

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISC. COMMERCIAL APPLICATION NO. 18 OF 2020**

**KURINGE REAL ESTATE CO. LIMITED ..... APPLICANT**

**VERSUS**

**BANK OF AFRICA (T) LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**WILSON SIMON NGUI ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL MICROFINANCE BANK PLC ..... 3<sup>RD</sup> RESPONDENT**

**CDJ CLASSIC GROUP LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**ISMAIL, J.**

4<sup>th</sup>, & 5<sup>th</sup> October, 2021

Resurgence is the word that best fits this application. It is yet another bite by the applicant, done through this application, preferred under the certificate of urgency. The application, which comes after back to back losses in at least two of the previous attempts, seeks to, *inter alia*, move the Court to investigate the applicant's claim of ownership of the property standing on Plot No. 696 Block "C" Sinza Kinondoni, Dar es Salaam. The ground for contention is that the said property belongs to the

applicant, having acquired it through sale by a public auction conducted on 28<sup>th</sup> March, 2018. Disposal of the suit property came following the 2<sup>nd</sup> respondent's inability to liquidate his loan obligation with the 3<sup>rd</sup> respondent. On 30<sup>th</sup> September, 2020, the said suit property was again placed on sale, ostensibly to settle an obligation with the 1<sup>st</sup> respondent. The contention by the applicant is that the sale was mistaken, touching on the property that belongs to people other than the borrower of the money from the 1<sup>st</sup> respondent.

The application is supported by an affidavit of Edward Eugen Mushi, the applicant's principal officer, and it sets grounds on which the application is based. The application has been opposed to by the 1<sup>st</sup> respondent, through a counter-affidavit filed in Court, alongside a notice of preliminary objections, the latter of which raises two grounds of object. These are: *firstly*, that pursuant to Order XXIII Rule 1 (3) of the Civil Procedure Code, Cap. 33 R.E. 2019 (CPC), the Court has no jurisdiction to deal with the application. *secondly*, that the application is an abuse of the court process.

When the parties were invited to address the Court on the first objection, they unanimously took the view that a matter similar to the instant application was preferred by the applicant, only to be withdrawn

before the same was heard on merit. The withdrawal was without leave to re-file that the applicant craved for. The argument by Mr. Rweyemamu, counsel for the 1<sup>st</sup> respondent, is that, since the withdrawal was without leave to re-file, subsequent actions of a similar nature were offensive of the provisions of Order XXIII rule 1 (3) of the CPC, that precludes re-filing of a suit or application if no leave to re-file is granted. The counsel referred to the subsequent application, by the applicant, preferred vide Misc. Commercial Application No. 81 of 2020, in which an application similar to the withdrawn application and a replica of the instant application was dismissed for not complying with the cited provision of the law. He urged the Court to sustain the objection and dismiss the application.

Mr. Kusalika, learned counsel for the applicant, admitted to the fact that the first application for objection proceedings was withdrawn at the instance of the applicant. He took the view that the Court has jurisdiction to entertain the application, since none of the previous proceedings were determined on merit. While conceding to the fact that leave to re-file was declined, he was insistent that these were objections proceedings which are different from the previous proceedings.

I have heard the submissions by the counsel. What comes out as an uncontested fact is that on 16<sup>th</sup> October, 2019, the applicant's application

for objection proceedings was, at Mr. Kusalika's instance withdrawn, and no leave was granted to allow a re-entry by the applicant through similar proceedings. That notwithstanding, there was an attempt by the applicant to institute Misc. Commercial Application No. 81 of 2020, which was nipped in the bud, when the Court (Hon. Fikirini, J as she then was) sustained an objection similar to the instant objection, and dismissed the application. Before dismissing the application, the Court made the following observation at p. 10 of the ruling:

*"Mr. Makota's submission relying on Order XXIII Rule 4 of the CPC, though valid and made sense but not in relation to the present application which was withdrawn for the reasons best known to the applicant and of which leave to re-file was declined, the order which has not been vacated. The order that the execution should proceed was not a fresh order as she would construe it, but an already order in place which had to be suspended to allow room for the Miscellaneous Commercial Application No. 1 of 2029 to be heard and determined. The case of Katibu Mkuu Amani (supra) is relevant as far as objection proceedings are concerned **but as stated above in the absence of an order vacating the order dated 16<sup>th</sup> October, 2019, this application becomes superfluous.** The applicant's argument that after the withdrawal of the application she had to wait for another attempt to attach her property to*

*be opportunity for her to again file another fresh objection proceedings application, is misplaced.”[Emphasis added]*

The quoted excerpt sums up everything and seals the fate of the instant application. Being a replica of the application, which was dismissed after a successful invocation of the objection, the instant application cannot emerge unscathed, given that the objection raised is similar to what swayed the Court into dismissing the application filed as Misc. Commercial Application No. 81 of 2020. I take the view that subsistence of the withdrawal order dated 16<sup>th</sup> October, 2019, serves as a preclusion from or an impediment to any subsequent preference of applications of a similar nature by and/or between the same parties.

In the upshot, the objection by the 1<sup>st</sup> respondent is sustained and the application is hereby dismissed with costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 7<sup>th</sup> day of October, 2021.



**M.K. ISMAIL**

**JUDGE**

**High Court of the United Republic of Tanzania  
(Commercial Division)**

**07/10/2021**