

**IN THE HIGH COURT OF ZANZIBAR
(INDUSTRIAL DIVISION)**

HELD AT TUNGUU

CIVIL APPLICATION No. 12 OF 2023

**(Application to object attachment of the House attached in the execution
to the award given in dispute No. DHU/MMG/85/2021)**

Soud Ali Mzee APPLICANT

VERSUS

- 1. PANDU BUYU MAKAME**
- 2. ALI SIMAI AMEIR**
- 3. HUSSEIN ALI MDUNGI**
- 4. JUMA HAMZA ALI**
- 5. GALAXY SECURITY COMPANY LTD**



RESPONDENTS

RULING

17th October 2024

A. I. S. Suwedi, J

The applicant under Order XVIII, Rule 3; Order XXIV, Rule 50 (1) (2) and Rule 51 of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar is requesting this Court to investigate the properties attached in the execution of the award given in the Dispute No. DHU/MM. G/85/2021 because it is not liable for attachment. The facts are that the 1st, 2nd, 3rd and 4th respondents filed a dispute, Dispute No. DHU/MM. G/85/2021, before the Dispute Handling Unit, claiming unfair termination from the 5th

respondent. The dispute was decided in their favour, where respondent No. 5 was required to pay them TZS 2,700,000/- each as salary compensation.

After getting that order, the 1st, 2nd, 3rd and 4th respondents applied for execution before this Court. Consequently, the 5th respondent office house at Kiembe Samaki, bounded by the open space at North, East and West and the road at South, was attached for sale by auction to enforce the earlier stated order. Hence, this application was filed whereby the applicant is requesting this Court to investigate the house attached as it was not liable for attachment at the time it was attached.

The law allows a third person to request the Court to investigate the property attached if that person has an interest at the time of attachment under Order XXIV, Rule 50 (1) (supra), which says:

Where any claim is preferred to, or any objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit.

The cited provision empowers the Court with a duty to investigate a claim on objection to the attached property that the property is not liable for attachment. However, the powers cannot be exercised arbitrarily, but

the claimant must adduce evidence to prove the claim as Rule 51 of the same Order says:

The claimant or objector must adduce evidence to show that at the date of attachment, he had some interest in or possessed the attached property.

Therefore, we must observe if the claimant has met the provision's requirement to exercise the powers so vested.

On the day the application was scheduled for hearing, the learned counsel, Daudi Kidyalla, represented the applicant. The 1st, 2nd, 3rd and 4th respondents were under the legal service of the learned counsel Suleiman Omar Suleiman, and the 5th respondent did not appear, although a summons was sent to him and was received on 07/09/2024. Hence, the proceedings proceeded in his absence under Rule 54 (1) of the Industrial Court Rules, 2021.

Counsel Kidyalla, after adopting the affidavit supporting the application, submitted that the applicant is the owner of the attached house and not the 5th respondent. The 5th respondent rented the house from the applicant, as shown in the attachments to the affidavit. He finally prayed for this Court to investigate and release the attached property.

On their side, the 1st, 2nd, 3rd, and 4th respondents, through the learned counsel Suleiman Omar, replied that the applicant failed to show ownership of the attached house. The attachment "**SOUD 2**" does not

show ownership but shows the right to use the land given to four people. Besides, the certificate does not show that the house was built on the same land.

Counsel Suleiman stated further that the applicant was duty-bound to supply evidence under Order XXVI, Rule 51 of Cap 8, and failed to do so. Even the attachment "**SOUND 3,**" a lease contract, did not show that the house is the same attached. The company has been at the attached house for over 15 years. It seems the applicant intended to defeat the justice of the 1st to the 4th respondent. Lastly, he adopted the counter affidavit and prayed for the dismissal order against the application.

Counsel Kidyalla rejoined that the Certificate of the Right of Occupancy shows more than one owner, but one of them is the applicant, so he has an interest at the time of attachment and is the proper person to object to the attachment.

The two assessors who sat with me in this application successfully gave their opinion that the applicant failed to prove the claim. The applicant's evidence does not show that he owns the attached house, and they both advised me to dismiss the application.

On my part, I started going through the application with an affidavit supporting the application. I glanced at the attachments of the affidavit and asked myself whether the attached documents showed the

ownership of the house to the applicant as claimed. The first attachment is the execution form in which the 1st, 2nd, 3rd and 4th respondents requested the Court to attach a house at Kiembesamaki bounded by the open space at North, East and West and the road at South. This has nothing to do with showing ownership. The second attachment is the Provisional Certificate of a Right of Occupancy, in which a temporary land use right was given to four people: **MARYAM SAID KASSIM, SOUD ALL MZEE, MAULID ALI MZEE** and **RASHID SEIF SAID**. The Provisional Certificate of Right of Occupancy shows the right to use land at Kiembe Samaki. Unfortunately, there is no evidence that the disputed house has been built on the land given, as stated by Counsel Suleiman.


Another issue with the provisional certificate is that the copy was only made to the front page, so this Court failed to see the given conditions. However, I understand that the provisional certificate is valid for two years only. The one at hand was issued on 16/04/2015, which is currently nine years and six months. Also, the provisional right was issued to four persons, and one of them is **SOUD ALL MZEE**, not **Soud Ali Mzee**. I wonder if it was intended for Soud Ali Mzee (the applicant). Hence, my conclusion to this attachment is that no proof of ownership is shown.

The third attachment is the House Rental Agreement between the applicant and the 5th respondent, entered on July 1, 2023. The 1st to the 4th respondent described the house by boundaries, but no boundaries are given in the agreement. The contract states that the house is located at Airport "Shehia". This has made me unable to decide if the contract is related to the attached house.

The fourth attachment is the letter from the Court to the Regional Police Commander of the Urban West Region informing about the attachment and sale of the house used as an office of the 5th respondent with the boundaries stated before herein. This document is also unrelated to the house ownership the four respondents requested to be attached.

On this basis, I agree with the assessors' opinion that the applicant has not proved the claim that he owns the attached house. Therefore, I am dismissing this application without an order to costs.

DATED at TUNGUU ZANZIBAR this 17th day of October 2024



A. I. S. Suwedi
JUDGE – INDUSTRIAL COURT