

TANZANIA / JUDGMENT

20160526 TZHC Dar es Salaam

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TZHCDECIDED
26 May 2016

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IN THE HIGH COURT OF TANZANIA DAR ES SALAAM DISTRICT REGISTRY AT DAR ES SALAAM
(ORIGINAL JURISDICTION) MISC. CIVIL APPLICATION NO. 399 OF 2015 (Originating from Civil
Case No. 107 of 2015) EPHATA BANK LIMITED APPLICANT VERSUS
MARY MSIMBIRA RESPONDENT Date of Last Order: 24/03/2016
Date of Ruling: 26/05/2016

RULING

FELESHI, J.: This ruling emanates from an application made under sections 68(e) & 95 and Order XXXVI Rules 6(1) & (2), 7(1) and 8 of the Civil Procedure Code, [CAP. 33 R.E, 2002] for attachment before Judgment' in respect of the respondent's property located along Bagamoyo road, Tegeta Ward, Plot No. 112, Block No. "D" LO. No. 81072 under Certificate of Title No. 37091 registered in the name of Mary Msimbira. The hearing of the application was scheduled and. addressed by way. of written submissions which parties complied with. To argue for the application, the applicant was represented by the M/5 Kimbori & Co. Advocates whereas the respondent engaged the services of the M/5 Law . Front Advocates. Addressing the application, the applicant's counsel submitted that, the applicant is seeking attachment of the referred plot as security for any Page 1 of 4 Court Decree that may be passed to recover the applicant's money paid to the respondent as loan as the respondent has ignored to pay her monthly installments as scheduled in the loan agreement facilities. The applicant's counsel added that, the respondent who was once an employee of the applicant, after being terminated from employment, has no reliable source of income to pay some two loan facilities thus worrying the applicant that the respondent may dispose of the said property for the purposes of meeting her daily life expenses thus risking the overdue loan. Reference was made in a High Court decision in Efatha Bank Limited vs. Emmanuel Godwin Gambi, Miscellaneous Land Application No. 72 of 2014 and Sokoine Drive Services Station Ltd vs. Motor Vessel Sepidel, Fairseas Shipping Inc. & Mega Speed Liners Ltd, Commercial Case No. 33 of 2008 in which the Court held to that effect. In reply, the respondent's counsel submitted that, in terms of condition 5 of the loan agreement, the respondent was required to surrender her title deed No. 3709 as security for the loan whereas the respondent complied with. Moreover, the same was returned to the respondent in a friendly manner whereas there is no formal request asking the respondent to submit the said title deed which she failed to comply. Besides, the respondent is not in a position to either pay the loan or surrender her title deed to the applicant as the applicant has breached the loan agreement which is yet to expire. It

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