

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

COMMERCIAL CASE NO. 34 OF 2001

CRDB BANK LIMITED.....DECREE – HOLDER /PLAINTIFF  
/RESPONDENT

VERSUS

1. RUKANGA BUTCHERY &  
GENERAL SUPPLIES LTD.....1<sup>ST</sup> JUDGMENT DEBTOR  
2. THEOBALD L. RUKANGA.....2<sup>ND</sup> JUDGMENT DEBTOR  
3. GODEBERTHA T. RUKANGA.....3<sup>RD</sup> JUDGMENT DEBTOR  
/1<sup>ST</sup> APPLICANT  
4. EDNA HARRISON MWANGAMBAKU.....4<sup>TH</sup> JUDGMENT DEBTOR  
/2<sup>ND</sup> APPLICANT

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**RULING**

**KALEGEYA, J:**

The 3<sup>rd</sup> and 4<sup>th</sup> judgment – debtors/Applicants filed separate chamber summons which however contain similar prayers in the following wording,

- “ 1. *That this Honourable Court may be pleased to grant an interim injunction restraining the Respondent, its agents and servants, or any other person from evicting the applicant and family, or otherwise tempering with the property of the second judgment debtor (deceased) known as House No. 654 C.T 25951 situated at Sinza B Kinondoni Municipality Dar es Salaam or any other property, until hearing and determination of the application to set aside the purported sale inter-parties.*
2. *That this Ho. Court may be pleased to grant order setting aside the sale of House No. 654 C.T 25951 situated at Sinza B*

*Kinondoni Municipality Dar es Salaam property of the second Judgment debtor (deceased) in which the Applicant has interest purportedly carried out on 14<sup>th</sup> July 2002.*

3. *Costs be provided for.*”,

hence their consolidation.

The Applicants are represented by Mr. Eustace, Advocate, while the Respondent/Decree – holder is represented by Mr. Lyimo, Advocate. Arguments were made by way of written submissions.

While I sympathise with the Applicants on what transpired or what may subsequently transpire, I am sorry to say that they have taken the wrong route to quench their grievances. Why?

Let us exalt our minds on the facts in order to appreciate the basis of my observations.

The Respondent filed a summary suit under O. 35 CPC against four Defendants including the two Applicants. Upon Defendants' failure to apply for leave to defend, judgment was entered in favour of the Respondents as follows:

*“Judgment is hereby entered in favour of Plaintiff in the sum of Shs.27,000,000/= being the Principal sum; 21% interest on the said sum between the date of filing the suit and date of judgment; 7%*

*interest on the decretal sum from date of judgment till payment, and costs.”*

This was on 2/04/2001.

On 18/7/2002, the 3<sup>rd</sup> Judgment – debtor/1<sup>st</sup> Applicant filed the chamber summons in question while the 4<sup>th</sup> judgment – debtor/2<sup>nd</sup> Applicant filed hers on 22/7/2002.

Now, before the applicants placed their applications on record, the court record ends with the court's order granting judgment and quoted above. However, from the chamber summons, supporting affidavits, counter-affidavit and submissions, we get to know that the Respondent had appointed Yono Auction Mart & Company Ltd to auction houses on plots Nos. 654 Block “B” with Title deed No. 25951 and plot No. 606, Block “E”, Sinza, with Title deed No. 25647 belonging to 2<sup>nd</sup> and 4<sup>th</sup> Judgment – debtors respectively; that the 2<sup>nd</sup> Judgment – debtor is dead and the 3<sup>rd</sup> Judgment – debtor/1<sup>st</sup> Applicant is the Administrator of the deceased's Estate; that these houses had been auctioned at shs.12 and 7 million, respectively, and that no order for execution has ever been sought and obtained from the court save that the decree holder had appointed Yono Auction Mart on the basis of Mortgage Deeds which provided, among others,

*“The Bank shall have power, when the mortgage money has become due and without recourse to any Court of law, to sell, or to concur with any person selling the mortgage property.... by public auction...”*

From the above, it is as clear as day light that the court has no hands in what transpired. The applicants had filed their chamber summons based on rules relating to executions put into process by the court which is not the case here. The Applicants complain of flaws including failure to make the auction sufficiently public leading to lower realizations in prices. Unfortunately, there is nothing that transpired with courts' hand or blessing. That being the case, the only way that this out - of - court execution process can be impugned is to file separate action(s) against the Decree-holder or Auctioneer or both. The maximum the present record can assist in, if the matter ever goes to trial, is to provide evidence of what the situation was before the said execution process took place.

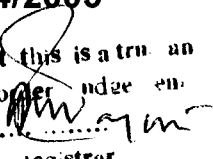
For reasons stated the applications stand dismissed.

**L.B. KALEGEYA**  
**JUDGE**

Delivered

**L.B. KALEGEYA**  
**JUDGE**

**7/4/2003**

I Certify that this is a true and correct copy of the original/offer made on this date.  
  
.....  
Registrar  
Commercial Court  
Dag es Salaam  
Dated 7/4/2003