

TANZANIA / JUDGMENT

SELEMAN JOHN VS BANK OF AFRICA T LTD MISC

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TANZLIIDECIDED
1 January 2025

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1 IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA COMMERCIAL DIVISION AT DAR ES SALAAM MISC.COMMERCIAL APPLICATION NO. 5277 OF 2025 (Arising from Objection Proceedings No. 4324 of 2025) SELEMAN JOHN MOHAMED..... APPLICANT
VERSUS BANK OF AFRICA TANZANIA LTD..... FIRST RESPONDENT MICAH ELIFURAH MRINDOKO T/ A NEW K I L W A R D S E R V I C E S T A T I O N SECOND RESPONDENT ADILI AUCTIONMART LIMITED..... THIRD RESPONDENT

RULING

March 24th, 2025 Morris, J The applicant above filed this application seeking for three main reliefs: the Court Order to vacate its previous Order for Proclamation of sale of a residential house registered under Certificate of Title No. 186257/120, situated on Plot No. 610, Block 47, Kijitonyama Area, within Kinondoni Municipality in Dar es Salaam (the property), in order to realize the decretal sum of Tshs 1,596,725,027/30 due to the 1st respondent in respect of 2 Execution No. 75 of 2015 pending the hearing and determination of Misc. Commercial Application No. 4324 of 2025; costs for this application; and any other relief as this Court deems fit and just to grant in the circumstances. The affidavit of Selemani John Mohamed was filed in support of the application. Briefly, the applicant deposed that on 17th January, 2016 he purchased above named landed property from the 2nd respondent at TZS 130 million and gained the vacant possession thereof free from any encumbrances. He therefrom resided live in the said house peacefully until early February, 2025 when he received a letter from a local Ward Executive Officer for conducting valuation of the said property. It was deposed further that, he later realised that his house was subject of this Court's Order for execution of decree in Commercial Case No. 75 of 2015 between the 1st respondent and the 2nd respondent. Moreover, it was clear that there was a warrant of attachment of the same that was granted to the 3rd respondent who consequently issued a Fourteen (14) days' notice to settle the decretal amount lest the house shall be disposed of. Hence, the present application aimed at countering such movement. 3 It is evident that through this application, the applicant intends to protect the property temporarily. His application is on two pillars. The first part is on ex-parte basis and the other one is between the parties. The former is intended to protect the property stated above from any form of pending hearing and determination of this matter inter-partes. However, the respondents have

been served with the application in time. When the matter came up for hearing today, Advocate Walter Shayo represented the applicant. Further, whereas Mr. Mwang'enza Mapembe, learned Counsel appeared for the 1st and 3rd respondents; Advocate Emmanuel Kessy represented the 2nd respondent. The applicant prayed for an order to maintain the status quo pending hearing and determination of the objection proceedings. The 2nd respondent did not object the prayer. Nevertheless, the 1st and 3rd respondents did contest but swiftly left the outcome of their stance to the judicious assessment of the Court. The issue to be determined hereof is whether the applicant has any justification for the application. From the affidavit in this matter, it is unveiled that the property stated in this application is under investigation in the objection proceedings (Application No. 4324/2025) pending in this Court. 4 According to Order XXI Rule 57 (2) of the Civil Procedure Code, Cap 33 R.E 2019, where there are pending objection proceedings against execution, befittingly the Court may stay the process until the requisite investigation regarding the subject objections are completed. The relevant provision reads as quoted below. "Order XXI 57 (1)..... Not Applicable....."

- (2) Where the property to which the claim or objection applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection" (bolding supplied for emphasis). Further, it is on record that the matter involving the objection proceedings has been set to proceed on April 10th, 2025. To me, the subject day is close enough to the present date not to cause undue injustice to the respondents if this application is granted. On that basis, I proceed to sustain the applicant's prayer for maintenance of status quo pending hearing and determination of the objection proceedings herein (Appl. No.4324/2025). In consequence hereof, and for avoidance of any doubt; the respondents, their agents, assignees, workers or other person acting on their behalf are hereby restrained from alienating or selling or leasing or taking possession of CT 186257/120 Plot No. 610 Block 47 Kijitonyama, Kinondoni Municipality – Dar es Salaam until completion of hearing and determination of the application for objection proceedings between parties. I grant no costs. It is so ordered. C.K.K. Morris Judge March 24th, 2025 6 Ruling delivered (online) this 24th day of March 2025 in the presence of Advocate Walter Shayo for the applicant; Mr. Mwang'enza Mapembe, learned Counsel for the 1st and 3rd respondents; and Advocate Emmanuel Kessy for the 2nd respondent. C.K.K. Morris Judge March 24th, 2025

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