

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 264 OF 2020

(Arising from Execution Cuse No. 32 of 2019)

BLUE LINE ENTERPRISES ----- APPLICANT/D. HOLDER

VERSUS

EAST AFRICAN DEVELOPMENT

BANK ----- RESPONDENT/J. DEBTOR

ATTORNEY GENERAL ----- INTERESTED PARTY

Date of last: 23/02/2023

Date of Ruling: 05/05/2023

R U L I N G

MGONYA, J.

The Applicant before this Court filed an application where in cause of its commencement both the Respondents raised preliminary objections against the Application. Beginning with the points of objection raised by the 2nd Respondent, were to the effect that:

- 1. The award dated 03/08/2005 and registered 29/09/2005 (Decree) which is sought to be***

executed by this Honourable Court is hopelessly time barred;

2. The Applicant is barred in law for want of enabling provision of the law under which the Court derives its powers to grant what is asked for;

3. The Application is untenable for being sought against a stranger to the case.

Likewise, the 1st Respondent also raised objections to wit:

4. This Honourable Court lacks jurisdiction to hear or determine this Application because the Respondent enjoys immunity from every form legal process and immunity from execution through judicial action pursuant to article 44 and 45 of the East African Development Bank Act (Act No. 7 of 1984) Cap. 231 as amended by the Finance Act 2005 (No. 13); and

5. That the reliefs sought by the Applicant are res judicata having been decided by the Court of Appeal of Tanzania in Civil Appeal No. 110 of 2009 arising from Misc. Civil Cause No. 135 of 2020 between the same parties.

In respect of the said objections the same were heard by way of written submissions, whereas each party filed submissions in accordance to the scheduling order. I have

carefully gone through the submissions of each party and the efforts of the Counsel for both parties are appreciated.

However, it should be known to the parties that I have no intentions in reproducing the submission but each party be assured reference will be captured from the submissions in determination of the objection in as far as relevance is concerned.

First, to begin with the first objection that, ***the award dated 03/08/2005 and registered 29/09/2005 (Decree) which is sought to be executed by this Honourable Court is hopelessly time barred***, the Interested party who is the Solicitor General has objected this application in the manner that the same is time barred, being that twelve years have lapsed as from when the Arbitral award was granted to when the Applicant seeks to execute the award. That, the law is clear on execution that the same cannot be exercised after the lapse of twelve years. In reply the Applicant stated that the 1st Respondent being a party that has just joined in this application as an interested party is not updated in the events of this case. Further that the execution sought by this application arose in 2009 after the last payment that was made by the 1st Respondent. However, this same matter was also in the Court of Appeal whereas the matter was finalised in 2011 and this application was filed in 2020. That,

both periods of time stated herein did not amount to twelve years hence making this application being within time.

I am of the firm view that it is settled and established in law that execution of a decree is enforceable until when the period of twelve years has lapsed. The Law under **section 27 (3) of the Law of Limitation Act Cap. 89 [R. E. 2019]** has stated that: -

"(3) Where a right of action has accrued to recover a debt or other pecuniary claim, or to recover any other movable property whatsoever, or to recover any sum of money or other property under a decree or order of a court and the person liable or accountable therefor acknowledges the claim or makes any payment in respect of it, the right of action in respect of such debt, pecuniary claim or movable property, or as the case may be, the right of action in respect of an application for the execution of the decree or the enforcement of the order, The Law of Limitation Act [CAP. 89 R.E. 2019] 22 shall be deemed to have accrued on and not before the date of the acknowledgement or, as the case may be, the date of the last payment."

From the provision above and the submission of the Applicant that the matter has accrued from the time of last payment which was in 2009 unlike the time it was registered as claimed by the Interested Party; and considering the matter to have been filed in this Court in 2020, the period lapsed by the time the matter was being filed was **eleven years** making this application to be **within time. It is therefore from the above that this Court find the first ground of objection unwarranted and hence overruled.**

The **second objection** as raised by the Interested Party and fourth objection herein as raised by the 2nd Respondent will be determined jointly since they are similar in accordance to their submissions, thus ***the Applicant is barred in law for want of enabling provision of the law under which the Court derives its powers to grant what is asked for, and This Honourable Court lacks jurisdiction to hear or determine this Application because the Respondent enjoys immunity from every form legal process and immunity from execution through judicial action pursuant to article 44 and 45 of the East African Development Bank Act (Act No. 7 of 1984) Cap. 231 as amended by the Finance Act 2005 (No. 13).***

The Interested Party submitting on this objection averred that, they are challenging the jurisdiction of this Court for lack of proper provision to move the Court in relation to what is sought in the application. The cited provisions being **Order XXI Rule 35 and 36 and Order XLIII Rule 2 and section 68 (a) and 95 of the Civil Procedure Code Cap. 33 [R. E. 2019] (herein after referred to CPC)** do not empowers this Court for lifting the corporate veil of the 1st Respondent since the same has immunity.

It was the Interested Party's submission that the order sought against the 1st Respondent cannot be granted since the latter enjoys absolute Immunity from any Judicial proceedings. This immunity is entailed in, **The Charter for the Establishment of the Respondent under Article 44 of the Charter.**

The 1st Respondent also submitted in line with the interested party by also emphasizing that, the 1st Respondent has immunity from all legal proceedings hence this Court has no competent jurisdiction to entertain the application in that circumstance.

The Applicant argued this objection by stating that, they are of the firm opinion that the Court has jurisdiction to execute this application. The Courts are directed to decide matters on

substantial justice without being overwhelmed by procedural technicalities due to the establishment of the overriding objectives, as this principle has long been in the **Constitution of the United Republic of 1977 as amended from time to time, under Article 107(A)**, before being adopted in amendments of the CPC. It was further submitted that, what matters is if the jurisdiction exists, the Court will insert the relevant provision and proceed to determine the matter before it. That they have shown above that jurisdiction exists since there is a lacuna in the Charter establishing the East African Development on execution in circumstances like this one.

I have gone through the provision of the law cited and join hands with the Respondents that none of the said provision used to move the Court has specifically stated that they include lifting the Corporate veil. I find it of essence to first remind myself that the application before the Court is on **execution** by subjecting the Director of the 1st Respondent to civil prisoner. The enabling provisions on the chamber summons with regards to the prayer made, I agree have properly being cited and from the submissions the 2nd Respondent who is the interested party is not in dispute with that part for the said provisions cater for execution and the means of execution preferred by the Applicant.

On the other hand the 1st Respondent and the interested party have both Stated the 1st Respondent has immunity on judicial proceedings and both have sought reference from **Article 44 of the Charter for Establishment of East African Development Bank.**

Having gone through the **Charter**, I have decided to quote the relevant part for ease of reference as herein below:

“Article 44 – Judicial Proceedings

1. The Bank shall enjoy immunity from every form of legal process except in cases arising out of the exercise of its borrowing powers, in which cases it may be sued only in a court of competent jurisdiction in a Member State in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.”

From the provision above, the 1st Respondent and the Interested Party on their submission in respect of the 1st Respondent having immunity stated that, the Article is clear that 1st Respondent shall enjoy immunity from all forms of legal process except in exercising its borrowing powers. In the circumstance of the application, the records reveal the execution

is sought from an act of the 1st Respondent exercising its **lending powers** to the Applicant.

It is from the Charter under **Article 44** that lending powers when interpreted falls within the purview of which immunity is vested to the 1st Respondent. It is in this respect that the Respondents find this Court lacks jurisdiction. Immunity is a well known concept to mean protection or exemption from something, especially an obligation or penalty. In Law, it the official grant of exemption from legal proceedings or liability. The East African Development Bank is stated to have immunity which has been granted to it by its constitutive Instrument.

In consideration of the transaction that was made between the 1st Respondent and the Applicant from the record reveal that the 1st Respondent had exercised it lending powers. In as far as the 1st Respondent exercises its lending powers the same is subjected to immunity since such powers are not borrowing powers of which the 1st Respondent lacks immunity for an exception has been provided for to that respect.

Regarding this application, I have taken effort to go through the case of ***EAST AFRICAN DEVELOPMENT BANK VS BLUELINE ENTERPRISES LIMITED, (Civil Appeal No. 110 of 2009) [2011] TZCA 52 (28th December, 2011)*** Court of Appeal held that: -

"For the foregoing reasons we have no lurking presentiment in holding that via Article 44 of the schedule to the Act, the EADB, has been granted absolute immunity from all forms of legal process in all cases arising out of the exercise of its lending powers. Equally, all its properties and assets and business premises enjoy absolute immunity under Article 45 except when exercising its borrowing powers. A contrary construction, in our respectful view, would necessarily lead to a blatant breach of the terms of the Charter and the Treaty establishing the East African Community. Such an eventuality will not augur well for the country in its relationship with the Partner States and the international community.

Having held that the immunity claimed by the appellant in these legal proceedings was not

based on the traditional doctrine of sovereign immunity, as mistakenly held by counsel for the respondent, we hold without any demur that the TRENDTEX case has no relevance to this appeal. While not doubting its soundness, we are of the firm view that it does not detract from the fact that the immunity from legal process granted to the appellant in the exercise of its lending powers is unfettered and absolute. The High Court, therefore, wrongly entertained the execution proceedings after the appellant had unequivocally pleaded immunity.”

Moreover, in the urge of determining the circumstance of this case I had to go through the ***Diplomatic and Consular Immunities and Privileges Act Cap. 356 [R. E. 2002], under the Third Schedule item 6*** where the 1st Respondent has been mentioned to be one of the Organizations that have immunity. The Case of ***BOARD OF DIRECTORS, CENTRE FOR FOREIGN RELATIONS AND SHARIFF ASHAM TARIMO, REVISION NO. 296 OF 2022***, My Learned Sister, Hon, S. M. Maghimbi also stipulated on matter of immunity being pleaded, the Court becomes hands tied for that purpose.

Having grasped from the above of what was once decided in this case by the Court of Appeal on immunity of the East African Development Bank being the 1st Respondent herein. I find the Court of Appeal being the Apex Court in our jurisdiction has already deeply pondered on the matter of **Article 44** of the Charter in respect of the immunity granted to the 1st Respondent whereas lending powers fall in ambit of the immunity. Having said all this my hands are tied. **This objection raised by the Respondents is hereby sustained.**

In the event therefore, the instant Application before this Court from the above is hereby dismissed, hence determination of the other grounds of objection demise at this juncture.

I make no order as to costs.

It is so ordered.



L. E. MGONYA

JUDGE

05/05/2023

