

TANZANIA / JUDGMENT

BOTOTO MWITA MARO VS MUSTAFA EBRAHIM KASSAM MISC

COURT
TANZLIIDECIDED
1 January 2015

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Page 1 of 6 IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM
MISC COMMERCIAL APPLICATION NO 132 OF 2015 (Arising from Commercial Case No 2 of 2010)
BETWEEN BOTOTO MWITA MARO----- APPLICANT VERSUS
MUSTAFA EBRAHIM KASSAM AND ZULFIKAR EBRAHIM KASSAM T/S RUSTAAM AND
BROTHERS----- 1st RESPONDENT MM AUCTIONEERS AND
DEBT COLLECTORS CO LTD COURT BROCKERS ----- 2nd RESPONDENT

RULING

Date of Hearing; 17/8/2015 Date of Ruling; 2/10/2015 SONGORO, J On the 5th June, 2015, Bototo Mwita Maro the Applicant requested the court to grant application for investigating a claim on objection to attachment of attached property and post postponement of sale of the property situated at Plot No 1000, Block "C" Temeke Azimio Area Dar es Salaam. The Applicant's application was made under Order XXI, Rule 57(1) (2), Rule 58, Rule 59, and Section 95 of the Civil Procedure Code, Cap 33 [R, E 2002] and any other enabling provision of the Law and is supported by an affidavit sworn by the Applicant himself. Page 2 of 6 Respondents are Mustafa Ibrahim Kassam and Zulfikar Ebrahim Kassam t/s Rustam and Brothers and MM Auctioneers and Debt Collectors, Co Ltd Court Brokers who also filed counter affidavit to oppose the Application. Thus on the 17/8/2015 when the application was called for hearing the Applicant appeared in person and pursued the application where as Respondents was represented by Mr. Byabato. In pursuing his application, the Applicant told the court that, he is a businessman residing at Temeke. He then briefed the court that, Respondents are claiming from one Jofrey C. Mngano but he was being served with court summon and appearing before Hon Judge Mruma. Further the Applicant argued that, he was discharged by the Court because has nothing to do in court. Furthermore, the Applicant claim that, he has house situated at Plot No 1000, Block C , Mtoni Tandika, and Vumilia Court Brokers and Auction Marts has attempted to attach, and sale it by public auction. Next, the Applicant complained that, the house is in his name but Respondent wants to sale to recover debts which belong to Jofrey C Mngano who is his uncle. Page 3 of 6 He finally argued and prayed that, since he is not the debtor, he is praying to the court to issue an order to stop the sale of his house and investigating the claim. In response to the application, Mr Byabato, Learned Advocate for Respondent argued that, the application has been overtaken by event because the

house was sold on 31/5/2015 while the application for staying the sale was filed in court on the 11/6/2015. To substantiate his point that, the sale of the house was done on the 31/5/2015 the Counsel draw the attention to an affidavit of Benson Swai, a Court Broker. The Learned Counsel humbly told the court that, the application for an order to stay was filed several days after the sale took place. Next the Respondent Counsel briefed the court that, the Applicant Butoto Mwita Marwa was involved in Commercial Case No. 2 of 2010 and Judgment was issued against him. But always he is using the trick to deny that he was not involved in previous credit transactions with the Respondent but was personally involved using a name of Joyfrey C. Mngano. He then argued that the names of Jofrey C Mngano and the name of Butoto Mwita Maro refers to one and same person. The counsel then elaborated that, when he was trading in the name of Joyfrey. C Mngano he took trading stock from the 1st Respondents and he failed to pay for his debts and was successfully sued in Page 4 o f 6 Commercial Court and a Decree was issued in favour of the Respondent. After the Judgment and Decree was issued the Applicant then changed his name called himself as Butoto Mwita Maro. It was the submission of Mr. Byabato that, there is a court decision of Temeke District Court in Criminal Case No 585 of 2010 delivered on the 19/1/2015 which decided that, Butoto Mwita Maro and Joyfrey .C .Mngano is one and the same person. For that, reasons, Respondent's Counsel prayed to the court to dismiss the application for lack of merit. In his rejoinder the Applicant retained his earlier submission and insisted that, the house belonged to him and his name is Butoto Mwita Maro and not Geoffrey Mngano who was debtor. He then prayed for an order prayed in the application. The Court has carefully considered the Applicant's application and the orders which are being sought and find there is a proof from paragraph (g) of the Counter Affidavit of Benson Swai, the Court broker that, the house in question has been sold to Mr. Twaha Saidi Massawe in connection with the court order dated 29/4/2015 on Decree in Commercial Case No 2 of 2010. I have carefully considered the Applicant's application for investigation of claim, on objection and attachment and sale in line with the provisions of Order XXI Rule 57 of the Civil Procedure Code, has not taken place and the purpose of investigation, or objection to the attachment is either to postpone or stop the sale of property. That, court finding the investigation and objection to attachment intends to postpone sale is reinforced with the words which appears at the end of Rule 57 which reads "Postponement of Sale. Bearing in mind that, the property in issue has been sold already as per the Counter Affidavit of the 2nd Respondent, pursuant to the Court Decree of this Court, I decline to issue any of the orders prayed in the application for reasons that, the application has been overtaken by the events, and is hereby dismissed with costs in favour of the Respondents. Dated at Dar es Salaam this 2nd day of October? 2015 H.T. SONGORO JUDGE Delivered at Dar es Salaam this 2nd day of October, 2015 .J 5 >• X'r... H.T. S O N G O R C i JUDGE fe , A VV v * f ■ , Page 6 o f 6 The Ruling was delivered in the presence of Applicant and 2nd Respondent and in the absence of the 1st Respondent and his Advocate.

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