

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISCELLANEOUS CIVIL APPLICATION NO. 325 OF 2021
(Originating from Civil Case No. 105/2021)

AFROIL INVESTMENT LIMITEDAPPLICANT

VERSUS

ALCHEMIST ENERGY TRADING DMCC..... RESPONDENT

STANBIC BANK TANZANIA LIMITED..... RESPONDENT

PETROLEUM BULK PROCUREMENT AGENCY..... RESPONDENT

RULING

16th & 20th February 2023

MKWIZU, J.:

This ruling is in respect of an objection raised against an application for temporary injunction by the applicant filed in this court on 8th July 2021 made under Sections 68 (e) and Order XXXVII Rule 2(1) of the Civil Procedure Code, Cap 33 R. E. 2019. The applicant was moving this court to inter alia, issue an order *for cancellation of the irrevocable letter of Credit No IL21050TZ0100828 issued to the 2nd Respondent following the beneficiary (1st Defendant)'s failure to deliver the consignment to the Applicant as agreed.*

Having been served with the application, the 2nd respondent counsel approached the application with a preliminary objection to wit:

"The application is bad in law for seeking permanent orders under the auspices of provisions of temporary injunction to

wit sections 68 (e) and Order XXXVII Rule 2(1) of the Civil Procedure Code, (Cap 33 R. E. 2019)...”

When the matter came before me for mention on 16/2/2023, Mr Ramadhani Karume, for the applicant arose to inform the court that the application has been overtaken by event. He said, the application was intended to limit the execution of a Letter of Credit (LC) whose maturity date has expired and therefore the payers sought in the application have been automatically attained by the maturity of the letters of credit. He for that reason prayed for the withdrawal of the application with no order as to costs.

On his part, Mr. Jeremia Tarimo counsel for the 2nd respondent informed the court that there is in the records an *ex-parte* order by this court that mandated the non-execution of the Letters of Credit pending hearing of the main application and a preliminary objection against the application. He was of the view that, the appropriate procedure would have been for the plaintiff to concede to the point of objection and not to withdraw it for the later action would be to pre-empt the preliminary objection.

When asked to respond to Mr. Tarimo’s proposition, Mr. Ramadhan Karume readily conceded that the orders sought in the application – (interparty prayers) are the same orders sought for in the main suit rendering the application incompetent. While supporting that the proper procedure would be for the court to strike out the application, he sought the court’s indulgence for the applicant not to be condemned to pay costs. Considering the shared position by the parties counsel that orders sought are of permanent nature embodied in the main suit between the parties,

there is no other conclusion than that the application is a misconception rendering it incompetent.

As to the issue of costs, it is obvious that the 2nd respondent has incurred some costs in the preparation of the counter affidavit and the point of the preliminary objection. They have as well, through their advocate made several appearance in court . This alone justify costs on their party.

Consequently, the application is struck out with costs. Order accordingly.

DATED at **DAR ES SALAAM** this 20th day of February 2023.



E. Y Mkwizu
Judge
20/2/2023

