

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MWANZA SUB-REGISTRY)

AT MWANZA

CIVIL REVISION NO. 07 OF 2022

(Arising from the Ruling of the District Court of Nyamagana District at Mwanza in Misc. Civil Application No. 49 of 2022)

ACCESS MICROFINANCE BANK TANZANIA LIMITED

(Formerly known as Access Bank Tanzania Ltd).....1st APPLICANT

CHAMPION AUCTION MART.....2ND APPLICANT

VERSUS

JOEL WILSON CHUMA.....RESPONDENT

RULING

30th June & 1st July, 2022

DYANSOBERA, J:.

Before the District Court the respondent did, in Misc. Civil Application No. 49 of 2022, make an application for interim order seeking an ex parte order for the release of motor vehicle Reg. No. T. 206 DHY make Golden Dragon and an injunction to restrain the sale by the applicants, their workmen, agents and or whomever purporting to act on applicants' behalf pending the determination of the application for temporary injunction inter parties. The respondent also sought costs of the application and any other reliefs the court thought fit and just to grant.

By a ruling delivered on 21st day of June, 2022, the District Court granted the application in the following terms: -

'having based on the applicant application, I conceived this application is of urgent importance, if the application is likely not granted, the applicant is likely to suffer irreparable loss, that being the case the order of ex parte interim order for the release of motor vehicle with registration number T.206 DHY make of Golden Dragon and injunction to restrain the sale by respondents, his workmen, agents and or whomever purporting to act on the respondent's behalf is granted, pending the determination of the application inter parties. No order as to the costs.

The applicants were aggrieved by that ex parte interim order and on 22nd day of June, 2022 they, through the legal services of their learned Counsel Mr. Patrick Suluba Kinyerero, filed an application under sections 79 (1) (c) and 95 of the Civil Procedure Code [Cap. 33 R.E.2019] together with other enabling provisions of the laws seeking the exercise of the court's revisionary powers to check on the propriety, legality and correctness of an ex parte interim order issued by Hon. R.M.V.L. Mugendi in Misc. Civil Application No. 49 of 2022 in the District Court of Nyamagana District at Mwanza delivered on the 21st day of June, 2022, costs of the application to be provided for and any other reliefs.

The application has been filed under a certificate of urgency. On 30th day of June, 2022 when the application was called for hearing after the respondent had been duly served, Counsel for the applicants informed the court that the respondent was served on that very day, that is on 30th June, 2022. Truly, the respondent attended in person and admitted to have been served but had two concerns: one, he argued that he had engaged an advocate who is away and two, he prayed to be given time to reply, at least a week.

Mr. Patrick Suluba submitted that on 26th day of June, 2022, they appeared before Mr. Mugendi at Nyamagana District Court in Misc. Civil Application No. 49 of 2020, the application which was heard ex parte leading to the issuance of the an ex parte interim order requiring the applicants to release a motor vehicle Reg. No. T. 206 DHY make Golden Dragon Bus. The said motor vehicle had been pledged as a security for the loan secured by the respondent and was attached on 16th day of June, 2022 after the respondent failed to pay the loan. Mr. Partick informed the learned Resident Magistrate that after the applicants had been dissatisfied with the ex parte order of that court they decided to seek redress to the High Court vide Civil Revision No. 7 of 2022 which

had been set for hearing on 6th day of July, 2022 and the revision was seeking to challenge the trial court's ex parte order passed against the applicants and leading to the attachment of the motor vehicle that had been pledged in the securing of the loan to the respondent. However, despite this information that the matter was before the High Court, the respondent, on 28th day of June, 2022, asked the District Court to seize the motor vehicle and take it back to him. The learned Resident Magistrate granted the respondent's request, appointed Mr. Kasanga who, assisted by the police, seized the motor vehicle and placed it under the custody of the respondent. Counsel for the applicants supported his argument by producing a copy of the ruling of District Court delivered on 28th day of June, 2022.

It is indicated in that ruling that the learned Resident Magistrate appointed Mr. Kasanga H. Kasanga to execute the court order with the police.

With respect, the learned Resident Magistrate acted high handedly and denied the applicants due process rights. In the first place, the interim order of releasing the motor vehicle with Reg. No. T.206 DHY which had been pledged as a collateral for the loan secured by the

respondent was made without notice and without hearing the other party, in this case, the applicants. Although a court has power to issue an ex parte interim order, such orders are rarely granted and will only be issued if the court decides that there are exceptional circumstances. In other words, such orders are issued when immediate relief is needed and when the scheduling a regular hearing and providing notice to the other party is not feasible.

Second, the order to execute the previous order was made and given by the learned Resident Magistrate with the full knowledge that the matter now was before the High Court challenging his previous order. Since his previous order was being challenged in the higher court, wisdom demanded the trial Magistrate to await the directions of the superior court before he embarked on executing his previous order which was on the challenge. It cannot be gainsaid that the orders of the trial Magistrate were imbalanced, hurried and with no safe guarding conditions in place. A court which is a fountain of justice should do the most and best to minimize injustice and increase justice in the circumstances. It is my finding that the orders made by Hon. V.L. Mugendi, RM in Misc. Civil Application No. 49 of 2022 on 21st June, 2022

and on 28th June, 2022 were, to say the least unfortunate and were attractive target for abuse. This court cannot condone such an exercise.

Consequently, the said orders are all declared a nullity. Taking into account that the matter is still pending before the District Court, I hereby direct the District Court to hear the respondent's application in the presence of both parties who should utilize the occasion to fully argue their sides of the matter and enable the court to come up with more balanced and less hurried decision so that the ends of justice are attained, for justice should not only be done but it should manifestly and undoubtedly be seen to be done. It is my finding that the District Court acted in the exercise of its jurisdiction illegally and with material irregularity.

Invoking the provisions of Section 79 (1) (c) of the Civil Procedure Code [Cap.33 R.E.2019], I grant this application and **revise the interim order issued on 21st day of June, 2022 together with the execution order made on 28th day of June, 2022 and set them aside. The motor vehicle in question to revert back in the control and management of the applicants was the case before hand.**

The respondent is condemned costs of this application.

Order accordingly.



W. P. Dyansobera
Judge
1. 7. 2022

This ruling is delivered under my hand and the seal of this Court on this 1st day of July, 2022 in the presence of Mr. Patrick Suluba Kinyerero, learned Advocate for the applicants and in the presence of the respondent.



W.P. Dyansobera
Judge