

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

MISC LABOUR APPLICATION NO 75 OF 2022.

(Arising from Labour Execution No 97 of 2021)

TIB DEVELOPMENT BANK LIMITED..... 1ST APPLICANT
ATTORNEY GENERAL.....2ND APPLICANT
DANIEL B. WELWEL AS RECEIVER MANAGER OF
MOUNT MERU FLOWERS LIMITED.....3RD APPLICANT

VERSUS

LEMA ZAKARIA MEASI.....1st RESPONDENT
MOUNT MERU FLOWERS LIMITED..... 2nd RESPONDENT
MANJALE FREDY LUSENGA
T/A SHASHI INVESTMENT LTD, COURT BROKER..... 3rd RESPONDENT

RULING

16th November, 2023 & 15th January, 2024

KAMUZORA, J.

The Applicant brought an application under Order XXI, Rule 57 (1) (2), 58, 59, Section 68(e) and 95 of the Civil Procedure Code, Cap. 33 R.E 2019 (CPC) praying for this court to be pleased to investigate and find that the landed property known as 20 units of Green Houses located at Farm No. 105/1/1 Nduruma area, Arumeru District with 16.184 Hectors together with generators and motor vehicle Registratio No. T.219 CTL

Make Landcruiser are not liable to attachment and sale in execution by the 1st Respondent in satisfaction of the decree of the High court at Arusha in Execution No. 97 of 2021. The Applicants prays that this court be pleased to release the aforesaid property from attachment and sale as the same is the property of the 2nd Respondent but charged by way of debenture and mortgage and which is now under receivership of the 3rd Applicant.

The 1st and 3rd Respondents filed separate counter affidavit opposing the application and the 1st Respondent raised four points of preliminary objection on the competency of the application; one, that the application lack merit, two, that the application is incurably defective for offending Rule 25 of the Labour Court Rules GN No. 106 of 2007, three, that the Applicants' affidavit is incurably defective for offending Rule 24 (2)(a)(b)(c)(d)(e) and (f) and four, that the Applicants' affidavit is incurably defective for offending Rule 24 (3)(a)(b)(c)(d).

When the matter was called for hearing of the preliminary points of objection, Ms. Zamaradi Johanes and Mr. Leyan Mbise, Learned State Attorneys appeared representing the Applicants. The 1st Respondent appeared in person but engaged Mr. Keneth Samwel Ochina for drawing documents only. Other Respondents did not appear and parties in attendance opted to argue the objections by way of written submissions.

The counsel for the Respondent argued jointly for the 1st and second points of objection. He contended that the application lacks merit as there is no any court in Tanzania which is cited as High Court of Arusha Labour Division in Labour and thus, there cannot be Labour Execution No. 97 of 2021 in the said court. He insisted that, we have only one high court of the United Republic of Tanzania with its sub-registries. That, in Arusha we have the sub-registry of the High Court of the United Republic of Tanzania and not High court of Arusha.

The counsel for the Respondents further submitted that this application was brought under certificate of urgency but offended Rule 25 of the Labour Court Rules GN No. 106 of 2007 for the affidavit did not contain reasons for urgency. To him, the omission is fatal and the suit ought to be dismissed.

On the 3rd and 4th points of objection, the counsel for the Applicant submitted that this application contravenes Rule 24 (2)(a)(b)(c)(d)(e) (f) and Rule 24 (3)(a)(b)(c)(d) of the Labour Court Rules for the Applicants failed to file a list and attachment of the documents that are material and relevant to the application. That, the Applicants failed to file a statement of material facts in chronological order, on which the application is based. That, the Applicants failed to file a statement of legal issues that arise

from the material facts and reliefs sought. He therefore prayed for the application to be dismissed for being incompetent and unmaintainable.

In reply, the counsel for the Respondents submitted that the Respondent misinterpreted Rule 25 as the said provision is not applicable in objection proceedings. He explained that objection proceeding is not specifically provided for under the Labour Court Rules but provided for under Order XXI Rule 57 and 578 of the CPC. To him, the objection based on that provision lacks merit.

On the 3rd and 4th points of the objection that the application offends Rule 24 (2)(a)(b)(c)(d)(e) (f) and 24 (3)(a)(b)(c)(d) of the Labour Court Rules, the counsel for the Applicant submitted that the said provision does not apply to objection proceedings. He explained that objection proceedings are governed by the CPC. He asserted that under Rule 55 of the Labour Court Rules, the court is allowed to adopt procedures that it deems appropriate in the circumstance where there is gap in Labour Court Rules. To support that assertion, he referred the case of **Tujijenge Tanzania Ltd Vs. Mwamba Paul Maduhu**, Misc. Labour Application No 24 of 2021, HC at Mwanza. He insisted that since there is gap in labour laws regarding procedures for objection proceedings, the appropriate

procedure is that found under Order XXI Rule 57 of the CPC. He insisted that the objections raised are meritless hence, be overruled with costs.

I have considered the rival submissions by the counsel for the parties. Starting with the argument that the application lacks merit for there is wrong citation of the court registry, I find this argument misconceived. While I agree that we have one High court of the United Republic of Tanzania with its sub-registries in most of the regions in Tanzania, we still have labour division of the High Court of the United Republic of Tanzania. From the record, the title is correctly cited in the certificate of urgency save for the chamber application and affidavit in which the words "Arusha District Registry" are added. I however do not find the error to be fatal because, such an error can be cured under overriding objective principle by allowing parties to correctly cite the court title.

On the argument that this application offends Rule 25 of the Labour Court Rules GN No. 106 of 2007 for the affidavit did not contain reasons for urgency, this court finds this argument devoid of merit because, not indicating reasons for urgency can only affect the speed determination of the matter but does not go to the root of the matter. The reasons are usually necessary for the court to assess if there is any urgency which may

force the court to move from its usual Callender schedule and handle the matter urgently. Where the court is not satisfied with the reasons for urgency, it may proceed on scheduling the matter like any other normal case. In my view, failure to indicate reasons for urgency may be a reason for not giving speed attention to the matter as it was the case in the matter at hand. Besides that, the certificate of urgency indicates the reason for urgency contrary to what was alleged by the counsel for the respondents. The applicant clearly indicated that the matter is of utmost urgency for the 1st respondent had already appointed the auctioneer to carry out the auction of the suit properties. I therefore find no merit in the 1st and 2nd points of objection.

On the 3rd and 4th points of objection, the counsel for the Applicant submitted that this application contravenes Rule 24 (2)(a)(b)(c)(d)(e) (f) for the Applicants failed to file a list and attachment of the documents that are material and relevant to the application. It is unfortunate that the Respondent did not mention documents which are material and relevant to the application that were left out by the Applicants. Despite that, there are number of documents deponed and attached to the Applicants' affidavit, thus the claim that the Applicants failed to file a list and attachment of the documents that are material and relevant to the application is baseless.

On the argument that the Applicants offended Rule 24 (3)(a)(b)(c)(d) for failure to file a statement of material facts in chronological order, on which the application is based, this court find this argument weak. The affidavit contains all material facts necessary to move the court and the relief is basically found under the chamber summons. The chamber summons and affidavit are self-explanatory showing that the Applicants are seeking for court indulgency in investigating if the attached property is liable to attachment. As well captured by the counsel for the Applicant, and by virtue of Rule 55 of the Labour Court Rules, the procedures for investigation are well covered by the CPC under Order XXI. Thus, the claim that the application offended the provisions of the Labour Court Rules cannot stand.

From the above arguments and reasons thereto, this court finds that the points of objection raised by the 1st Respondent are meritless. I therefore overrule all points of objection but since this matter emanates from labour dispute, I hesitate from imposing costs.

DATED at **ARUSHA** this 15th Day of January, 2024.




D.C. KAMUZORA

JUDGE

