

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 125 OF 2018

YARA TANZANIA LIMITED.....DECREE HOLDER

VERSUS

LUCY MASASI KAYOKA T/A

LUCY/GODFREY STORES1ST JUDGMENT DEBTOR

LUCY/GODFREY STORES2ND JUDGMENT DEBTOR

Date of Last Order: 15/12/2022

Date of Ruling: 20/01/2023

RULING

MKEHA, J.

When the decree holder filed an application for execution, the judgment debtor filed an affidavit in view of showing cause why execution orders ought to be refused. The decree holder afterwards filed a counter affidavit and a notice of preliminary objection alleging that the affidavit in view of showing cause was defective for being hearsay. Later on, the learned advocates for the decree holder abandoned the notice of preliminary

objection. Although the judgment debtor had filed an affidavit in view of showing cause, no appearance was made in court in view of actually telling the court why execution orders ought to be refused. In the affidavit for showing cause (Paragraphs 7 to 9), the judgment debtor told the court that, in the application for execution improper plot numbers had been referred to. In view of the judgment debtor, wrong properties might be attached. In paragraph 6 of the affidavit for showing cause, it was stated that, the judgment debtor would suffer irreparable loss if the application for execution is granted. The affidavit suggests without availing actual evidence that, the properties sought to be attached are matrimonial properties.

Ms. Elizabeth learned advocate for the decree holder submitted that the properties sought to be attached are not matrimonial properties as alleged. According to the learned advocate the properties were not matrimonial properties when they were put as securities. The learned advocate prayed to remove Plot No. 336 Block "J" Changarawe from the list of properties proposed to be attached.

The only issue for determination is whether the judgment debtor has succeeded showing cause why execution orders should not be granted. Whereas the affidavit for showing cause had alleged that the properties are matrimonial properties, no documentary evidence was annexed to prove the said vital fact. That, wrong properties might be attached cannot be a reason for not issuing attachment orders. For if a property not belonging to the judgment debtor is attached, Order XXI rules 57 to 59 of the Civil Procedure Code will come into play. And in any case, the decree holder stands to bear costs relating to wrong attachment. That, the judgment debtor stands to suffer in the event her properties are attached cannot be a reason for not issuing an attachment order. That said, it is the holding of the court that the judgment debtor has not managed to show cause as to why the application for execution should not be granted.

Consequently, the application for execution is granted. Let prohibitory orders be issued against the following properties:

- (i) Plot No. 108, Block J, Changarawe – Mafinga, Iringa.
- (ii) Plot No. 178 Block J Changarawe – Mafinga, Iringa.
- (iii) Plot No. 263, Block MM Mjimwema - Mafinga Iringa.

(iv) Plot No. 163 Block J Mjimwema - Mafinga Iringa.

Dated at Dar es Salaam this 20th day of January, 2023.




C.P. MKEHA

JUDGE

20/01/2023

Court: Ruling is delivered in the presence of the parties' advocates this 20th day of January, 2023.




C.P. MKEHA

JUDGE

20/01/2023