

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

MISC. CIVIL APPLICATION NO. 22 OF 2019

(Arising from Civil Case No.5 of 2019 of the High Court of Tanzania at Shinyanga)

KELLO RASHID KARADENGA.....APPLICANT

VERSUS

THE ASSOCIATION OF TANZANIA TOBACCO TRADERS LTD...1ST RESPONDENT

THE TANZANIA LEAF TOBACCO COMPANY LIMITED.....2ND RESPONDENT

THE TANZANIA TOBACCO PROCESSORS LIMITED.....3RD RESPONDENT

THE OFFICER COMMANDING DISTRICT (OCD)-KAHAMA.....4TH RESPONDENT

THE ATTORNEY GENERAL(AG.....5TH REPONDENT

Date of Last Order: 14/05/2020

Date of Ruling: 24/07/2020

RULING

C. P. MKEHA, J

In the present application, the applicant is asking the court to order the 1st to 3rd respondents to either furnish security in the tune of TZS. 500,000,000/= or produce documents of title in respect of the three respondents' Ware House situated on Plot No.1, 2 Block "A" Usule Area, Tabora Municipality PLAN D⁶ 179/18 Reg. No.29333 estimated to be of the value of some Tanzania shillings six hundred million only (TZS. 600,000,000/=), pending determination of Civil Case No.05 of 2019.

In terms of the affidavit supporting the application, the 1st, 2nd and 3rd respondents are Tobacco Companies registered in Tanzania dealing with tobacco businesses and they are about to close their businesses here in Tanzania and return back to their home countries and that as the affidavit was being sworn, the three respondents were selling their properties. Reliance was put to the Invitation to Tender for Purchase of the respondents' used motor vehicles.

The applicant submitted through Mr. Ndayanse learned advocate that the 1st, 2nd and 3rd respondents had failed showing cause why they should not be ordered to furnish security save for mere allegations that the main suit stands to fail.

It was also submitted for the applicant that the three respondents made no tobacco buying operations during 2018/2019 tobacco buying season which is an indication that they are about to close their business in Tanzania.

The 1st, 2nd and 3rd respondents' reply through Mr. Kyariga learned advocate was to the effect that a mere apprehension without evidence that the respondents are intending to do what is feared is not a sufficient ground for attachment before judgment. An Indian case of **V. K. Nataraja Gounder Vs S. A Bangaru Reddiar AIR 1965 Mad 212** was cited. The said decision dealt with Order XXXVIII Rule 5 of the Indian Civil Procedure Code which is in parimateria with our Order XXXVI of the Civil Procedure Code. The court stated that:

"The essential requirements which must be proved to the satisfaction of the court are: (1) the defendant is about to remove the whole or any part of his property;

or (2) The defendant is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court and (3) That, the defendant is intending to do so to cause obstruction or delay in the execution of any decree that may be passed against him. Vague and general allegations that the defendant is about to dispose of the property or remove it beyond the jurisdiction of the court, unsupported by particulars, would not be sufficient compliance with the rule. It is incumbent upon the plaintiff to state the grounds on which he entertains the belief or apprehension that the defendant would dispose of or remove the property, or to give the source of his information and belief in the matter. This is really settled law on the subject."

In view of the three respondents there is no evidence in the applicant's affidavit to meet the requirement of the law. It was also submitted for the respondents that, the fact that the 1st, 2nd and 3rd respondents made no tobacco buying operations in 2018/2019 tobacco buying season could not trace origin in the applicant's affidavit. In view of the learned advocate for the respondents, submissions ought to be elaborations or explanations of evidence already tendered. Reference was made to the cases of **Transafrica Assurance Co. Ltd Vs Cimbria (E.A) Ltd (2002) E.A 627** and **Tina & Co. Limited and 2 Others Vs Eurafrican Bank Ltd Now known as BOA Bank (T) Ltd, Civil Application No.86 of 2015, CAT at Dar es Salaam (Unreported)**. The learned advocate for the 1st to 3rd respondents invited the court to dismiss the application for being frivolous and unmeritorious.

To a great extent, the applicant's rejoinder was a reiteration of what had been submitted in chief. In addition, the learned advocate for the applicant submitted that, as he was rejoining, the respondents were already outside the local limits of the jurisdiction of the trial High Court which in his view, renders granting of the application more appropriate.

From the applicant's affidavit the applicant's belief is pegged on the respondents' invitation to tender for purchase of the three respondents' used motor vehicles. Neither the applicant's affidavit nor his submissions indicate that the said sale of the said used vehicles was being done by the respondents with the dishonest intention of defeating or delaying the execution of a possible decree in Civil Case No.5 of 2019. In the absence of evidence or particulars enabling the court to appreciate that sale of the said vehicles was for purposes of defeating or delaying the execution of a possible decree, the court has no justification of ordering attachment of the respondents' properties or ordering them to furnish security. As it was held in **Nowroji Vs Deccan Bank, AIR 1921 Bom 69**, a man is not debarred from dealing with his property because a suit is filed against him and an attempt to sell a small portion of a large estate does not warrant an inference that the defendant intends to obstruct or delay execution.

For the foregoing reasons, I hold the application to be devoid of merit. The same is dismissed. Each party to bear own costs.

Dated at **SHINYANGA** this **24th** day of July, 2020.

