

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOROGORO SUB-REGISTRY
[AT MOROGORO]**

MISC. LABOUR APPLICATION NO. 3661 OF 2024
(Originating from Labour Execution No. 29 of 2022)

CRDB BANK PLC.....APPLICANT

VERSUS

HADSON JACKSON MUHILA & 2 OTHERS.....1ST RESPONDENT

PICCADILLY ENGINEERING & CONSTRUCTION LTD.....2ND RESPONDENT

PICCADILLY CONSTRUCTION LTD..... 3RD RESPONDENT

MIKOLA MANJALE LUSENGA t/a

SHADHNSHALE AUCTION MART AND

GENERAL TRADING COMPANY LIMITED 4TH RESPONDENT

RULING

13/03/2024 & 28/03/2024

KINYAKA, J.:

Under certificate of urgency, the applicant channeled to this Court the present application objecting to the attachment of the movable properties, namely, the motor vehicles with registration number T534 DSH, T183 DRS and T599 DHS hereinafter, "the attached properties" attached pursuant this Court's warrant of attachment dated 4th May 2023 in Labour Execution No 29 of 2022.



A brief factual background of application as gathered from the affidavit in support of the applicant's application is that sometimes in 2021, the 1st respondent referred a Labour dispute to the Commission for Mediation and Arbitration (CMA) vide Labour Dispute No. CMA/MOR/32/2021 claiming for breach of the employment contract against the 3rd respondent.

Upon hearing the 1st respondent's *ex-parte*, the CMA issued an *ex parte* award ordering the 3rd respondent to pay the 1st respondent a decretal sum of TZS 29,925,000. The records indicates that in a bid to enforce the award, the 1st respondents filed an application for execution against the 2nd and 3rd respondents in this court vide Labour Execution No. 29 of 2022 seeking for attachment and sale as regard to movable properties specifically identified as Motor Vehicle Registration No. T 534 DSH, T183 DRS and T599 DSH owned by the 2nd respondent. On 4th May 2023, this Court issued the warrant of attachment of the movable properties to the 4th respondent instructing the 4th respondent to attach and sell the subject properties along with other costs that are incidental to the execution process.

As it appears, the applicant herein asserts interest over the said properties as a creditor in respect of the loan facility secured by a debenture instrument executed between the applicant and the 2nd respondent. Upon becoming

aware of the attachment, on 23rd February, 2024, the applicant through the service of Felix Mutaki, learned advocate lodged the present application resisting the said attachment.

The application was made by chamber summons taken out under the provisions of Order XXI Rule 57(1) (2); Rule 58 and 59 of the Civil Procedure Code Cap. 33 R.E. 2019; and Rule 25(1), 2(a), (b), (3); and Rule 55(1) and (2) of the Labour Court Rules, G.N. No. 106 of 2007 (hereinafter, the "Rules"), and supported by an affidavit deposed by Pascal Mihayo, the principal officer of the applicant.

Through this application, the applicant sought for the following orders:

1. That the Honourable Court be pleased to investigate the validity of the claim or objection regarding the attachment of movable properties, to wit, Motor Vehicle Registration No. T534 DHS, T183 DRS and T599 DSH (hereinafter referred as the "subject properties"), in the Labour Execution No. 29 of 2022 in execution of a decretal sum of TZS 29,925,000 as delineated in the warrant or attachment, currently held by the 4th Respondent.
2. That this Honourable Court be pleased to declare that the Applicant holds legal interests in the attached movable properties, to wit, Motor

Vehicle Registration No. T534 DSH, T183 DRS and T 599 DSH and grant the objection raised herein and issue an order for the full release of the subject properties from attachment.

3. Costs of the application.

4. Any other relief(s) as this Honourable Court may deem fit and just to grant.

When the application was called on for hearing, the applicant was represented by Mr. Felix Mutaki, learned advocate, whereas the 1st respondents were represented by Mr. Boniface Edward Basesa, legal representative from DOSHITWU, and Mr. Mikola Manjale Lusenga and Mr. William Mirumbe, appeared for the 4th respondent. The 3rd respondent did not appear.

Upon taking the floor to address the Court, Advocate Felix Mutaki contended that the 1st and 2nd respondents agreed to settle their dispute and further that the 2nd respondent also settled with the 4th respondent in respect of the attachment costs. He added that on that basis, the respondents informed him that they do not object to the applicant's prayers in the present application.

Under the circumstances, Mr. Mutaki, relying on Order XXI Rule 58 and 59 of the Civil Procedure Code, Cap. 33 R.E. 2019 hereinafter, "the CPC" prayed for the Court to uplift the order of attachment and release the attached properties from attachment and further that there should not be an order as to costs.

On his part, Mr. Basesa admitted that the 1st respondents have settled their dispute with the 2nd respondent and hence averred that they do not object to the applicant's prayers for the release of the attached properties.

Mr. Akberali, the Managing Director of the 2nd respondent conceded that they settled the dispute with the 1st respondents so that the attached properties are released in order for the 2nd respondent to pay its debts to the applicant. He also contended that he settled with the 4th respondent on payment of the latter's costs.

On the other hand, Mr. Lusenga briefly conceded to the application following the 2nd respondent's concession to pay them costs associated with the attachment



Having heard the parties' submissions, as well as the applicant's affidavit and the annexure attached thereto, the main issue for determination is whether the applicant's application is meritorious.

I have investigated the applicant's objection and claims in the present application as required by Rule 57 of Order XXI of the CPC within which the present application was preferred. In totality Rules 57, 58 and 59 of Order XXI of the CPC stipulate 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:

(2) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection. Provided that, no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed.

58. The claimant or objector must adduce evidence to show that at the date of 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 judgement debtor or of some person in trust for him or in the occupancy of the tenant or other persons paying rent to him, or that being in the possession of the judgement debtor at such time it was so in the possession not in his own account or as his own property but on account of or in trust for some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment."

There is litany of authorities amplifying the above provisions. For instance in **Sosthenes Bruno & Another v. Flora Shauri, Civil Appeal 249 of 2020 (unreported)** on page 12 through to 13, the Court of Appeal, in interpreting the above provisions had the following to say:-

"The rationale for inclusion, in the CPC, of the above rules in Order XXI, in our view, is to provide for a procedure on how to carry out investigation of claims and objections which may be presented to court by third parties who may be adversely affected by attachments arising from decrees born out of

proceedings to which the objectors were not parties. See this Court's decision in Katibu Mkuu Amani Fresh Sports Club v. Dodo Umbwa Mamboya and Another [2004] T.L.R. 326. In that respect, Order XXI rule 57 (1) provides for two different aspects; one, an objector, a third party to the court proceedings, is permitted to access the court in order to object to any attachment of the property in which he has interest, and; two the rule vests jurisdiction in the court that passed a decree to hear the objector on his objection as if he was a party to the suit. The proviso to the rule imposes a caveat that, in order for the claim to succeed, the proceedings need not be designedly or unnecessarily delayed by the objector in terms of presenting them to court."

As regards to Rule 58 and 59, the Court went on expounding on the same to the effect that:-

"The next rule, which is rule 58 of that Order, provides that after preferring the objection before the court, the applicant has a duty to prove either of the two facts in respect of the property subject of the attachment. One, is his interest in the property or; two alternatively, he must prove that at the time of the attachment, he was in possession of the property attached.....Under rule 59 of Order XXI, if upon investigation the court finds out, and is satisfied that, for the reason stated in the application, the property when attached, was not in the

possession of the judgment debtor or of some person in trust for him or some other people claiming it in his name, the court shall make an order releasing the property from attachment, wholly or to such extent as it thinks fit."

In my application of the provisions as amplified by the Court of Appeal in the authority above to the present matter, I find that the applicant had interest in the attached properties being motor vehicles with registration numbers T534 DSH, T183 DRS, and T599 DSH. My findings are based on the evidence adduced in the affidavit in support of the application and the annexure appended thereto, which are not farfetched.

From the records, on 4th December 2019, the applicant issued a credit facility to the 2nd respondent amounting to US\$ 855,400, where they also entered into a debenture instrument dated 6th December 2019. Under clause 2 of the debenture instrument, the 2nd respondent created charge over all its movable and immovable assets including, among other assets, the motor vehicles as indicated in clause 2.1.5 of the Debenture instrument.

Subsequently, on 6th December 2019, the debenture instrument was duly registered with the Registrar of Companies at the Business Registration and Licensing Agency (BRELA) securing the charged assets. The debenture

instrument and the certificate of registration of a charge to secure the said loan facility, were attached to the applicant's affidavit as CRDB-4 referred to in paragraph 12 of the affidavit.

Following the creation and registration of the charge, the 2nd respondent registered all its motor vehicles including those under the warrant of attachment, being motor vehicles with registration numbers T534 DSH, T183 DRS, and T599 DSH in the name of the applicant as a title holder, evidenced by annexure CRDB-5 referred to in paragraph 13 of the affidavit.

Based on the foregoing observations, and my examination from my reading of the applicant's affidavit and the attached annexure pointed out above, I find the applicant has managed to substantiate before this Court that on 4th May 2023, when the warrant of attachment was issued by this Court in Labour Execution No. 29 of 2022, he had interest in, and was in possession of the attached properties. It follows that the applicant duly complied with the requirement of Order XXI Rule 58 of the CPC.

I have been satisfied that based on the certificates of registration of the motor vehicles in the name of the applicant as title holders appended as annexure CRDB-5 in paragraph 13 of the affidavit, the applicant had interest

in the attached properties at the time the warrant of attachment was issued on 4th May 2023. I have also been satisfied that the properties were not in possession of the 2nd respondent but in possession of and on account of the applicant as the title holder.

Based on the provisions of Order XXI Rule 59 of the CPC, and considering that the application has not been opposed by the 1st, 2nd and 4th respondents, I hereby uplift the warrant of the attachment issued by this Court on 4th May 2023 and order a full release of the attached properties, namely, motor vehicles with registration numbers T534 DSH, T183 DRS, and T599 DSH from attachment.

Based on the respondents' concession to the application on account of the settlement agreements reached between the 1st respondents and the 2nd respondent; and the 2nd respondent and the 4th respondent, I make no orders as to costs.

It is so ordered.

DATED at MOROGORO this 9th day of April 2024.


H. A. KINYAKA

JUDGE

09/04/2024

