

TANZANIA / JUDGMENT

mwita zephania iyenga v actas secondary and others 2021 tzhcld 2029 3 december 2021

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THE HIGH COURT OF TANZANIA LABOUR DIVISION AT PAR ES SALAAM MISCERRANEOUS APPLICATION NO. 246 OF 2021 BETWEEN MWITA ZEPHANIA IYENGA..... APPLICANT AND ACTAS SECONDARY..... 1st RESPONDENT PETER MASHANA MACHAGE & 5 OTHERS..... 2nd RESPONDENT CD! CLASSIC GROUP LTD..... 3rd RESPONDENT

RULING

Last order 10/11/2021 Date of Ruling 03/12/2021 B.E.K. Mganga, J Peter Mashana Machage and 5 others, 2nd respondents were teachers employed by ACTAS Secondary school, the 1st respondent. The 2nd respondents filed labour Dispute No. CMA/DM/KIN/R.79/174 against the 1st respondent and they were awarded to be paid TZS 22,900,000/=. Having the award in their hands, 2nd respondents filed Execution application No. 660 of 2018 praying to attach house situated at Mbezi Beach Ndumbwi street. On 9th February 2021, Hon. W.S. Ng'humbu, Deputy Registrar issued an attachment order. The applicant filed this miscellaneous application objecting attachment of the said house. The application is made under Rules 24(1), 24(2)(a), (b), (c) (d),

(e) and (f), 24(3)(a), (b), (c), (d), 24(11)(b), 25(8) and (9) Rule 55(1) i and (2) of the Labour Court Rules, GN.No. 106 and Order XXI Rules 57(1), 58 and 59 read together with Order XXXVI rule 9 and section 9 of the Civil Procedure Code [Cap. 33 R.E. 2019]. The application is supported by an affidavit of Mwita Zephania Iyenga. In the affidavit in support of the application, the deponent deposed that the applicant is aggrieved by the order of attachment and has made this application for objection as the house does not belong to the 1st respondent. Mr. Mugituti Matiko, the officer of ACTAS Secondary school filed a counter affidavit stating that the 2nd respondents (decree holders) should be patient waiting for conclusion of a land case pending before the High Court Land Division between Williamson Garments Limited and Mugituti Matiko c/o ACTAS secondary school. On their part, the 2nd respondents filed a joint affidavit opposing the application. The 3rd respondent did not file a counter affidavit and did not enter appearance. When the application was called for hearing, Mr. Augustino Kusalika appeared and argued for and on behalf of the applicant. In his submission, Mr. Kusalika

argued that the house in question belongs to Paulo Zephania lyenga who died on 27th February 2020 at Mbarali Hospital within Mbarali District and that the said house cannot be a subject of attachment in execution No. 660/2018. 2 Mr. Mugituti Matiko submitted that he is the oner of the 1st respondent. He conceded that he resides in the house, the subject of the attachment, since 2003 and that all people know that the said house is his. He submitted that certificate of title is in the name of the other person as change of name has taken long time and that the issue of change of name is pending at the Ministry of Land. He submitted that he does not know the name of the person appearing in the title deed. Peter Mashana Machage, one of the 2nd respondent, submitted on behalf of the 2nd respondents that, the house that is the subject of this application, belongs to Mugituti Chacha Matiko, the owner of the 1st respondent. He submitted that applicant has brought forged documents to show that the house does not belong to the Mugituti Chacha Matiko, the owner of the 1st respondent. He pointed out the forgeries by submitting that it is alleged that the said Paulo Zephania lyenga bought the land in question on 20th September 1999, but there is no signature of the seller. He argued further that no evidence has been brought in court to prove that the house belongs to Paulo Zephania lyenga. Mr. Luangisa Peruse Peter one of the 2nd respondent, submitted to supplement what was submitted by Peter Mashana Machage by stating that he stayed in the house in question for two years at the time he was 3 working with the 1st respondent, after being invited by Magituti Matiko, the owner of the 1st respondent. He went on that, all improvements on the disputed house were done by the said Magituti Matiko, the owner of the 1st respondent. In rejoinder, Mr. Kusalika submitted that no evidence including electricity bills were brought by the 2nd respondents to prove that the house belongs to Mugituti Matiko, the owner of the 1st respondent. Counsel conceded that the house has electricity and that even the applicant did not supply the bills to prove that it belongs to Paulo Zephania lyenga From the party's rival's submissions, this Court is called upon to determine the issue as to whether the application is meritorious enough to warrant its grant. Since rule 55 of the Labour Court Rules, G.N No. 106 of 2007 gives powers to this Court to adopt any procedure that it deems appropriate in the circumstances, I do hereby apply it to this application as labour laws is silence regarding objection of attached property. The applicant, under the provision is Order XXI rule 57(1) and Rule 58 of the Civil Procedure Code, Cap 33 R.E 2002 is duty bound to adduce evidence to the effect that, on the date of attachment he had 4 interest in the property. On the other hand, the court under Rule 57 of the same Order, has been invited to investigate the objector's claim to satisfy itself by evidence, if the applicant had some interest in the property on the date of attachment. It is the duty of this court to satisfy itself before granting the application that applicant discharged that duty. It is alleged that the property is owned by Paulo Zeophani lyenga who is alleged to have died on 27th February 2020 at Chimara Hospital within Mbarali Distctrict due to severe Pneumonia. Applicant attached to the affidavit in support of the application a burial permit. I have carefully examined the said burial permit and find that it bears no stamp of the hospital or signature of any officer of the said hospital. I have noted that there is only the signature of Mugituti Chacha that is similar to the one signed by Mugituti Matiko on his counter affidavit. Absence of official rubber stamp of the Chimara Hospital makes the

said burial permit questionable. Therefore, there is doubt as to whether, the said Paulo Zephania lyenga is dead or not. Applicant attached a document purporting to be sale agreement between Paulo Zephania lyenga, the buyer and John Amiely Liguni, the seller. It is worth to point that, there is no specific paragraph in the affidavit explaining that the said Paulo zephania lyenga purchased the 5 property in question from John Amiely Liguni for the attached document to support that paragraph. The 2nd respondent challenged the said document as being a product of fraud namely forgery. The 2nd respondent argued that the alleged sale agreement was not signed by the seller, and that the ten-cell leader just put a thumb print. The 2nd respondent was of the view that on 20th September 1999 or any date in that year, it was impossible to have a ten-cell leader in Dar es salaam who could not read or know how to write. The 2nd respondent submitted that according to the alleged sale agreement, the parties agreed TZS 2,000,000/= as sale price, but amount that appears to have been paid is only TZS 500,000/= as final payment. This, according to 2nd respondent is contradictory. The 2nd respondent did not stop there. He harmed hard. Mr. Luangisa submitted that he stayed in the house in question for two years while working with the 1st respondent and that all improvements were done by Magituti Matiko, the owner of the 1st respondent. On his part, Mugituti Matiko, for the 1st respondent, conceded that he resides in the said house, the subject of the attachment, since 2003 and that all people know that the said house is his. In other words, he admitted that he is the owner of the property in question. 6 Applicant also attached to the affidavit, minutes of family members appointing Mwita Zephania lyenga, the objector, as administrator of the estate of the said Paulo Zephania lyenga. As pointed hereinabove, there is doubt that the said Paulo Zephani lyenga is dead. The said family minutes allegedly appointing applicant to be administrator of the estate of the said Paulo Zephania lyenga does not give interest to the applicant over the property in question. I am of that considered view because there is no evidence showing that applicant was appointed by the court to that effect. In his affidavit in support of the application, applicant said nothing as to whether there is any application pending or having been decided by the court appoint him as administrator of the deceased's estate. From the foregoing, I am of the view that applicant has failed to discharge the burden of proof that the property belongs to Paulo Zephania lyenga, the alleged deceased. From the investigation I have conducted by reading documents filed by the parties and asking them some few questions for clarifications, I have formed an opinion that the property, the subject of attachment, belongs to Mugituti Matiko, the owner of the 1st respondent and not Paulo Zephania lyenga. I do hereby 7 therefore dismiss the application and order that the 1st respondent's houses cannot be excluded from the execution proceedings. B.E.K. Mganga
JUDGE 03/12/2021 8

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