

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

CIVIL CASE No. 16 OF 2002
KHASHIL RAJABU - PLAINTIFF
VERSUS
HAMAD RAJABU t/a
M/S RAJABU AUTO SPARES & OTHERS - RESPONDENTS

R U L I N G

Khashil Rajabu the applicant/objector has filed an application through the services of S.K. Safari & Co Advocates seeking the following orders, to wit

- (i) to set aside the sale of the attached property pending the investigation of the claims and objections
- (ii) Costs
- (iii) Any other such relief(s) that the Honourable Court may deem fit and or just.


The application supported by the applicant's affidavit has been filed under Order XXI Rules 24, 57(1)(2), 59 and Section 68(e) and 95 of the Civil Procedure Code 1966. In reply one Godson M.T. Killiza the Company Secretary of NBC Ltd, the second respondent countered the affidavit invariably for and on behalf of the other respondents. With leave of the Court the parties were allowed to argue the application by way of written submission on the following schedule: applicant by 14/02/2002, respondents by 22/02/2002 and rejoinder if any by 26/02/2002, Ruling on 15/03/2002. The record shows that the applicant has not filed his submissions as ordered by the Court whereas the second and fourth respondents have urged the Court to dismiss the application for want of prosecution. I respectfully agree and order that the application by Khashil Rajabu stands dismissed with costs for want of prosecution.

Further submissions have been drawn by the second and fourth respondents that the Chamber Application filed by the applicant has no standing in law in that the cited order and the rules thereto envisage a scenario that the challenged sale proceeds in execution of a Court decree or order which is not the case with the suit property. Indeed the facts

in the application clearly show that the intended sale is pursuant to mortgage contract as such the property's attachment is not through an order of the Court hence the irrelevance and inapplicability of the prayer for setting aside the order.

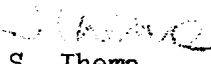
In the final analysis I agree with the submissions of the learned Advocate for second and fourth respondents and hold that the application/objection is misconceived and with no standing in law. It can only be dismissed with costs.

It is so ordered.


S. Thema

JUDGE

Court: Ruling delivered today 22nd March 2002 before IMMA & Co Advocates and in the absence of the applicant whos is notified.


S. Thema

JUDGE

22/03/2002