

TANZANIA / JUDGMENT

20070622 TZHC Dar es Salaam

COURT
TZHCDECIDED
22 June 2007

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM · I 1 ' .
I COMMERCIAL CASE NO. 184 OF 2002 , i. JOYCE ALEX MASO NU•. APPLICANT/
OBJECTOR ' , ' , VERSUS I , . PATRIC CHACHA..... :..... 1ST RESPONDENT MOMBO
AGIP PETROL STATION ... ~.L 2ND RESPONDENT -----1I ----- ! RULIN,G I: i

1. Date of Hearing - 20/6/2007 ~
2. Date of Ruling - 22/6/2007 I ! I I MASSATI, J: The 1st Respondent herein, PATRICK CHACHA, I . obtained judgment for the sum of!i shs.19,389,833, plus 7% ,I ' interests on 4/10/2002. After !iunsuccessfully trying to execute it by attachment of the Judgment ' Debtor's properties, ' ' and upon the decease of its Directotj, one ALEX MASONU, the ' ' Decree Holder/. 1st Respondent filed I an application for execution in this court on 2/4/200f, the mode in which this court's assistance is sought is:- I "(a) Attachment and Sale of ! the J/ Debtor's· Plot and 1 . . I . . Property built thereon at E,omang'ombe, Hai District, Kilimanjaro Region." ' I C, 2 On 18th May 2007, the court issued a prohibitory order in respect of the said property. Notably, there is no evidence that the order of the court was executed. Be that as it may, on the 21st May, 2007 the Applicant/Objector, JOYCE ALEX MASONU, filed the present application under 0. XXI rule 57 (1) (2), ss. 48 (1) c & d, and
- s. 95 of the Civil Procedure Code Act, the purport of which is: - "(b) This Honourable Court may be pleased to investigate the actual ownership of the property attached hereto which Applicant (sic) claim (sic) is not liable for attachment.
- (c) That this Honourable Court may be pleased to. declare that the home and property built thereon and situated at Bomang'ombe, Hai District at Kilimanjaro Region is a matrimonial home of the judgment debtor, the late Alex Masonu and that the Applicant's livelihood depends on that home hence not liable for sale." The application is supported by the Applicant's affidavit which was sworn on 18th May 2007 (which, as noted above is the same date on which the prohibitory order was issued by 3 ' this court) before a magistrate in Dar es Salaam. It is averred in paragraph 3 of the Applicant's affidavit: - "That I have been taken back after learning from my son one KIPAA ANANDUMI that my [Vltrimonial home situated at Boman'gombe, Hai District Kilimanjaro Region will be attached and auctioned" (underlining mine) The affidavit is 9 paragraphs long, but I have deliberately set out the above facts for reasons that will be clear shortly.

0. 21 rule 57 of the Civil Procedure Code Act 1966 under which the application is preferred, provides: - "57. (i) 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.... " (emphasis mine) I 4 This provision is in pari materio with rule 58 of Order 21 of the Indian Code of Civil Procedure Act which was once applied to this country, and as the predecessor of the Code. I 'I In India, it has been held that, before there can be a claim, there must be a valid attachment and that before actual attachment of property inherent pow€r of the court cannot be invoked to entertain a claim by a: third party under this provision. (See SARKAR ON CODE OF CIVIL PROCEDURE 10th ed. Vol. 2 at p. 1533). Although I am not bound by the authorities cited by the learned authors of the treatise, I think they make lot of sense to me, i because, before actual attachment, the objector has no cause of action yet because obtaining a warrant of attachment is one thing, executing it is I another. One may even decide not to proceed with it. In the present case the Applicant clearly admits that the property is yet to be attached; but only that the said property "will be attached". On the authorities, I do not think, an objection can be raised against a future attachment. I For the above reasons, it is my, considered view that the present objection has been preferred prematurely. It is therefore incompetent. I would accordingly strike it off, which renders it unnecessary for me to consider the merits of the I 5 objection. As this point was taken by the court suo motu, I I will make no order as to costs. Order accordingly. SGD j S.A. MASSATIi JUDGE I 22/6/2007! 747 words

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