

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 652 OF 2018
(Originating from Execution No. 62 of 2020)

DAWSON SWAI.....APPLICANT

VERSUS

PERFECT PERFECT PETER SAO (As administrator of the Estate of the Late **Peter V.X SAO**).....**1ST RESPONDENT**
FOSTER AND COMPANY LIMITED.....**2ND RESPONDENT**
MARIAM MANYANGA.....**3RD RESPONDENT**
ROGATI KANIKI.....**4TH RESPONDENT**
ARUNA NYAEL NKO.....**5TH RESPONDENT**
PETER KUNDY.....**6TH RESPONDENT**
EUNICE A. NDIMBO.....**7TH RESPONDENT**
EMANUEL MWIGUNE.....**8TH RESPONDENT**

R U L I N G

Date of Last Order: 05.05.2022
Date of Ruling: 24.05.2022

T. N. MWENEGOHA, J.

The applicant here in above has moved this court for objection proceedings under Section 95, Order XXI Rules 57(1), and (2), and 58 of the Civil Procedure Code Cap 33 R. E. 2019. He is seeking for the following orders:-

- 1. That the court should investigate the claims and objection proceedings instituted by the applicant here in and order**

that, property subject to execution No. 62 of 2020 by way of demolition and eviction partly belongs to the applicant's here in

2. Any other reliefs that this court deem just to grant.

3. Costs be provided.

The application was accompanied by the affidavit of Dawson Swai, the applicant himself. The same was heard by way of written submissions and was only contested by the 1st and 2nd respondents. Hearing was done by way written submissions. Advocate Muharami Rajabu Chuma appeared for the applicant while the 1st and 2nd respondents were represented by Advocate Idd Mussa Msawaga.

Submitting in favour of the application, the applicant's counsel was of the view that, since the instant application was not contested by the 3rd -8th respondent, then the same should be granted. He was further of the view further that, as shown under paragraph 3 of the affidavit in support of the application, the applicant has interest in the property attached for demolition. That, he acquired the said property in 1999 and has enjoyed its use since then to date. That, even the 2nd respondent in his counter affidavit has clearly stated that the property in question as seen under paragraph 2 of his counter affidavit that, the property is not among the properties to be demolished. Hence any execution whatsoever in relation to the property in question has to be investigated by the court. That, if this application is denied the applicant stands to suffer irreparable loss as his property is about to be demolished.

In reply, the counsel for the 1st and 2nd respondents was of the view that, this application has no merit and has to be dismissed. That, there is no property whatsoever of the applicant which has been attached and subject

to execution, rather as shown under annexure DS-01, only the properties belonging to 3rd – 8th respondents are the one which have been attached subject to the execution of the decree. Hence the applicant has no cause of action against the 1st and 2nd respondents in this application.

Secondly, he has no interests in the properties attached. Thirdly, the applicant has failed to prove any damage suffered as he has no interests in the properties attached for execution.

In his rejoinder, the applicant's counsel maintained that, the area to demolished is unsurveyed land including the applicant's peace of land. If the execution proceeds, the applicant and his family will lose a home.

In dealing with the merit or otherwise of the application at hand I will rely on the provisions of Order XXI Rule 57 (1) and (2), also Rule 58 of the Civil Procedure Code, Cap 33 R. E. 2019, which provides 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."

58. "The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached."

The above quoted provisions of the law set three conditions prior to the application for objection proceedings is allowed.

Firstly, there should be an attachment of property made by the decree holder. In the application at hand, there are properties attached ready for execution. According to annexure DS-1, it shows that, there are premises located at Kimara, occupied by the 3rd to 8th respondents here in above which were attached.

Secondly, the attachment should be made in an execution proceeding. It is on record that, there were execution proceedings vide Execution No. 62 of 2020 before this Court that has resulted into the attachment of the properties in question.

Thirdly, the objection proceedings are made by a person who was not the party to the suit. The applicant, Dawson Swai was not party to the original suit, vide Land Case No. 26 of 2010, as stated at paragraph 5 of the affidavit in support of the application. Also see **Aman Fresh Club versus Dodo Ubwa and Another (2004) TLR, 326.**

Fourthly, the applicant should prove to have interest in the attached properties. As I have said herein above, in the 1st condition, as per annexure DS-1, it appears that, the properties attached subject to execution belong to the 3rd to 8th respondents and not the applicant herein above. This was also the argument of the counsel for the 1st and 2nd respondents that, the applicant has no interests in the properties attached, hence he lacks cause of action against the respondents in this application.

It follows then, from the above analysis, the applicant lacks the 4th condition which falls under Rule 58 of Order XXI supra. In my view, it is mandatory that all four conditions must be met before an application for objection proceedings is allowed. Failure to meet one among the four criteria above renders the whole application incompetent. In that case, the applicant has nothing to object in the first place. His application has not met the tests of the objection proceedings as set out in Order XXI Rule 57 (1) and (2) and Rule 58 of the Civil Procedure Code, (supra). I therefore find that this application is devoid of merit.

In the event, I dismiss the entire application with costs.

Ordered accordingly.




T. N. MWENEGOHA

JUDGE

24/05/2022