

TANZANIA / JUDGMENT

mayur patel vs nic limited another 2005 tzhc 255 1 november 2005

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TZHCDECIDED
1 November 2005

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IN THE HIGH COURT OF TANZANIA AT MOSHI MISC. CIVIL REVIEW NO. 10 OF 200[^] (C/F. M L S C *JCIVIL_REVISION NO«_.76/2002) _ H AYp PATEL . . . o A P P L I C A N T VERSUS 1 . No I o „, C . LIMITED .

2. ZUBERI SHABANI MTENGETI) '** *Ki5i>FUWDJ^'i,iS R 'JJ L_I^NG . > The Applicant being aggrieved] with, the Warrant of attachment issued by the learned District Registrar on the 1st day of November, 200[^] but served on the Applicant through the second Respondent on 28/12/200^t has applied to this court under Order *2 of the Civil Procedure Code, 1966 for review of the said warrant of attachment on the ground inter alia that no notice to show cause was served on the Applicant in terms of Order 21 rule 21 of the Civil Procedure Code, 1966, as the application for execution was brought after a lapse of one year from the date of delivery of the ruling and order in Misc. Civil Revision No. 76 of 2002. The application is advocated by Mr. Jonathan, learned counsel. The Respondents are advocated by Mr. Maruma.. The application has been argued by „way of written submissions as ordered by this court on 18/^/2005. ;Mr. Maruma has str^G;rly cp£osed this application and he contends that the warrant of attachment issued by the District Registrar cannot* b e ' ' subject of review before a High Court Judge as the latter did not issue it. He contends further in his submission that a review is an opportunity accorded to a court properly constituted to take a second look at its judgement or order. Under Order bZ of the Civil Procedure Code, 1^66, one l' ;may apply for a review of judgement to the court which passed the decree or make the order! So contends Mr. Maruma in his submission. *. Mr;'[Jonathan, in his rejoinder submission,, in reply to what M r # - Maruma stated, contends that the District Registrar in an integral * part of the High Court set up therefore the application was prope r l y ■■-filed * in'the "High Court and that it is for the court" to decide regarding the proper aas4grimeii^ of the matter. v ' In my considered view, the issue is whether the provisions of Order bz can be invoked to review^a Warrant of attachment issued by the V /2 District Registrar. My proper reading of the provisions of Order clearly shows me that one may only a^ply for a review of judgement to the court which passed the decree or made the order* Now, it is common knowledge that a warrant of attachment is not a judgement hence it cannot be subject of review under the provisions of-Order of the Civil Procedure Code, 1966, Secondly, it is the law 'that an application for review should be heard and determined by the v-^ry

judge who passed the decree or made the order. Now, in the present case the Warrant of attachment was issued by the District Registrar in execution process, therefore in terms of the provisions of Order of the Civil Procedure Code, 1966 the same cannot be placed before the judge for review as it was not issued by him nor can it be construed as a decree or an order made by him for purposes of review under the said Order. In the result, I find and hold that this application for review is incompetent and improperly before this court. The same is hereby struck out with-costs. It is so Ordered. F., kj R«V J U N D U , JUDGE, 1/11/2005 Bight o f Appeal Explained. F. k{ R.' JUNDU,* JUDGE, 1/11/2005 1/11/2005 Coram: F» A. R. jundu, J , For the Applicant: Absent • . For the 1st Respondent: Mr. Maruma, Advocate For the, 2nd Respondent: Absent CC: Kimario * ... but • .. Court: Ruling delivered in the absence of * 1 Applicant in the presence of \ f of Mri Mariiraa for the 1st Respondent and in the absence of ' the ""second Respo F • A 0 R • JUHDtJ, L o JDGE, 1/11/2005 A t MOSHio

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