

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

COMMERCIAL CASE NO.10 OF 2000

CRDB BANK LIMITED.....PLAIDNTIFF

VERSUS

JOHN KAGIMBO LWAMBAGAZA..DEFENDANT

R U L I N G

KIMARO,J.

The CRDB BANK LTD, the decree holder has filed an application seeking for an order to set aside sale of the judgment debtors property situated on plots No. 48,49 and 50 Block C Ubungo-Kibangu- Dar-Es-Salaam.

Another prayer is that the decree holder be allowed to conduct another sale.

The main reason given in support of the chamber application is that there was no prior adverts in the Newspapers as required by the Law.

Mr. Bwana, Learned Advocate who appeared for the decree holder, relied on the reasons contained in the affidavit filed in support of the chamber application and prayed that the application be granted.

The sale was conducted by one Hamisi Shabani Nsombo, a court broker, T/A Nsombo & Co. LTD. Although he received service of the chamber application and the date of hearing, there was no response from him.

A letter dated 3/10/2002 from the Court broker shows that the sale was conducted on 15/09/2002. The only advert made available to this court is one published in a daily paper which one can not recognise. There is only the cutting of the advert which does not show in which paper it was published. The advert shows that the sale was to be conducted on 25/08/2002. Obviously, this advert was not the one relevant for the sale which took place on 15/09/2002. Apart from the advert referred to above, there is nothing else to prove that the sale of 15/09/2002 was advertised.

A counter affidavit by Mr. John Kagimbo Lwabangaza, the judgment debtor supported the application and pointed out the irregularities in the sale which was conducted on 15/09/2003. He also lamented for not being aware of the sale, not being summoned in court to settle the terms of sale, as well as the purchase price which he said was low and calculated to deprive him of the property and leaving a big debt behind. Mr. Rweyongeza, Learned Advocate who appeared for the judgment debtor restated the views expressed by the judgment debtor. He supported the prayer for setting aside the sale. As for the person who should conduct the sale if at all the application is granted, Mr.

Rweyongeza submitted that another person should be appointed but not the decree holder.

Order XXI rule 64 states specifically that every sale in execution of a decree shall be made by public auction.

Order XXI rule 65 explains the stages in the process of sale. That is issuance of proclamation for sale and the contents of the proclamation for sale.

Order XXI rule 66 requires the proclamation for sale to be published in Gazette or in local newspaper.

Under Order XXI rule 67 an immovable property can not be sold by public auction before expiry of 30 days from the date of publication of the adverts, unless there is a written consent of the judgment debtor.

As shown before, there is no evidence of advertisement for the sale of the judgment debtors property before the same was sold on 15/09/2002.

The sale was conducted in breach of the provisions of Order XXI rule 66(1) and (2) of the Civil Procedure Code 1966. Breach of the said provision automatically led to breach of the provisions of Order XXI rule 67.

The breach of the provisions of Order XXI rules 66(1) and (2) and 67 justifies cancellation of the sale which took place on 15/09/2002. It is hereby cancelled.

Regarding the second prayer in the chamber summons, it is rejected. The Registrar is directed to appoint another person other than the decree holder to conduct the sale which follows, subsequent to the cancellation of the sale of 15/09/2002. There is no Justification to condemn the judgment debtor to pay costs. No order for costs.

N.P. KIMARO,

JUDGE

22/04/2003

I Certify that this is a true and correct  
 copy of the original as filed in the court  
 .....  
 .....  
 .....  
 Dated 23/4/2003