

TANZANIA / JUDGMENT

19760925 TZHC Mwanza

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TZHCDECIDED
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IN THE HIGH COURT OF TANZANIA A2. 1111 V WV ZA S L)c• t. . . pc) VIL 68 OFL971

... (From the decision of the District Court of Musoma at Ifig in Civil Appeal No. 1971/1 before P. J. Lunyele - District Magistrate and the Zanzibar Primary Court Civil Case No. 1971/1 before K. B. KADEI ... APPELLANT, ... NY/TJvqAkOiKISIU .. RESPONDENT JUDEN KATI•TI :: ... In Zanzibar Primary Court Civil Case No. 1971/1, in which Nyakangara was suing Muai Kidefderi for a decree of debt, the Primary Court gave judgment, in favour of Nyakangara. Nyakangara, being a decree holder, initiated execution proceedings that culminated into attachment of twenty six heads of cattle, belonging to 1. the Judgment debtor. The decree holder was with these heads of cattle for over five months, after which the proceedings were quashed, heads of cattle handed back to the Judgment debtor by the District Court which ordered the case to start de novo. The case started anew, and again judgment was given in favour of Nyakangara, who initiated execution proceedings. This time only seven heads of cattle were found at the home of the Judgment debtor, but the decree holder traced and found 12 heads of cattle that he claimed, he identified to be the property of the Judgment debtor, at the home of the objector, the appellant in this case, were the twelve heads of cattle that were attached and thus from the subject matter of these proceedings. Consequently, the objector filed objection, claiming that the twelve heads of cattle ceased to be the property of the Judgment debtor. I understand that this application must have been made under the provisions of rule 70 (i) (2) (4) and (5) of the Magistrates Courts (Civil Procedure in Primary courts) Rules 1964 Cap. 537 which provides - 70 (1) "Any person, other than the Judgment debtor, who claims to be the owner of or to have some interest in property which has been attached by the Court, may apply to the court to release the property from attachment, stating the grounds on which he bases his objection." 70 (2) On receipt of any application under sub-rule (i)

- the Court shall fix a day and time for hearing the objection and shall cause notice thereof to be served, upon the objector, the creditor and the judgment debtor. 70 (4) On the day by hearing the court shall investigate the objection, and shall receive such evidence as the objector, the judgment creditor, and the judgment debtor. 70 (5) If the Court is satisfied, that the part of it does not belong to the Judgment debtor, it shall make an order releasing it, or such part of it, from attachment. ... /2 — 2—. The above provisions, acknowledge the fact, that it is

possible that third parties, other than judgment debtor may have objection to property being attached. The objector in this case is doing just that. Furthermore although, the code does not clearly prescribe the extent to which the investments contemplated by 70 (4) above should go, I would think, if the court is satisfied that the ownership of the property attached. That is, if the court is satisfied that the property does not belong to the judgment debtor, that would be enough. I should therefore rely upon the applicant or objector to establish that the property attached does not belong to the judgment debtor. Otherwise, the objector must in his application state the grounds on which he bases his objection. In this case, the objector maintains, that the twelve heads of cattle were his property having been paid as dowry for his daughter - LL&ATU. The Decree Holder maintains, that the heads of cattle belong to the Judgment debtor, who must be taken the same to the objector to defeat justice, and that he identifies

- d. them all, because in possession of them, for five months as a result of the first attachment. The objector told the court that the twelve heads of cattle that were seized under an attachment order, were part of the 26 heads of cattle paid to him, as dowry by one Nyakarigara who married his daughter. Nyakarigara on the other hand, said he never married the objector's daughter, but the daughter of the objector's brother. Mr. Ivalitemba for appellant, went out of his way, and said that, this made no difference as his brother's children are his children. I pose. If we are talking in terms of extended family, system, and all the tenets that accompany the same, K. I. L. is right. But, notwithstanding this, I have yet to find a tribe which by — posse actual parents and accept a paternal uncle to receive all the dowry instead of the father. 1 In this case, the objector appellant supported by Ivalitemba, went to rely upon this court, that the objector received the bride price for Ahiu instead of her father. And that he received 12 heads of cattle in all. But according to Nyakarigara Wanami, he only paid 18 heads of cattle, and this is the actual father of WASITU. Not the appellant, he also says that, the 12 heads of cattle that the objector was talking about were bought from the auction, but prevaricates in his next breath, that six out of twelve were given to the objector, by his brother Nyakatende. Thus it is obvious, there were a lot of prevarications in the objector's evidence. And it should be surprising, that the objector should only have seven heads of cattle, on the 2nd attachment, when he had over twenty heads on the first occasion. There is no explanation as to where the other could have disappeared to. Further the Decree holder, had occasion to stay with the judgment debtors heads of cattle for five months, and his claim that he could identify it or has not been displaced. Like the lower courts, and as urged by, Kunjuba for the respondent there was reason for satisfaction, that the heads of cattle attached belonged to the judgment debtor. The objector's application, was rightly, rejected. And his appeal to this court is so treated rejected with costs. \$AJIT1?I, JUDGE MWANZK HIGH COURT 25TH PTJio, 197 ... I ... -3.

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