objection proceedings.

From the above discussion, I agree with the Respondent's counsel that the Applicant being a party to the dispute before CMA is barred from challenging the decision by objection proceedings. Thus, the claim that the Applicant was unaware of the dispute at CMA is unwarranted. I therefore find that the application is bad in law for being improperly brought under Order XXI, Rule 57(1) of the Civil Procedure Code, Cap 33 R.E 2019.

In the final analysis, the Applicant's application is hereby dismissed. In considering that the application emanated from labour dispute, no order as to costs is made.

DATED at **ARUSHA** this 29th day of September 2023.




D.C KAMUZORA

JUDGE

