

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

REVISION NO. 281 OF 2020

BETWEEN

SAADAT ABDULAZIZ RAIS.....APPLICANT

AND

WANZAGI SELEMANI MAKONGORO.....1ST RESPONDENT

FIRST OBSERVER SECURITY CO. LTD.....2ND RESPONDENT

STANLEY J. KEVELA, T/A

YONO AUCTION MART & CO. LTD.....3RD RESPONDENT

RULING

Date of Last Order: 02/11/2020

Date of Ruling: 20/11/2020

A. E. MWIPOPO, J

The Applicant namely Saadat Abdulaziz Rais has lodged the present application against the Orders issued by Hon. F.A. Mtarania, Deputy Registrar, dated 22nd June, 2020, in Execution No. 337 of 2019. The applicant is seeking for the following orders:-

1. That, this Court be pleased to object the order of attachment of the house located at Nia Njema/Upendo Street behind Msikiti wa

Udongo, Bagamoyo, Pwani, the property of Saadat Abdulaziz Rais, the order was issued by this Court on 12nd June, 2020, by Hon. F.A. Mtarania, Deputy Registrar in course of putting into operation Execution No. 337 of 2019, on the ground that the Application was not a party to the proceedings at Commission for Mediation and Arbitration (CMA) in Labour Dispute No. CMA/DSM/ILA/R.514/17.

2. That this Court be pleased to issue an order restraining the attachment of the said house.
3. The cost of this application be provided for.
4. Any other relief(s) this Court deems just be granted.

The background of the dispute in brief is that the 1st Respondent namely Wanzagi Selemani Makongoro successfully referred the labour dispute to the CMA which was registered as Labour Dispute No. CMA/DSM/ILA/R.514/17 against his Employer namely First Observer Security Co. Ltd. The 1st Respondent was awarded by the Commission on 6th December, 2017, a sum of shillings 12,284,615/= being terminal benefits and general damages for mental torture. The 1st Respondent filed Execution Application No. 337 of 2019 where on 22nd June, 2020, the Deputy Registrar issued warrant of attachment to Mr. Stanley J. Kvela of Yono Auction Mart & Co. Ltd, the 3rd Respondent, in respect of

the house located at Nia Njema/ Upendo street behind Msikiti wa Udongo, Bagamoyo, Pwani, property of Murtaza Daruga, one of the Director of the 2nd Respondent. The Applicant became aware of the attachment of the house and he filed the present application for uplifting the attachment.

In this Application, the Applicant was represented by Peter Junior, Personal Representative, the First Respondent appeared in person and the 3rd Respondent was represented by Advocate Andrew Kevela. Hearing of the application proceeded inter parties. The Court ordered hearing of the application to proceed orally.

The Personal Representative for the Applicant submitted that they received the order of the Court on the execution of the house no. 170, Block F, at Nia Njema, Bagamoyo. The House is property of the Applicant as proved by the offer of the respective plot which is Annexure PA1 attached to the Affidavit. The Applicant availed original offer to the Court as proof of the ownership of the respective offer to the Applicant.

The Applicant stated further that the house is not the property of judgment debtor namely Murtakim Murtaza Daruga. The Applicant prayed for the Court to set aside the order of the Court which attached

the house located at Nia Njema / Upendo Street. He also prayed for the cost of the suit.

In reply, Mr. Wanzagi Selemani Makongoro, the 1st Respondent, submitted that he did made search to Bagamoyo District Council and their answer through a letter dated 20th October, 2020, with Reference No. BAG/LD/5610/05 shows that the plot No. 170, Block F, at Nia Njema is owned by Applicant, Saadat Abdulaziz Rais, of P.O. Box 100, Bagamoyo from 1st October, 2011 on offer as the surveyed plan is not complete. For that reason, he admitted that the plot belongs to the Applicant and not to the judgment debtor namely Murtakim Murtaza Daruga.

From the submission of both parties it is clear that the plot No 170, Block F, at Nia Njema, Bagamoyo, which was attached for execution by the order of this Court dated 22nd June, 2020, in Execution Application No. 337 of 2019, as the House located at Nia Njema/ Upendo Street behind Msikiti wa Udongo, Bagamoyo, was not a property of judgment debtor, Murtakim Murtaza Daruga. It belongs to the Applicant as it was proved by letter of offer. For that reason, the 1st Respondent erred to point the property not belonging to the judgment debtor and as result the Court ordered attachment of the said property of the Applicant for execution of 2nd Respondent debt which was wrong. As result, this

application succeeds in its entirety. The attachment order is hereby lifted and I order the 3rd Respondent immediately to release the house belonging to the Applicant which was wrongly attached in the Execution No. 337 of 2020 by the order dated 22nd June, 2020. The 1st Respondent is at liberty to find another property of the judgment debtor and proceed with execution procedures before the Registrar according to the laws. As this application originates from labour dispute, there is no order as to the cost of the suit.



A. E. MWIPOPO
JUDGE
20/11/2020