

TANZANIA / JUDGMENT

RAPHAEL Z

COURT
TANZLII

DECIDED
7 August 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (MWANZA SUB REGISTRY) AT MWANZA MISC. LABOUR APPLICATION NO. 21 OF 2023 (Originating From Execution No. 36 of2023) BETWEEN RAPHAEL Z. SHILLATU..... 1st APPLICANT SHARBANO ABUBAKAR..... 2ND APPLICANT STEVEN DOGANI DIALLO..... 3RD APPLICANT LUCAS SAMWEL..... 4th APPLICANT BONIFACE KIAMA KARINGE..... 5th APPLICANT VICTORIA AGRICULTURAL MACHINERY CORPORATION LTD.....6th APPLICANT VERSUS HATIBU KASSIM MAARUFU..... 1st RESPONDENT SAHARA MEDIA GROUP LIMITED..... 2nd RESPONDENT

RULING

8th July & 7th August 2024 A. MATUMA, J. The first Respondent Hatibu Kassim Maarufu successfully sued the 2nd Respondent through Labour dispute No. CMA /MZ/ILEM/1047/2016. Thereafter Execution proceedings No. 36 of 2023 were initiated and various vehicles were ordered to be attached and Sold in execution of the Decree. The vehicles are; _ 1

1. Prado with registration No. T408 ACL
2. Nissan Orvan T580 A TA
3. Mahindra Bolero No. T 498 CMF
4. Mahindra Bolero No. T 453 CMF
5. Mahindra Bolero No. T 482 CMF
6. Mahindra Bolero No. T523 CMF The applicants alleging that the properties named Supra belong and owned to them and not the 2nd Respondent are now before this court through this application seeking an investigation of the claim and an order to the effect that such properties are personal properties of the applicants which are not liable for attachment and sale in executing of the decree resulting from the suit in which they were not parties. At the hearing of this application, Mr. Joseph Mange learned advocate represented the applicants, the 1st Respondent was present in person and had the service of Mr. Bahati Kessy learned advocate while the 2nd Respondent was represented by Mr. Boniphace Sariro learned

advocate. Submitting for this application Mr Joseph Mange learned advocate argued that although the attached properties were initially owned by the 2nd Respondent, they were no longer her properties at the time of the labour dispute supra and even during the time of execution because the 2nd Respondent had already sold those vehicles to the Applicants way back in 2017 and 2018 respectively. The learned advocate referred this court to sale agreements attached to this application as annexure SMG1 collectively. He cited the case of Sosthenes Bruno and Another versus Flora Shauri, Civil Appeal No. 219 of 2020 (CAT) to the effect that objection proceedings against attachment of properties may be brought by a third party by showing and or establishing two things; interest in the property and possession of the property at the time of attachment. He argued that by the sale agreements, the applicants have sufficiently established interests in the properties and that the properties were attached in their possession. He also cited the case of Bukoba Municipal Council versus Mantrack Tanzania Limited and others, Misc. Commercial Application No. 92 of 2019, Commercial Division at Dar es Salaam to the effect that actual possession in itself is enough to prove interest in the property. The learned advocate finalized his arguments by submitting that the properties to be attached in execution of the decree must be that of the judgment debtor but in this case the attached properties do not belong to 3. the 2nd respondent (judgment debtor). He thus prayed this application to be granted and an order releasing the vehicles be issued. Mr. Boniphace Sariro learned advocate for the 2nd respondent (judgment debtor) supported this application and made it clear that they did not file a counter affidavit because they are not in opposition to this application. Mr Bahati Kessy learned advocate opposing this application argued that ownership of the vehicle is established through motor vehicle Registration card or the report of ownership from Tanzania Revenue Authority. He opposed that sale agreements in themselves suffice to prove ownership because they are not stamped by stamp duty as per the stamp duty Act, Cap 189 section 5 (1) (a) and (b) reading together with section 47. He also argued that contracts by themselves may even be backdated to defeat the end of justice. The learned advocate argued that had the contracts been stamped by stamp duty, it could have been easy to ascertain the real date when the contracts were entered. He also argued that the applicants are all related to the judgement debtor who is the 2nd respondent herein whereas the 1st to 5th applicants are staffs of the 2nd respondent and the 6th applicant shares the same Directorship with the 2nd respondent. He cited the case of Samwe! 4 Nyalla Nghuni and Others versus Patrick Osoro Nyawangah, Misc. Labour Application No 15 of 2020 (HC) at Mwanza showing that the 2nd respondent had in that case tried to escape or defeat the execution of the decree in the same manner as in this case. He also invited this court to look at the contract purportedly entered between the 2nd respondent and 6th applicant in which such contract is not dated to show the exact date it was entered and that the two are related because the seller and the Buyer had the same signatory who is Mr Samwel Nyalla. In the circumstances, the learned advocate for the 1st Respondent argued that such sale agreements are questionable and should not be believed. He finally argued that possession is not ownership and prayed this application to be dismissed with costs. In his rejoinder, the applicants' advocate submitted that proof of ownership is not one of the criteria in objection proceedings but only interests

and possessions. About stamp duty, he argued that lack of stamp duty does not invalidate the contracts to make them ignored. About backdating the contracts, he argued that those are criminal allegations with no proof. He however admitted that the 1st to 5th applicants/are official staffs of the 2nd Respondent herein and that the 6th applicant and the 2nd Respondent are sharing leadership personnel Mr. Samweli Nyalla so to speak. He also admitted that the vehicles are still registered in the names of the 2nd Respondent. Having heard the parties herein for and against this application I am of the firm finding that Mr. Bahati Kessy is absolutely right in his arguments relating to ownership of a registered property. In the instant matter, it is undisputed that the attached vehicles are registered in the names of the 2nd Respondent who is the judgment debtor and against whom the execution leading to attachment of the vehicles in question was made. From the date of the alleged sale of the vehicles by the 2nd Respondent to the applicants to the date of their attachment it is almost seven to eight good years. This presupposes that the alleged sale agreement was not a serious business because the applicants did not take the necessary steps to have ownership change for them to acquire title to the properties. I am aware that the applicants' affidavit avers that the applicants initiated the transfer but the same has not been completed because the attempted transfer was barred by Tanzania Revenue Authority on allegation of taxation. 6 In the circumstances, it is as good as the transfer was rejected by the relevant authority which is mandated in law to register ownership of vehicles. In that respect the sale was not complete and the applicants should have returned to their seller for remedies because there is no way they could own unregistered vehicles to their own name which is an offence under the law. Even though no affidavit of the relevant officer of Tanzania Revenue Authority was filed to substantiate that really the applicants made any attempt to have the vehicles transferred to them. Nevertheless, the sale contracts are suspicious as rightly argued by Mr. Bahati Kessy learned advocate. They are not stamped for the purposes of establishing the real date it was entered more so when the applicants are officials of the 2nd Respondent to avoid the possibility of such contracts being manipulated to defeat the end of justice. The sale contract of the 6th Respondent is not even dated. I therefore reject the sale agreements and hold that since the vehicles are registered in the names of the judgment debtor, they were properly attached and are liable to be sold in execution of the decree. I have as well taken note of the case of Samwel Nyalla Nghuni supra which shows that the 2nd Respondent had attempted to escape the execution of the decree against her in the " same way as in this case 7 whereas her official staffs objected the intended execution purporting that the attached properties were already sold to them by the 2nd Respondent. It seems the 2nd Respondent is maintaining the method which does not work. Let me remind the staffs and employees of the 2nd Respondent that it is a criminal offence to conspire with any body to defeat the cause of justice. That is in accordance to section 386 (1) (a) of the Penal Code, Cap. 16 R.E 2019. They must be careful to avoid being dragged by the 2nd Respondent into unnecessary quarrels which might one day turn into criminal charges against them. I have decided to make this warning due to the modus operandi of the 2nd Respondent depicted from Samwel Nyalla's case and this one. Having said all these, I find that this application has been brought without any sufficient cause and it

is consequently dismissed with costs. It is so ordered. tuma Judge 07/08/2024 8

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