

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MWANZA DISTRICT REGISTRY**

AT MWANZA

MISC LAND CASE NO. 15 OF 2022

(Originating From CMA/MZ/NYAM/04/2020/01/2020)

KATAVI MINING COMPANY LIMITEDAPPLICANT

VERSUS

SHUKURU JACKSON MASHIMBA..... RESPONDENT

RULING

22nd August and 2nd September 2022

ITEMBA, J

This application emanates from labour execution no. 17 of 2022 before this court. The applicant is moving the court to investigate the claims and objections to attachment of his properties in execution of a decree under the grounds that the said properties are not subject to attachment. The applicant is asking the court to lift the warrant of attachment in respect of her properties which are 3 motor vehicles, as follows:

- i. Nissan Patrol with registration no. T. 886 DKP
- ii. Nissan Patrol with registration no. T 865 DKP
- iii. Toyota Land Cruiser Pickup with registration no. T. 887 DKP.

The application is made under Rule 24 (1), 24 (2), (a), (b), (c), (d), (e), (f) and 24 (11), 55 (1) and (2) of the Labour Court's Rules and Order XXI Rule 57 (1) and (2) of the Civil Procedure Code.

At the hearing Mr. Msafiri Henga and Einhard Mshongi, both learned counsels, appeared for the applicant and respondent respectively.

According to Mr. Henga, in the said execution proceedings, the court ordered the above-named properties to be seized and sold. That according to paragraph 4 of the applicant's affidavit, the applicant is objecting the sale of the said properties because they do not belong to the judgement debtor but they are personal belongings of the applicant.

He submitted further that the applicant is a company with a legal personality and she has never been a party in any suit against the respondent. That, it is unlawful to attach the applicant's properties.

In reply, the respondent admits that the applicant has never been a party in a case against the respondent but the court should consider that; the applicant has influence to the judgment debtor. That, the applicant has been paying salary to the respondent on behalf of the judgement debtor and if the applicant is not having any duty to the respondent, he would not

have been involved on salary payment. He attached the salary slip to that effect.

The respondent argued further that the secondly ground is on the management structure of the applicant and judgment debtor. That some of the officers of the applicant are officers of the judgement debtor. For example, in the execution proceedings, the same Osama Ahmed, sworn an affidavit and appeared before the court as the Principal Officer of the judgment debtor and today he has done the same for the applicant.

Lastly, the respondent submitted on the share structure of judgement debtor that the applicant owns 80% of all shares of the judgement debtor. He therefore stated for these reasons, the applicant's properties should be attached for execution purposes.

Rejoining, Mr. Henga stated that the company has a different legal personality with its shareholders, and that the liability of the company cannot exceed to personality. He referred **section 15(2) of the Company Act**. That the management structure cannot be a source of liability to shareholder as a shareholder can have shares in different companies. He did not dispute that the applicant was paying salary to the

respondent but he argued that the applicant was doing that as a shareholder.

The issue to be determined is whether the applicant has proved to have some interest in the attached properties.

The applicant's counsel has submitted that all the three properties belong to the applicant and in support of that, he has attached relevant motor vehicle registration cards. I have noted that there is no attachment of the motor vehicle registration card of Toyota Land Cruiser Pickup with registration no. T. 887 DKP.

Generally, the respondent is not disputing that the properties does not belong to the applicant and that the applicant was not a party to any case which led to this execution proceedings. The respondent's argument is that the business relation between the applicant and the judgement debtor is too close to the extent that even the applicant's properties can be attached in realization of the execution order against the judgement debtor. Upon further questioning by the court, the applicant stated that there is no property in the name of the judgement debtor as all her properties are in the name of the applicant.

I have considered the submissions from both parties. I am of the view that, much as the respondent deserves to be granted his rights according to the court orders, executions have to be lawful. Despite the close relation established between the applicant and the judgement debtor, there is still no proof that the properties in question belong to the judgement debtor as the law requires.

As the applicant and the judgement debtors are both companies, the decree holder may wish to move the corporate veil to be lifted so that he can know the personalities behind the judgement debtors and try to proceed with execution.

According to Order **XXI rule 58 of the Civil Procedure Code**, all that the applicant or the objector is required to do is to produce evidence to show that at the date of the attachment he had some interest in, or was possessed of the property attached. In this, I am also influenced by the decision in **Nyarugusu Mine Company Ltd. v Oxley Limited and 2 others** Misc. Commercial Application no. 4/2021. In the present application, the objector has successfully discharged that duty under Order XXI rule 58 (supra) and the respondent has not disputed to that particular aspect.

I have mentioned that there is a motor vehicle make Toyota Land Cruiser Pickup with registration no. T. 887 DKP which do not have any proof of ownership apart from oral statement by the applicant. However, that situation, does not automatically mean that the said vehicle belongs to the judgement debtor. Besides, as stated earlier, the applicant has averred that all the three motor vehicles belong to her and the respondent does not dispute that.

That said, the application is allowed.

I therefore proceed to issue an order that, the warrant of attachment in respect of the three motor vehicles namely Nissan Patrol with registration no. T. 886 DKP, Nissan Patrol with registration no. T 865 DKP, Toyota Land Cruiser Pickup with registration no. T. 887 DKP, be lifted.

I make no orders as to costs.

DATED at **MWANZA** this 2nd day of September, 2022.



L.J. ITEMBA

JUDGE

Ruling delivered under my hand and seal of the court in chambers in presence of both parties, Mr. Revocatus Sepetu for the applicants, Mr. Einhard Mshongi for the respondent and Ignas, RMA.



Ignas
L. J. ITEMBA
JUDGE
2/9/2022