

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

MISC. APPLICATION NO. 177 OF 2021

(Arising from Commercial Case No. 147 of 2014)

JESCA PAUL MOSHA.....1ST APPLICANT
JOAKIM PAUL MOSHA.....2ND APPLICANT
ANNASTAZIA PAUL MOSHA.....3RD APPLICANT

VERSUS

INTERNATIONAL COMMERCIAL BANK

(TANZANIA) LTD1ST RESPONDENT
LAILATU AMANI MAIMU2ND RESPONDENT
**MARTHA MOSHA (ADMINISTRATRIX OF ESTATE
OF THE LATE PAUL ALOYCE MOSHA.....3RD RESPONDENT**
**ZAHARA ALLY MCHIA (ADMINISTRATRIX OF ESTATE OF THE LATE
ALLY ABDALLAH MCHIYA4TH RESPONDENT**

Date of Last Order: 14/12/2022

Date of Ruling: 24/01/2023

RULING

MKEHA, J.

The applicants in this application are moving the court to investigate an objection filed in respect of a house located at Plot No. 29 Block "B"

Ubungo Settlement Area with Certificate of Title No. 59498, Dar es Salaam which is subject of attachment vide Commercial Case No. 147 of 2014. The application is made under Order XXI rules 57 (1), 58 and 59 of the Civil Procedure Code. It is supported by a joint affidavit sworn by Ms. Jesca Paul Mosha, Joakim Paul Mosha and Ms. Annastazia Paul Mosha. The application is contested through counter affidavits of Vitalys Evarist Salimu on behalf of the 1st Respondent, Lailatu Amani Maimu, the 2nd respondent, Martha Mosha, 3rd respondent and Zahra Ally Mchia, the 4th respondent.

In terms of the joint affidavit of the applicants, as well as the submissions made by Ms. Esther Nyalanda for the applicants, the decree subject of execution emanates from a mortgage transaction involving one Paul Aloyce Mosha. According to the said affidavit and submissions, whereas the said mortgage was executed in 2011, the said Paul Aloyce Mosha whose property is under attachment died on 20/07/2010 as per death certificate issued on 01/07/2016. According to the applicants, spousal consent appears to have been signed by the 3rd respondent in 2011 after the demise of the owner of the attached property in 2010. According to the applicants, being heirs of the late Paul Aloyce Mosha, have interest in the

attached property. They therefore moved the court to lift the warrant of attachment.

In terms of the counter affidavit sworn on behalf of the 1st respondent and the submissions by Mr. Zacharia learned advocate for the 1st respondent, the applicants' allegation regarding date of death of Paul Aloyce Mosha is without truth. According to the learned advocate, the letters of administration signed by the applicants' mother (3rd respondent) indicates that, Paul Aloyce Mosha died on 20/07/2013. See: Annexure JJ5 to the applicants' Joint Affidavit.

The 2nd and 3rd respondents submitted that, the late Paul Aloyce Mosha died on 20/07/2010. The 3rd respondent submitted that, she was deceived by the officials of the first respondent to sign the spousal consent in 2011 while her late husband died in 2010.

However, the letters of administration made as annexure to the applicants' affidavit, that was signed by the 3rd respondent on 20/12/2013 indicate that, the late Paul Aloyce Mosha died on 20/07/2013. This fact was not countered by the 3rd respondent. Neither by the Applicants. It is therefore correct as rightly submitted by Mr. Zacharia learned advocate that, the

death certificate issued on 01/07/2016 indicating that death occurred on 20/07/2010 contradicts with information offered by the 3rd respondent at Kimara Primary court when she petitioned for letters of administration. Be it as it may, whether death occurred in 2010 or 2013, the applicants remain to be heirs of their late father. However if the attached property had been mortgaged before the demise of the late Paul Aloyce Mosha, the applicants' interest in the said property is subject to the 1st Respondent's rights against the mortgaged property.

The remaining question to be answered is whether there is an executable decree in this case. The parties are in agreement that Commercial Case No. 147 of 2014 was instituted against among other persons, Paul Aloyce Mosha in November, 2014. Whether death occurred on 20/07/2010 or on 20/07/2013, the said Paul Aloyce Mosha was not a living person at the time of institution of Commercial Case No. 147 of 2014. The case proceeded to its finality against a dead person. In other words, a decree was issued against a non existing person. The said decree, no doubt is unexecutable.

For the foregoing reasons prohibitory orders issued by this court on 25/10/2021 are hereby lifted. The application succeeds to such a limited

extent. The parties are advised to take legal steps in view of rectifying the anomalies indicated herein. I make no order as to costs.

Dated at Dar es Salaam this 24th day of January, 2023.



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C.P. MKEHA

JUDGE

24/01/2023

Court: Ruling is delivered in the presence of the parties' advocates.



A handwritten signature in black ink, appearing to be "C.P. MKEHA".

C.P. MKEHA

JUDGE

24/01/2023