

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 27895 OF 2023

*(Arising from Land Execution No.116/2022 and Consolidated Land Case No.122
and 286 of 2016)*

KILOSA DISTRICT COUNCIL..... 1ST APPLICANT

ATTORNEY GENERAL.....2ND APPLICANT

VERSUS

DONALD CHRISTIAN TEMBA..... 1ST RESPONDENT

KULWA GODFREY KYOVECHO.....2ND RESPONDENT

TUMAINI MANJALE t/a SHASHI

INVESTMENT LIMITED.....3RD RESPONDENT

FERDINAND TEMBA t/a MARIO MOTEL

AND CAMPSITE.....4TH RESPONDENT

RULING

14th March & 24th April, 2024

L. HEMED, J.

The instantaneous application has been brought under the provisions of section 68(e) and Order XXI Rules 57(1), 58 and 59 of the Civil



Procedure Code, [Cap.33 R.E 2019]. The applicants **KILOSA DISTRICT COUNCIL & ATTORNEY GENERAL** are seeking for the following orders:-

" (a) That this Honourable Court may be pleased to investigate and find that the House No.57, Green Street, Mikumi Urban Area, Kilosa District is not liable to attachment and sale in execution by the 1st and 2nd Respondents in satisfaction of the decree of the High Court of Tanzania, Land Division at Dar es Salaam, in Execution No 116 of 2022.

(b) That this Honourable Court be pleased to release the aforesaid property from the attachment and or sale..."

The application is supported by the affidavit of **HILAL HAMIS IDDI**, a Principal Officer of the 1st Applicant. The respondents, **DONALD CHRISTIAN TEMBA, KULWA GODFREY KYOVECHO, TUMAINI MANJALE t/a SHASHI INVESTMENT LIMITED** and **FERDINAND TEMBA t/a MARIO MOTEL AND CAMPSITE** could not appear nor could they file counter affidavit despite being duly served. Following the non-



appearance of the respondents, the matter proceeded ex-parte against them.

The background of the matter is that the Applicants were not a party to Consolidated Land Cases No.122 and 286 of 2016 which were litigated amongst the respondents herein. In the said consolidated suits, the 1st and 2nd Respondents sued the 3rd and 4th respondents for unlawful sale of plots No.5,6,7,8,9,10 and 11 Block "H" Kikwalaza –Mikumi Urban Area. The 1st and 2nd respondents claimed for an order of eviction of the 3rd Respondent from the suit properties and for payment of general damages, interests and costs of the suit. After having heard the matter, this court decided the matter in favour of the 1st and 2nd respondents by making the following orders:-

" (1) The purported sale of the first plaintiff's land described as plots numbers 5 and 6 and the second plaintiff's land described as plots numbers 7,8,9,10 and 11 Block "H" Kikwalaza Mikumi Urban Area to the first defendant by the second defendant is declared ineffectual, null and void.



(2) *The first plaintiff is declared the lawful owner of the plots number 5 and 6, Block "H" Kikwalaza Mikumi Urban Area and the second defendant is declared the lawful owner of the plots described as Plots numbers 7, 8,9, 10 and 11 Block "H" Kikwalaza Mikumi Urban Area.*

(3) *The first defendant is declared is (sic) a trespasser to the land of the first plaintiff.*

(4) *The structures built by the first defendant on the first plaintiff's plots be demolished.*

(5) *Any servant or person acting on behalf of the first defendant be evicted from the plots of the plaintiffs.*

(6) **Each plaintiff is awarded general damages of Tshs. 20,000,000/= which will make the total general damages awarded to both plaintiffs to be Tshs. 40,000,000/= and the same be paid by both defendants.**

(7) *The plaintiffs are awarded interest of the amount stated in paragraph(6) above at the court rate of 7% from the date of delivery of this judgment to the date of full payment and*



(8) The plaintiffs to get the costs they have incurred in the suit.”(Emphasis added)

In order to realize the decretal sum of Tshs 40,000,000/=, the 1st and 2nd Respondents filed Execution No.116 of 2022 praying for attachment and sale of House No.57 Green Street, Mikumi Urban Area, Kilosa District, purportedly to be the property of the 4th Respondents. This Court granted the application for execution and assigned it to **TUMAINI MANJALE t/a SHASHI INVESTMENT LIMITED**, the Court Broker (the 3rd Respondent herein). On 10th November 2023 the 3rd Respondent issued public auction announcement to sale the House No.57 Green Street, Mikumi Urban Area.

In the affidavit deposed to support the application, it was averred that House No.57, Green Street, Mikumi Urban Area is among the properties owned by the 1st Applicant in the planned Market area comprising of 4.493 acres. In the submission to support the application, **Mr. Mkama Musalama**, learned State Attorney argued that the duty of the objector is to adduce evidence to demonstrate that the property attached belongs to him and not the judgment debtor. He asserted that, the 1st Applicant has given evidence under paragraph 15 of the supporting



affidavit that it has interest in the suit landed property subject to be attached. Reliance was put on the decision of this Court this Court in **Letshengo Bank (Tanzania) Limited vs. Bank of Africa and others**, Misc. Civil Application No.146 of 2020 and that of **Equity Bank (T) Limited vs Prosper Rweyendera and 2 Others**, Misc. Land Case Application No. 356 of 2021.

Having gone through the affidavit and the submission made in support of the application, it is obvious that the 1st Applicant claims to have interest in House No. 57, Green Street, Mikumi Urban Area, which is part of the area comprising of 4.493 acres. The provisions governing objection proceeding is Order XXI Rules 57, 58 and 59 of the Civil Procedure Code [Cap.33 RE 2019]. The said provisions readth 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:



Provided that, no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed.

(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. Evidence to be adduced by claimant

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. Release of property from attachment

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 judgment debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the court shall make an order releasing the



*property, wholly or to such extent as it thinks fit,
from attachment."*

The above provisions were echoed in the case of **Kwiga Masa v. Samweli Mtubatwa** [1989] TLR 103, where it was held *inter alia* thus:-

"... it is the duty of objector to adduce evidence to show that at the date of attachment he had some interest in the property attached."

From the above statutory and case law, it is the duty of the Applicant to give evidence to prove his/her interest in the property attached. The duty of the court is to apply the available evidence to investigate the applicant(s)' claim of having interest in the property subject to attachment.

I have scrutinized the claim of the applicants and the evidence stated in the affidavit supporting the application. My findings after thorough investigation of the documents made available to the court are that the applicants have vast interest in the property attached. It appears that the judgment debtor in Consolidated Land Cases No.122 and 286 of 2016 is not the owner of house No. 57, Green Street, Mikumi Urban Area, Kilosa District.



The facts made available to the court necessitate the intervention of the court. I am holding so because if we let the attachment and sale of the property in question proceed, the applicants who were not privy to the Decree subject for execution will be deprived of their interests in the property unheard. It is also my firm view that, since the 1st and 2nd respondents have the option of looking for another property of the judgment debtor, for purposes of executing the decree, it is better for the attachment and sale orders be uplifted and vacated.

In the final analysis, I find merits in the application and proceed to grant it. The suit property known as house No. 57, Green Street, Mikumi Urban Area, Kilosa District is hereby released and excluded from attachment in execution No. 116/2022. Each party to bear its own costs.

DATED at DAR ES SALAAM this 24th April 2024.



[Signature]
L. HEMED

JUDGE