

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 238 OF 2022

ITEL EAST AFRICA LTD..... APPLICANT

VERSUS

SAKUMA EXPORTS LIMITED1ST RESPONDENT

MV VISSAI VCT 052ND RESPONDENT

EXPARTE ORDER

Before this Honorable Court is an Application brought under the Certificate of Urgency. The same is made under **Section 68(e), Section 95 and Order XXXVI Rule 6(1),(b),(2), (3),7(1), and (2) of the Civil Procedure Code, Cap. 33 [R. E. 2019]** and **Section 2(3) and 3 of the Judicature and Application of Laws Act, Cap. 358 [R. E. 2019]**; respectively.

The substantive prayer under the *Exparte* Application hereto is for the Honorable Court to issue an *Exparte* Order restraining the Respondents, their Agents, Servants and whomsoever is and will be acting in respect of Vessel M/V Vissai VCT 05, the 2nd Respondent herein which is currently anchored at Dar es salaam Port in Tanzania from removing and/or cause removal of the said

Vessel from the Jurisdiction of this court. Further is to ensure that the Chief Harbour Master of the Tanzania Ports Authority and Tanzania Shipping Agency Corporation (TASAC) to oversee that the Vessel, MV Vissai VCT 05 does not leave the Port of Dar es Salaam, pending hearing and determination of the Application *inter parties* on the date to be scheduled by this Honorable Court.

The reason for the issuance of the instant *Exparte* Order have been well elaborated before this Honorable court by the learned Counsel for the Applicant **Mr. Elisa Abel Msuya** to be:

1st, that there is a pending Suit by the Applicant before this Honorable Court, **CIVIL CASE No. 85 of 2022** between the parties to this Application, whereas the Applicant is claiming against the Respondents herein the total sum of **Tshs. 876,408,956.03** as specific claim whereby the Applicant submits to have suffered breach of duty and care by the Respondents, Acts of Negligence and Misrepresentation for the sugar cargo at the Port of loading as contractually agreed between the Applicant and the **1st** Respondent herein.

2nd reason is to the effect that both Respondents herein are Foreign Companies; whereas the **1st** Respondent, **SAKUMA EXPORTS LIMITED** is the Company having its permanent

address in India while the 2nd Respondent herein, **MV VISSAI VCT 05** is a moving Vessel which is not registered in Tanzania.

From the above, it is the Applicant's concern that both Respondents have neither fixed addresses nor assets in Tanzania where the Applicant is likely to lose its rights when the same vacates the Jurisdiction.

It has further been submitted by the Applicant's Counsel that under those circumstances, the Applicant is in danger of suffering the irreparable loss when the restrain Order is denied.

3rd that the 2nd Respondent (the Vessel) is currently offloading its sugar cargo at Dar es Salaam Port and it is in its final stage where immediately thereafter the vessel will leave Dar es Salaam to unknown destination. Under those circumstances, again if the Captain of the Vessel is not made aware of the Court Order and Proceedings before this Honorable Court, the Vessel will leave the Jurisdiction - Tanzania where it won't be easy to be traced.

From the above reasons, it is the Applicant's prayer that the *Ex parte* Order be granted as the above demonstrated reasons justify as to why the Applicant should be granted with the *Ex parte* order sought.

I have been able to go through the Chamber Summons and the attached Affidavit by the Applicant in this Application. Further, I have heard the Applicant's Counsel submission in respect of this Application.

From the Applicant's Affidavit duly affirmed by one **IMRAN PATEL**, I have gathered the sense of controversy between the parties of which is centred on the contractual business terms and conditions. From the same, I have weighed the facts thereto and the Applicant's counsel respective submission before the court and I have come to the conclusion that the matter before the court, is fit for the grant of *Exparte* Order under the given circumstances.

The reasons behind the prayer justifies the Applicant's concerns; particularly where both Respondents are Foreign Companies. Therefore, for the interest of justice and to avoid the matter before the court to become nugatory, **I proceed to grant the prayed *Exparte* Order.**

For avoidance of doubt, this Court as from the date of this Order, is hereby **restraining the Respondents herein being SAKUMA EXPORTS LIMITED and MV VISSAI VCT 05, their Agents, Servants and whomsoever is and will be acting in respect of Vessel MV Vissai VCT 05, currently anchored at**

Dar es Salaam Port in Tanzania from removing and/ or cause removal of the said Vessel from the Jurisdiction of this Honorable Court.

Further, I proceed to order the Chief Harbour Master of the Tanzania Ports Authority to oversee that this Court Order is adhered to by ensuring that the MV Vissai VCT 05 does not leave the Port of Dar es Salaam pending hearing and determination of the Application before the court *inter-parties*.

Copy of this Order is to be served to:

- **Both Respondents herein,**
- **The Chief Harbour Master of the Tanzania Ports Authority; and**
- **The Director General - Tanzania Shipping Agency Corporation, respectively.**

It is so ordered.




L . E. MGONYA
JUDGE
7/6/2022