

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 676 OF 2018

GEORGE PETER SCORDOULIUS APPELLANT

VERSUS

EVEREST FREIGHT LIMITED 1ST RESPONDENT

ALI SAID 2ND RESPONDENT

AHAMED SAID 3RD RESPONDENT

R U L I N G

MGONYA, J.

This is an Application for this court to be pleased to issue an order of attachment before judgement of vehicles located at **Plot No. 71, Mikocheni Light Industrial Area**. This Application is filed under **Section 68 (e) and (c), section 95 and Order XXXVI Rule 6 (1) (b), (2) and (3) of the Civil Procedure Code Cap. 33 [R. E. 2002]**.

Attached to the Chamber Summons is the Affidavit sworn by **George Peter Scordoulius** the Applicant herein.

When the matter came for hearing, the Application was heard ***Exparte*** against the Respondents as it was evident by the summons that the Respondents where duly served but refused to enter appearance.

Submitting for the Application, **Mr. John Maliya** learned submitted that the Applicant before the court prays this Honourable Court to issue an order of attachment of vehicles located at **Plot No. 71 Mikocheni Light Industrial Area.**

In this respect, he referred the court to paragraphs 3 and 4 which clearly stating that the Applicant was appointed as an Agent to sale equipment of Park Village Auction Ltd a South Africa company; and that he was given a letter to that respect. The same attached to the Affidavit to support the allegation.

Further, the Applicant as a Sales Agent, was approached by 2nd and 3rd Respondents who were the Directors of the 1st Respondent and agreed to buy all the equipment from the Applicant. The same valued at **2,208,811.05 USD**. However, in early 2016 the Respondents paid the Applicant a total of **50,000 USD only**; leaving behind the debt of **154,881 USD** unpaid to date.

Despite of several reminders and meetings between the parties, the said outstanding balance is yet to be paid to date. It is the Applicant's Counsel allegation that while the Respondents are neglecting to pay the outstanding payment, there is also an attempt for the Respondents to re allocate their business to South Africa and close the same in Tanzania. It is from the said situation, the Applicant herein is praying for the order sought.

Having gone through the Chamber Summons, the Affidavit attached thereto and the Applicant's Counsel respective submission in respect of this Application, it has come to my knowledge that, indeed he prayer sought is under the provisions of **Order XXXVI Rule 1 of the Civil Procedure Code, hereinafter to be referred as Cap. 33.**

Through the same, I have realized that, the core prayer to this Application is on attachment before Judgement as there is a main case **Civil Case No. 194 of 2018** pending this honourable Court.

I have to admit also that I do understand the principles governing attachment before Judgement. One of the utmost important requirement is that there must be a specification of the property to be attached with is and the value of the said

properties to command an order for attachment before judgement from the court. This requirement is well reflected respectively in the provision of **Order XXXVI Rule 6 (2)** of the **Civil Code, Cap. 33** as quoted herein below:

"The Plaintiff shall, unless the court otherwise directs specify the property required to be attached and the estimated value thereof."

It is clear from the Applicant's Affidavit and respective submission before the court that the intended properties to be attached in **Plot No. 71 Mikocheni Light Industrial Area, within the City of Dar es Salaam** are neither **specified** nor **estimated in value** in the pleadings as required by law. From this shortcoming, there is a possibility of attaching the unintended properties therein.

At this juncture, I am very much concerned that the order of attachment if granted, will be **vague** and might cause chaos in the identified premises. I say so since, at this time, the court is not sure as to whose properties are at that particular plot. The Legislature in making this law had this in mind as the attachment under these circumstances, might bring chaos, confusion and

breach of peace and tranquillity if the order is not certain as the law requires.

From the above concern, the prayer sought is untenable under the given circumstances. In the event therefore, **I proceed to strike out the Application for want of a legal requirement.**

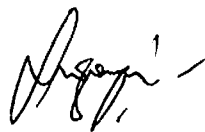
As the Application was heard *Exparte*, I make no order as to costs.

It is so ordered.



L. E. MGONYA
JUDGE
20/12/2019

Court: Ruling delivered in chambers in the presence of Mr. John Mallya, Advocate for the Applicant, and Ms. Janet RMA, this 20th day of December, 2019.



L. E. MGONYA
JUDGE
20/12/2019