

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

COMMERCIAL CASE NO.10 OF 2000

CRDB BANK LIMITED.....PLAINTIFF

VERSUS

JOHN KAGIMBO LWAMBAGAZA..DEFENDANT

R U L I N G

KIMARO, J.

This suit was filed in court on 5/04/2000. On 28/07/2000, judgment was entered against the defendant, now the judgment debtor (and second respondent in this application. (Mr. John Kagimbo Lwambagaza). Subsequently the properties situated on plots No.48, 49 and 50 Block C – Ubungo- Kibangu, Dar-Es-Salaam were attached and sold in executing of the decree. The sale took place on 15/09/2002. Unfortunately, the sale was set aside because it was conducted in breach of the provisions of Order XXI rule 66 (2) of the Civil Procedure Code, 1966.

This court ordered another sale in September. The sale ordered in September prompted this application by Joyce Lwambagaza, the spouse of John Lwambagaza.

She is praying for stay of execution pending determination of this application and an order to vacate the order for sale made in respect of the landed property on plots 48,49 and 50 Block C Ubungo Kibangu on the ground that the said property is a matrimonial property and home which is not liable for attachment and sale. The application was filed by WOMEN'S LEGAL AID CENTRE (WLAC) on legal aid basis. Apparently, they did not appear in court for hearing of the application. Instead, the applicant appeared personally.

The perusal of the court record shows that this is not the first time the applicant is filing an application to contest the sale. The first application was filed on 19th June 2001. During that time, the applicant was represented by Mr. Rweyongeza, Learned Advocate. Parties were ordered to file written submissions. This court made a ruling on the application that it had no jurisdiction because the judgment debtor had given a notice of an intention to appeal to the Court of Appeal. There is nothing on record to show whether or not the appeal was pursued by the judgment debtor. The likelihood is that it was not pursued and that is why an order for sale was issued for the sale which took place on 15/09/2002.

The previous application filed by the applicant serves as a bottom line in the assessment of the merit of this application.

In the affidavit which was sworn in support of the Chamber Application filed on 19/06/2001, the applicant deponed that her marriage with the judgment debtor was contracted on 5th July, 1975 and the sale of the property was to take effect on 24/6/2001.

In the affidavit filed in support of this application, she deponed that the marriage took place on 6th July 1985 and that and she first became aware of the sale on 5th September, 2003.

A comparison of the two affidavits proves the applicant to be a liar. If in the year 2001 she said her marriage took place on 5th July 1975, how comes that in 2003 she changes the date of the marriage? How could she tell the court that she first become aware of the sale of the properties in October 2003 while she was aware of the matter since June 2001?

The applicant has also shown that she filed a caveat. The caveat however was filed on 07/10/2003 while this case was filed in 2000.

The conclusion which can be drawn in the discrepancies appearing in the applicant's affidavit is that the applicant is making an attempt to rescue the property from sale. The attempt however, has been made too late when the case has moved to a point of no return.

The discrepancies in the affidavit and the caveat which was filed is clear evidence that the applicant is not trustworthy. Consequently this court cannot believe her. If she was prudent that she is genuinely fighting for her lawful rights, she was expected to come up with an affidavit showing the previous attempts made by her to salvage the situation and what happened, and not to deliberately conceal those facts.

Having brought up the contradictions in the applicant's application, and its repercussions, I order the same to be dismissed.

N.P.KIMARO,

JUDGE

10/11/2003

13/11/2003

Corum: N.P. Kimaro, J.

For Applicant – Absent.

For Respondent – Mr. Lawuo.

Court: Ruling delivered.

Order: The application is dismissed. No order for costs.

N.P.KIMARO,

JUDGE

13/11/2003

1014 - WORDS

I Certify that this is a true and correct
of the original order Judgement Rulling

Sign *N.P. Kimaro*
Registrar Commercial Court Dsm.

Date 13/11/03