

TANZANIA / JUDGMENT

pascal elias malya vs building centre establishment others 2009 tzhc 225 11 march 2009

COURT
TZHCDECIDED
11 March 2009

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IN THE HIGH COURT OF TANZANIA (AT DAR ES SALAAM DISTRICT REGISTRY) AT PAR ES
SALAAM CIVIL REVISION NO. 18 OF 2004 (Original Civil Case No. 207 of 2003) PASCAL ELIAS
MALYA..... APPLICANT/INTERESTED PARTY VERSUS THE BUILDING CENTER
ESTABLISHMENT.... 1stRESPONDENT BATHROMEO SAEN.....2nd
RESPONDENT ALLY SHABAN SEMINDU..... 3rd RESPONDENT SAEN INVESTMENT
& CONSTRUCTION..... 4TH RESPONDENT

RULING

KALEGEYA, J.: The applicant has two main prayers: "1.....court be pleased to allow
the Applicant be joined as an interested party or the Respondent in these provisional
proceedings.

2. court be pleased to declare that the applicant/interested party is a bonaftde
purchaser for value without notice o f any effect and that he should not be jeopardized in
owning the said house by any decision between the parties to this revision..... " A
background thereof is as follows. The 4th Respondent/Interested Party failed to, service a
loan facility extended by the 1st Respondent and secured by a legal mortgage over the 3rd
Respondent's house erected on Plot No. 661, Block E, LD 50338, Sinza Area with Certificate of
Title No. 24206. in consequence thereof, the mortgaged property was sold to the Applicant
by Unyangara Auction Mart, Ltd. Court Brokers at a public auction. The main matter before
the Court is an application for an order calling for record of the lower Court for examination
and reversal of the ruling of Mwakandi, RM dated 4/2/2004. The Applicant's concern is that if
he is not joined as an interested party his rights might be prejudiced. Regarding the present
Application, only the Applicant put in his supporting affidavit. The Respondent's did not file
any Counter affidavit. Apart from the above stated facts, in his submissions, the Applicant
stated further that after the sale at the public auction the legal process was duly executed
and the property title was changed into his name; that he proceeded and demolished the old
structure and constructed a new one worth shs. 70 million. In their very brief submission
the Respondents did not challenge the 1st prayer but they vigorously contested the 2nd

prayer. Without going into the merits regarding whatever order that led to the auction and sale of the mortgaged property, on the facts of this case, I am persuaded that indeed the Applicant is an interested party who, in the interest of justice, cannot be shut away from the controversy at hand. This is so because a decision may subsequently be reached that may directly affect his interests. As for the 2nd prayer, that can only be decided when the merits of the main application are being determined. For reasons explained above, the application succeeds in part. The application to have the Applicant joined as an interested party stands allowed. DATED at DAR ES SALAAM this 11th day of March, 2009. "LB,.. ^ ju d 6e

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