

**IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY)  
AT MWANZA  
HC.REVISION NO. 07 2020**

(Arising from the District Land and Housing Tribunal for Mwanza in Misc.  
Application No. 12 D of 2020)

**S.L.ISANGI AUCTION MART & COURT BROKER ..... APPLICANT**

**VERSUS**

**SAMWELI KIMARO ..... RESPONDENT**

**RULING**

*Last order: 04.09.2020*

*Ruling date: 07.09.2020*

**A.Z.MGEYEKWA, J**

The genesis of these revisional proceedings arise from a complaint letter dated 26<sup>th</sup> day of August, 2020 written by one S. L. Isanga Auction Mart & Court Broker. The revisional proceedings came before me from the directives of the Judge In Charge dated 28<sup>th</sup> day of August, 2020 from which a revision *suo mottu* was opened.

I find it apt to narrate the background material facts of the Revision I as they can be gleaned in the evidence adduced at the District Land and Housing Tribunal and the complaint which is before this court as follows; the respondent, Samweli Kimaro filed an application before the District Land and Housing Tribunal in respect to Misc. Application No. 12C of 2019, which originated from Land Application No.12 of 2005. The respondent moved the tribunal to investigate the claim and issue an order to release the properties. The tribunal pronounced its decision on 16<sup>th</sup> day of June, 2020 in favour of one Samweli Kimaro ordering the release of the properties and return them to the applicant as to the list SK 1 and SK 7. On 5<sup>th</sup> day of August, 2020, the learned Chairman of the District Land and Housing Tribunal for Mwanza issued a Garnishee Order *ex parte* against the applicant's account hence the present complaint.

At the hearing, S. L. Isanga enjoyed the legal service of Mr. Erick Kahangwa, learned Advocate, and Samweli Kimaro enjoyed the legal service of Mr. Barnaba Lugua, learned counsel assisted by Ms. Rose Ndege, learned counsel.

In his submission, the learned Advocate for S.L Isanga submitted that the Chairman issued a Garnishee Order against the applicant's Bank

account number 0740293020 Exim Bank, Mwanza Branch. The learned counsel valiantly argued that the applicant was not served to appear before the tribunal contrary to Regulation 23 (3) of the Land Disputes Courts (The Land and Housing Tribunal) Regulations of 2003.

The learned counsel for the applicant went on to state that the judgment debtor is required to be notified within 21 days to afford him right to be heard. Mr. Erick Kahangwa argued that the time frame started to run from 27<sup>th</sup> day of July, 2020 the day the respondent filed an application for execution and on 5<sup>th</sup> day of August, 2020, only 10 days past the Garnishee order was issued without serving the judgment debtor for the reasons known to the respondent and the Chairman. He continued to lament that the applicant was served through his learned counsel Mr. Rutahindurwa on 6<sup>th</sup> day of August, 2020 at 17:09 hrs.

Mr. Erick Kahangwa forceful argued that the procedure was fatal since the applicant was not afforded with right to be heard thus the principle of natural justice was violated. To fortify his argumentation he referred this court to Article 13 (6) (a) of the United Republic Constitution of Tanzania and the case of **Onesmo Nangole v Stephen Lemomo Kiruswa**, Civil Appeal No. 129 of 2016 whereas the Court of Appeal of

Tanzania cited with authority the case of **Abbas Sherally and Another v Abdul S/H.M Fazalboy**, Civil Application No.33 of 2002 (unreported). He added that the right to be heard has been discussed by courts and in numerous decisions, the Court of Appeal of Tanzania decided that the remedy is to nullify that decision for breaching the principle of natural justice. He urged this court to nullify the tribunal order for the same reasons.

Mr. Erick Kahangwa forcefully argued that the withheld account is used for court broker's activities; clients are depositing money in the said account. He went on to argue that the applicant received a letter from the Resident Magistrate of Ilemela District Court requesting the applicant to withdraw Tshs. 190,000,000/= from the said account and he referred this court to page 2 of the complaint letter. He added that the account in question holds public interest which cannot be jeopardized by one person. Mr. Erick Kahangwa urged this court to find that the tribunal did not follow proper procedure and the garnishee order was brought to the Bank by the respondent instead of a Court Broker.

In conclusion, the learned counsel for the applicant argued valiantly argued that the account is withheld contrary to the law. He went on to

state that the series of events gives this court power to revise the order of the District Land and Housing Tribunal for Mwanza.

Responding, Mr. Barnaba Lugua, learned counsel for the respondent argued that there was another Garnishee order dated 14th day of August, 2020 issued by the Hon. Murirya, Chairman of District Land and Housing Tribunal for Mwanza the said order was sent to the Bank by the applicant. He stated that Hon. Murirya issued both orders and in the second-order he released the said account, however, the source of the said order is missing thus the bank could not enforce the said order. He blamed the applicant for looking for another order from this court. He wondered if the tribunal issued a second order to release the garnishee order why the applicant has come before this court?

Mr. Barnaba went on to argue that the Chairman followed a proper procedure for not notifying the owner of the account prior to issuing the said order. He added that the purpose of the said order will be defeated if the other party is informed because he might withdraw all the money from the account.

Mr. Barnaba distinguished the selling movable and immovable properties, he referred this court to Regulation 23 (3) of the Land Disputes

Courts (The District Land and Housing Tribunal) Regulation and added that the Regulations are not applicable in the application regarding garnishee orders. He referred this court to Order XXI Rule 65 of the Civil Procedure Code Cap. 33 [R.E 2019]. He submitted that the executing court has power to uplift the garnishee order. He added that the applicant can complain at the tribunal which issued the said order and the tribunal could have to determine the matter inter-parties. Mr. Barnaba went on to state that the garnishee order can be brought to the Bank by another person because it is not an order of attachment of sale therefore the ground that the Court Broker did not send it to the bank does not serve a substance.

Mr. Barnaba forcefully argued that the money being deposited in the account of Court Broker is different, he referred this court to section 9 of the Court Brokers and Process Servers Appointment Remunerations and Disciplinary Rules which provides that a Court Broker has a separate account for the money paid to him for execution of court decrees, orders or warrants. Mr. Barnaba stated that not all matters its execution are given 14 days including the garnishee order as per Regulation 29 (3).

He argued that section 9 does not state that the money realized from the execution to be deposited to the Court Broker account. He also referred this court to Order XXI Rule 71 (2) which states that the amount of sale realized from the sale be paid to the court account and not the court broker's account.

Mr. Barnaba argued that in case the applicant's account will be released then the respondent will not acquire his money. He added that the applicant needs to supply alternative security. He insisted that the tribunal was correct in issuing the garnishee order.

In conclusion, Mr. Barnaba argued that the revision is aimed to defeat justice. He urged this court not to grant the applicant's application.

In his rejoinder, Mr. Erick Kahangwa reiterated his submission in chief and stated that they are not aware that there is another garnishee order which was issued by the tribunal otherwise they could not file the instant application. He insisted that parties are required to be notified before issuing a garnishee order as per Regulation 23 (1),(2) and (3) of the Land Disputes Courts (District Land and Housing Tribunal) and insisted that a 14 days notification is mandatory.

He went on to state that Order XXI Rule 20 (1) of the Civil Procedure Code Cap.33 states that notifying another party is necessary and show cause why execution should not be issued against him. He added that the execution process does not differentiate which execution be done without informing parties.

Mr. Erick Kahangwa further argued that the applicant has filed before the District Land and Housing Tribunal for Mwanza in Application No. 12D of 2020 filed on 20<sup>th</sup> day of August, 2020 after 2 days from the date when the garnishee order was issued. He insisted that it is the court broker who sent the garnishee order to the Bank as per Rule 7 of the Court Broker and process server (Appointment, Remuneration, and Disciplinary) Rules GN. 363.

Mr. Erick Kahangwa went on to state that the issuing of substituting the security as assurance security the prayer is misplaced because the application for stay is pending and the respondent prayed for other securities he referred this court to the Extract Order of the tribunal which did not include the applicant's account.

Finally, Mr. Erick Kahangwa urged this court to grant the application with costs.



After the submission for and against the revision were both learned counsels have submitted in length. Now, I will determine **whether or not the garnishee order was properly issued**. The records reveal that the District Land and Housing Tribunal issued a Garnishee order on 5<sup>th</sup> day of August, 2020. The Chairman instructed Exim Bank not to allow any person to withdraw money from the account No. 0740293010. I have also noted from the records that, the Applicant who is the Court Broker was ordered by the Court to release the properties under his custody to the then judgment debtor after having found that he executed the decree in contravention of the law.

The records do not show if the properties, which were to be released, were handed over to the judgment debtor. The records only show the garnishee order being issued by the learned chairman to the Broker in lieu of the properties which were to be released. I have carefully perused the records to find if the applicant had failed or refused to hand over the properties to the owner and whether there was an application to that effect.

My perusal of the records has found, a letter dated 27<sup>th</sup> day of July, 2020 from the respondent requested the Chairman to freeze the judgment

debtor account No. 0740293010. Then the respondent filed a Misc. Application No.12D of 2020 whereas the tribunal ordered the applicant to release the property with reference to the two lists. In my considered view, this is not an official application and there are no any proceedings records in the respective tribunal file. The order to attach a bank account is linked with no previous orders which were before the District Land and Housing Tribunal. The only previous order that is relevant as far as the applicant is concerned is the order to release the properties, which were wrongly attached, and even the Extract Order dated 05<sup>th</sup> day of August, 2020 is in respect to the properties lists. Consequently, if the leaned Chairman intended to enforce the said order against the Court Broker there ought to be an application for moving the court to effect the same. Therefore even the cited Regulation 23 (3) of the Land Disputes Courts (The Land and Housing Tribunal) Regulations of 2003 does apply in this application because there was no any application that rendered the Chairman to issue the Garnishee Order.

My findings are such that the garnishee order was issued without a base. The chairman acted *ultra vires* for issuing an order without having an official application before him for such an order. The fact that the order required the applicant to release the properties as stated in SK1 and SK7,

the Tribunal ought to have stick at making sure that **the properties** are released. Regulation 23 (3) of the Land Disputes Courts (The Land and Housing Tribunal) Regulations of 2003 does apply in this application because there was no any application that rendered the Chairman to issue the Garnishee Order.

From the foregoing, it is obvious that the Applicant was denied the right to be heard. It is trite law that a decision reached in breach or violation of the right to be heard unless expressly or impliedly authorized by law, renders the proceedings and decisions and/or orders made therein a nullity even if the same decision would have been reached had the party been heard. As it was held in numerals Court of Appeal of Tanzania decisions; in the case of **I.P.T.L. v Standard Chartered**, Civil Revision No.1 of 2009 (unreported) and **Amos Elias S Grace Mwijage** , Civil Application No. 432/08 of 2018 which was delivered on 19 June, 2020 (unreported), the Court of Appeal of Tanzania cited with authority the case of **Abbas Sherally v Abdul S. H. M. Fazalboy** (supra). Just for elaboration, in the case of **Abbas Sherally & Another vs. Abdul S. H. M. Fazalboy**, (supra) the Court categorically stated that:-

*"The right of a party to be heard before adverse action is taken against such a party has been stated and emphasized by the*

*Court in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard because the violation is considered to be a breach of natural justice. "*

It is evident, the tribunal Chairman issued the garnishee order in the absence of the applicant as there was no application for determining the question of issuing a garnishee order.

In the upshot, I find merits on the complaints and proceed to quash the proceedings and the garnishee order dated 5<sup>th</sup> day of August, 2020 made thereof attaching the applicant's account No. 0740293010.

Order accordingly.

Dated at Mwanza on this 07<sup>th</sup> day of September, 2020.

  
A.Z.MGEYEKWA

**JUDGE**

07.09.2020

Ruling delivered in chamber on 07<sup>th</sup> day of September, 2020 in the presence of Mr. William Myumbu, learned counsel for the applicant, and Ms. Rose Ndege, learned counsel for the respondent.



  
A.Z.MGEYEKWA

**JUDGE**

07.09.2020