

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB- REGISTRY)**

AT DAR ES SALAAM

MISC, CIVIL APPLICATION NO. 351 OF 2023

(Arising from execution no 56 of 2022 originating from Civil case No 102 of 2022)

ISSA ALI MANGUNGUAPPLICANT/ OBJECTOR

VERSUS

YUSUPH SHABAN MATIMBWA1ST RESPONDENT/ D/HOLDER

NOELESTATE COMPANY LIMITED 2ND RESPONDENT

RULING

16th & 17th May 2024

MKWIZU J:

The 1st respondent Yusufu Shaban Matimbwa successfully sued the applicant herein Issa Ali Mangungu for payment of the sum of Tshs 216,010.000/= in Civil Case no 102 of 2022. He was awarded Tshs 292,652,400/. Execution proceedings via execution No 56 of 2022 was filed and an ex-parte order was on 14th March 2023 issued for attachment and sale of the property comprising CT No 37240 described as Plot No 246 Block N Temeke Municipality in Dar es salaam.

Trading on the provisions Order XXI rule 57 (1) and section 48 (1)(e), 68 (e) and 95 of Civil Procedure Code Cap 33 RE 2019 the applicant is in court seeking an order lifting a warrant of attachment and an immediate release of the attached property on the ground that the properties legal owner is Frank George Maghoba who is not a party to either original proceedings nor the execution proceedings.

While composing the ruling I came across an issue challenging the competence of the application raised in the written submissions. The respondent's counsel was questioning the applicant's locus stand to file objection proceedings. Being a new issue featured in the written submissions, it required proper address. Parties were thus invited on 16/5/2024 to address the court on the point.

Mr Phares Mshana counsel for the applicant was the first to air his views on the point. He said, the applicant, who is also a judgment debtor, has the requisite locus to file an objection proceeding because he has a vested interest in the attached property, and he is using it as a residential house.

Ms Nyagori Nyamoyo advocate for the respondent had a different view. She said, objection proceedings application is only open to a third party who was not a party to the original proceedings. That since the applicant was a party to the original suit and a judgment debtor in the execution proceedings, he lacks the locus stand to file objection proceedings. She relied on the **Katibu Mkuu Amani Fresh Sports Club vs. Dodo Umbwa Mamboya and Another** [2004] T.L.R 326 and **Ilboru Safari Lodge vs. Isaya Rashid Mlangida** Misc. Labour Application No. 13 of 2023 HCT-Dar es Salam (Unreported). Mr. Hillary Sande Digate, the managing Director for the 2nd respondent had nothing substantial to tell the court. He only left the matter to the court to decide.

I have considered the parties submissions for and against the point of law raised. Luckily, objection proceedings applications are not made in the abstract. They are governed by Order XXI rules 57 up to 62 of the Civil Procedure Code [Cap 33 RE 2019]. Rule 57(1) of Order XXI is specific that.

*"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 aspects, **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.... "(bold is mine)

A plain interpretation of the above provision is that a competent objection proceeding must be against a property attached in an execution of the decree by a person who was not a party to the original suit. In other words, it is a contest to an erroneous attachment by a third party to the original proceedings. This position was amplified by the Court of Appeal of Tanzania in **Katibu Mkuu Amani Fresh Sports Club vs. Dodo Umbwa Mamboya and Another** [2004] T.L.R 326 Where it was held that:-

"In dealing with objection proceeding the court had the duty to investigate the claim raised by the objector. In investigating the claim the court had to ask for evidence to the claim raised.

The fact that the applicant/objector was not a party to the suit is all more reason for objection proceeding in which it is open for any claimant or objector."

See also **Ilboru Safari Lodge vs. Isaya Rashid Mlangida** Misc. Labour Application No. 13 of 2023 HCT-Dar es Salam (Unreported)

The rationale to this rule is not far-fetched. The parties' rights to the decree and all matters arising therefrom are catered for under section 38 (1) of the Civil Procedure Code. In this section, the executing court enjoys exclusive jurisdiction to deal with any questions relating to execution, discharge and satisfaction of the decree by the parties. The section reads:

*"38(1) All questions arising between the parties to the suit in which the decree was passed, or their representative, and relating to the execution; discharge or satisfaction of the decree, **shall be determined by the court executing the decree and not by a separate suit.**"(emphasis added)*

This position was well elaborated by **Sir Dinshaw Fardunji Mulla**, when interpreting Rule 58 of order XXI of the Indian Civil Procedure Code similar to Rule 57 of Order XXI of the civil Procedure Code, **in MULLA THE CODE OF CIVIL PROCEDURE CODE 19TH EDITION** at page 2654 when he said:

*"Since all questions arising between the parties to the suit in which the decree under execution has been passed or their representatives relating to the execution, discharge or satisfaction of the decree are to be determined under section 47 by the court executing such decree, an **objection to***

attachment made by such a party or his representative fall under that section and not under this rule: a separate suit for the purpose is barred . Thus an issue between the official receiver appointed under the Provincial Insolvency Act who was party to the decree and the attaching decree holder whether the property attached in execution was the personal property of the judgement debtor or joint family property is one between the parties and therefore falls under s. 47. An objection to attachment by a third party fall under r. 58...”(emphasis added)

Elaborating on the scope of Rule 58 on page 2658 second paragraph went further to state that

"An objection to the attachment raised by a party to the suit in which the decree in execution was passed falls under s 47. It is only a claim or objection to attachment by a third which falls under this rule . ..”(emphasis added)

It is uncontroverted that the applicant in this matter was a party to the main suit, the defendant in Civil case No 102 of 2022 that culminated to the executed decree subject to the contested attachment, a judgment debtor in execution proceedings No 56 of 2022 and a resident of the house attached and therefore not the envisaged objector under Order XXI Rule 57 of the CPC and therefore he is barred from bringing an objection proceeding as guided above. If at all it is true that the house attached is not his, the owner should have come to court under this provision to contest the attachment.

The application is incompetent. It is thus struck out for being brought in court by a person without locus. The respondents to have their costs. Order accordingly.

DATED at ES SALAAM this 17th Day of May 2024.



E.Y. Mkwizu
E.Y. MKWIZU
JUDGE

17/ 5/2024