

TANZANIA / JUDGMENT

# ray m sawaya vs hilary a sambo

## 2023 tzhc 20520 31 august 2023

COURT  
TZHCDECIDED  
31 August 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOSHI DISTRICT REGISTRY AT MOSHI LAND CASE APPEAL NO. 17 OF 2023 (Arising from the decision of the District Land and Housing Tribunal of Moshi District at Moshi dated 8h March 2023 in Misc. Application No. 5 of 2023 and originating from Application no. 124 of 2017 of District Land and Housing Tribunal of Moshi District at Moshi) RAY M. SAWAYA..... APPELANT Versus HILARY A. SAMBO..... RESPONDENT

### JUDGMENT

17th 8131st August, 2023 A.P.KILIMI. J.: Sometimes in 2017 the appellant and respondent entered a sale agreement of the suit land measured 1A acre situated at Kiboroloni Ward Mnazi mmoja Street. After the respondent who is the buyer paid consideration at the tune of Tshs. 22,000,000/= to the appellant, the appellant refused to honour the said contract by signing sales contract deed. Consequently, the respondent hereinabove sued the appellant at the District Land and Housing Tribunal of Moshi at Moshi in Application no. 124 of 2017 for breaching the sales contract. One of the issues agreed therein was whether the applicant is the lawful owner of the suit plot. On 10th April 2018 the trial tribunal concluded that the respondent is the lawful owner of the suit land, also ordered the appellant to pay the respondent Tshs. 6,000,000/= as general damages. The appellant was dissatisfied with the above decision and order thereto, he appealed to this court vide land Appeal no. 12 of 2018, having heard this appeal on merit, this court 22nd day of October, 2019 dismissed the said appeal. Subsequently, the respondent filed an application for execution at the tribunal vide Misc. Application no. 5 of 2023 claiming his award above. The appellant appeared therein and objected the execution to be done in respect to the suit land decreed to the respondent as shown above, contending that the said suit land is surveyed and is owned by one Haika Mangi. The District Land and Housing Tribunal considered that there are two decisions as stated above which granted ownership to the respondent and proceeded to dismiss his objection ordered the execution to proceed accordingly as it was decreed by the tribunal in Application no. 124 of 2017. The appellant aggrieved to this order has rushed to this court by way of appeal basing on the following grounds;

1. That the learned trial chairman erred in law when he dismissed the Appellant's objections to execution that:-
  - (i) the suit land belongs to Haika Mangi who was allocated the same vide shauri la mirathi Na. 18/2008 and that she has been in possession of the same since 2009 to-date. (ii) the respondent does not have any document to prove that the suit land was sold to him by the appellant. (iii) the suit land has already been surveyed as plot No. 127 Block A at Mnazi Kiboroloni in the name of Haika Mangi its lawful owner and developer since 2009. (iv) the respondent is not entitled to be paid Tshs. 6,000,000/- general damages.
2. That had the learned trial chairman properly evaluated the evidence regarding the objection he would have dismissed the application with costs. When this matter was before me for hearing, the appellant stood for himself while Mr. Julius Semali learned counsel appeared for the respondent. In supporting his appeal, the appellant argued that, the chairman of tribunal erred by dismissing his objection, because he has ordered to sell the land which is not owned by him, but rather said, the said land is surveyed as Plot No. 127 Block A, Mnazi mmoja Kiboroloni Moshi Municipality and the owner is Haika Mangi, who was bequeathed the said land in the Probate Case No. 18 of 2008 at Marangu Primary court, and she owned the said land since 2009 to-date. The appellant further added that, the respondent has no document to prove that, he sold the said land to him, therefore, has no right to be paid Tshs. 6,000,000/= because has no right to own the said land. Responding to the above submission, Mr. Julius Semali contended that, the appellant is neither spokesman of Haika Mangi who he said at tribunal is his wife, nor was permitted to present this claim this on behalf. Further, the counsel submitted that the tribunal in Application No. 124 of 2017, declared that the owner of suit land is Hilary A. Sambo (respondent), also in Land Appeal No. 12 of 2018 also stated the owner of the suit land is Hilary A. Sambo, that decision has never been quashed and no case pending, and the appellant allegation that land belong to one Haika Mangi is an afterthought. In respect to the second ground that respondent has no document to prove that said land was sold to him, the counsel submitted that, in execution there was no issue of prove of ownership, the execution was to execute the order of the Tribunal and High Court, therefore bringing now issues of evidence in respect to ownership is not correct and unlawful. In regard to ground, which the appellant alleged that, the land is already surveyed. The counsel for respondent contended that, appellant did not say when it was surveyed, secondly that was not stated in execution proceeding at the tribunal, therefore is an afterthought. In respect to the ground that the respondent was not required to be given that Tshs. 6,000,000/= because that land was never owned by him, Mr. Semali contended that, the ownership of the said land is no longer an issue, since the two court has already determined ownership, and the money was awarded by the court, and now remained for execution, therefore the appeal be dismissed with costs. In brief rejoinder, the appellant said an appeal before the High Court was in respect to the facts that at the tribunal, he was not given time for defence, and furthermore he urged this court that to give the said land to the respondent will bring dispute, because he is a mere administrator of the estate of Edina Sawaya. I have considered the rival submissions of the parties above, and having considered the record of

cases cited above, which both have traits which gave rise to this appeal, but also this appeal being emanates from application for execution, one question appear very material to me, which is whether there is a decree to be executed at the tribunal. The answer is 5 simple and straight forward as narrated history of this matter, currently there is existence of tribunal decision in application no. 124 of 2017, this is the case ordered ownership of suit land to the respondent, and be paid Tshs. 6,000,000/= as general damage, the same was challenged by the appellant herein at High Court in Land Appeal no. 12 of 2018, this court did not disturb the said decision but confirmed the decision of the tribunal. Thus, this undisturbed decree of the tribunal answers the whole of first ground which in fact contended on issue of ownership and amount awarded as general damages. Therefore, I find the first ground devoid of merit and dismissed. Coming to the ground number two, I subscribe with Mr. Semali contention that appellant cannot be spokesman of one Haika Mangi, it is a trite law when one's property is attached for execution, any person with interest to it has to file objection on the said executing court to show his/her interest on it and show reasons why the attached property is not liable for execution. Therefore, Haika Mangi being the personal with interest is one was required move the court. The appearance of appellant on her behalf while he has no power of Attorney caused him to lack legal stand and all what he averred therein was nugatory. The law on objection of property is clear as provided under Order XXI rule 57 and 58 of Civil Procedure Code Cap. 33 R.E.2019 respectively as follows; "57.-(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit: Provided that, no such investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed.

(2) N/A

58. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached. " [ Emphasis added] Lastly, the appellant has alleged that the said land is surveyed as Plot No. 127 Block A, Mnazi mmoja Kiboroloni Moshi Municipality and the owner is Haika Mangi, who was bequeathed the said land in the Probate Case No. 18 of 2008 at Marangu Primary court, and she owned the said land since 2009 to-date. I am in agreement with the counsel for defendant that this is an afterthought, because if it could have been true, the appellant ought to have raised this in the original application no. 124 of 2017 or in appeal at this court or let her appear in objection proceeding to prove herself the same. Therefore, also I find this second ground devoid of merit. In view of what I have endeavored to discuss, I am settled that this appeal is devoid of merit, the decision of the tribunal is affirmed and consequently I proceed to dismiss this appeal with costs. It is so ordered. DATED at MOSHI this day of 31st August 2023. JUDGE 31/ 8/2023 Court: Judgment delivered today on 31st day of August 2023 in the presence of the Appellant. Respondent and his advocate Mr. Julius Semali absent. Sgd: A. P. KILIMI JUDGE 31/ 8/2023 8

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Prepared on 14 October 2026 · Esheria