

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
DA ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

**Misc Civil Application NO. 15 OF 2023
(Originating from Execution No. 76 of 2020 Before
Hon.Nyembele, DR)**

**SAMNA (T) INVESTMENT LIMITED..... APPLICANT
VERSUS
MBOZI COFFEE CRING CO. LIMITED1st RESPONDENT
CRDB BANK PLC.....2nd RESPONDENT
THE HON ATTORNEY GENERAL.....3rd RESPONDENT**

RULING

MKWIZU, J:

In this application, the court is invited to issue an order lifting an Order of attachment of the Applicant's CRDB Bank Account No. 0150206039200 at the CRDB Bank, Azikiwe Street vide a Garnishee Order- Nisi made vide Execution No. 76 of 2022 on the 23rd day of November 2022 pending execution of the deed of compromise of the suit dated 16th June 2022 which is still subsisting until 31st October 2024 on the ground that the money therein belongs to the government and therefore not attachable under in terms of ORDER XXI Rule 2A of the Civil Procedure Code Cape 33 RE 2019

This application traces its genesis from the compromise deed entered between the applicant and the 1st and 3rd Respondent herein on 16th June 2022. The applicant defaulted in honoring the deed prompting application for execution by the decree-holder, the 1st and 3rd respondents by way of garnishee proceedings. Consequently, on 23rd November 2022, the decree-holders obtained a garnishee order nisi from the Deputy Registrar attaching the applicant's account No. 0150206039200 maintained at the 2nd respondent's Bank, Azikiwe Branch.

The applicant is not happy with the order by the Deputy Registrar and therefore has filed this application under section 2(3) of the Judicature and Application of Laws Act, (Cap 358, RE 2019), section 38(1) and section 95 of the Civil Procedure Act, (Cap 33 RE 2019) to challenge the same. The application is supported by an affidavit sworn by **Samwel Sule Nakei**, the Principal Officer of the Applicants Company containing factual grounds in support thereof.

The application is opposed by the counter affidavit of **Gerald Mndima Manongi**, the principal officer of the 1st Respondent, and **Daniel Nyakiha**, the State Attorney in the office of the Solicitor General for the 3rd Respondent.

When the parties in this application appeared before this Court on 9th February, 2023 for orders, they were represented by their advocates, Mr. Sisty Bernard learned advocate for the applicant, Mr. Fredrick Mbise and Norbert Chaula also learned advocates were for the 1st and 2nd respondents respectively and the 3rd respondent enjoyed the representation from Mr. Daniel Nyakiha learned State Attorney. With the leave of the court, the application was disposed of through written

submissions and the counsel of the parties did successfully filed their respective written submissions.

The Applicant's Counsel's main contention in his written submissions is that the money that the decree-holder has attached are government properties which, in terms of ORDER XXI Rule 2A of the Civil Procedure Code are not to be attached, he relied on the decision of **Karata Ernest And Others V the Attorney General**, Civil Revision No 10 of 2020(unreported). He contended that the money, in the attached account was paid to her by RUWASA a Government Agency whose total control is under the government in terms of article 6 of the Constitution of the Republic of Tanzania for facilitating a water Project achieved through tender No AE-102/2021/2022/SGD/W/20 aimed at rehabilitating Kinambeu Water Scheme(Project) at Iramba Singida and therefore the money belongs to the government and therefore the decree-holder ought to have followed the procedures stipulated under section 16 of the Government Proceeding Act, Cap 5 R: E 2002. He invited the court to find the attachment as illegal.

Responding to the applicants submissions Mr Fredrick Mbise condemned the applicants for failure to advanced sufficient reasons to move the Court to uplift the garnishee Order made in execution of decree made under Order XXI Rule 20(2) of the Civil Procedure Code. He said the applicant's explanation on why execution by attaching the said amount of money should not proceed is not acceptable. To him, the decision of **Karata Ernest &Others Vs The attorney General, Civil Revision Number 10 of 2020** is distinguishable as in that case, the execution was against the Government while in this case execution number 76 of 2022 is, firstly

Between **Mbozi Coffee Curing Company Limited & Another (decree holder) Vs Samna (T) Investment Limited(judgment Debtor)** and against the property of the Applicant, not Government. Mr. Mbise insisted that Account No:**015206039200** held at CRDB Bank Plc belongs to the Applicant **Samna (T)Investment Limited** and so the money contained therein regardless of the source.

He contended further that, applicant had an ample time to start repaying the decretal amount from 14th June 2022 up to 31st August 2022 but he kept mum allowing the 1st respondent to executed the entire sum under 1.3.2 of the deed of Compromise . He thus urged the court to dismiss the application.

The State Attorney for the 3rd respondent had short but focused submissions. He said the garnishee proceedings are different from other court proceedings because once the garnishee order nisi is issued and the court is satisfied that there is a third party holding judgment debtors money then the garnishee order absolute is made. To him Applicant is required to satisfy the court on how the repayment will be made and not otherwise.

He explained further that the applicant has failed miserably to establish evidentially that the money in his account belongs to RUWASA or was made by RUWASA instead she relied on a mere assertion that the Government is involved. He insisted that the attached money belongs to the applicant and therefore the attachment is legal

I have carefully considered the affidavit for and against the application and the parties' submissions. In an application of this nature applicant's duty is to show cause why the money attached to the applicant's account should not be released to the respondents as ordered in the garnishee order nisi. The applicant's reason is that the money in her account subject to the garnishee order is not hers but a government fund intended to facilitate Government Water Projects in Singida and therefore unattachable. And on why the said money is regarded as Government money, paragraphs 5, 8, and 9 of the supporting affidavit contains the following explanations:

5. That the Applicant had secured a tender contract(s) with the Rural Water Supply and Sanitation Agency(RUWASA), that for the execution of Tender No AE-102/2021/2022/SDG/W/20 between the Applicant and the Rural Water Supply and Sanitation Agency, a tender for construction of a Water rehabilitation project, at Kinambeu in Iramba District to wit, the Applicant was expecting to receive an advance payment for undertaking the said project which is under the Government of the United Republic of Tanzania, copies of the said contract between the Applicant and RUWASA is attached hereunder and marked as SAM2.

8. That the monies being held in the Applicant's Bank Account are funds that ought to be used by the Applicant in the execution of Tender Scheme No AE-102/2021/2022/SDG/W/20 between the Applicant and the Rural Water Supply and Sanitation Agency, a tender for the

rehabilitation of at Kinambeu water scheme in Iramba a project under the Government of the United Republic of Tanzania

9. Further to paragraph 8 herein above the funds in the bank's account are Government funds entrusted to the applicant for the sole purpose of giving service to the Public."

Both parties seem to agree with the legal position that government properties are not subject to attachment in the execution of the court decree under Order XXI Rule 20(2) of the Civil Procedure Code. Their point of divergency is on the ownership of the attached money. While the applicant is maintaining that the money attached belongs to the Government, the respondents counsel holds an opposite view.

The question for court determination is whether the money in the bank account, the subject matter of the application is Government money. I have confined myself to that question because apart from the fact that it is the only ground brought in support of the application, the liability of the applicant is not contested.

I have considered all what parties have availed to the court including the submissions. The applicants counsel has submitted at length on her existing contractual relationship with RUWASA trying to convince the court that the money in the applicants account subject of this application are from RUWASA and therefore a government money. Unfortunately, this fact has remained a mere assertion without proof. There is no single document be it a contract or even a deposit slip by RUWASA was made available to the court for it to assess the credibility of the applicant claim.

A mere fact that the applicant is under a contractual obligation with RUWASA to perform the contraction of the water Rehabilitation Project at Kinambeu in the Iramba District, which is not dispute anyway, does not change the status of the applicant account to that of the Government and ownership of the money therein. I say so because under normal circumstances, the Account holder under whose name the Account has been opened and maintained with the Bank is the owner of the account and whatever gets in that account. I think strong evidence was required to link the money is the applicant's account with the Government.

To say the least, the applicant has failed to prove on the balance of probabilities that the monies in Account Number 0150206039200 bearing the name **SAMNA (T) INVESTMENT LIMITED** at CRDB Bank, Azikiwe Street subject to the Garnishee Order- Nisi dated 23rd day of November 2022 belongs to the Government and therefore not subject to attachment. And since the applicant is the one who moved the court to change the present state of affairs by lifting the already issue garnishee order nisi , she is burdened with the duty of proof which as stated has failed to discharge.

Consequently, the application is dismissed for lacking merit. Costs to follow the events.

Dated at **Dar es salaam** this 3rd Day of March 2023.



E. Y Mkwizu

Judge

03/3/2023

