

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 29 OF 2006

NECO DATA LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

TANZANIA REVENUE AUTHORITY....1ST DEFENDANT/RESPONDENT

NICO (ZAMBIA) LTD.....2ND DEFENDANT/APPLICANT

ALFRED ADAM LYIMO.....3RD DEFENDANT/RESPONDENT

NECO ZAMBIA LTD.....4TH DEFENDANT/RESPONDENT

Counsel: Dr. Ringo for the Applicant and 4th Respondent

Mr. Primi for 1st Respondent

Mrs. Msuya for the Plaintiff/Respondent

Mr. Lugua for 3rd Respondent

R U L I N G

Dr. BWANA, J

1. As the parties to the main suit were waiting for a Ruling on 10 October 2006, Dr. Ringia filed another application, under certificate of urgency requesting this Court to:

***“grant an interim injunction restraining the Respondent/Plaintiff and its agents, appointees and/or employees and any third parties acting on its instructions or orders from denying entrance, blocking, prohibiting, restraining, threatening, harassing, evicting or interfering in any other manner and/or engaging in any other similar acts which seek or have the effect of frustrating, hindering and constraining the applicant and its agents, employees and authorized persons from accessing any premises, machinery, technology or documents thereby halting or constraining the effective implementation of all acts and obligations required of the Applicant in the execution of the lump sum, Remuneration Contract entered into with the Tanzania Revenue Authority (TRA) on 30th May 2005, until the hearing and final determination of the main suit before this court.*”**

2. The reasons for this urgent application are well elaborated in the accompanying affidavit of Dr. Ringo in support of the application, parts of that affidavit give a clear picture of what is at stake. For purposes of clarity, I reproduce it en extenso:-

1. That I am an advocate of the High Court of Tanzania and all courts subordinate thereto except for the Primary Courts as well as a grantee of Powers of Attorney granted by NECOR (Zambia) Limited, the 2nd Respondent herein with full powers to sign all pleadings and legal documents and enter appearance into court on its behalf and charged with the conduct of this case and therefore, I am in a position to depone matters herein understated.

2. THAT I am in possession of and have read the contents of a Lump Sum Remuneration Agreement ("the Agreement" entered into by NECOR (Zambia) Limited with the Tanzania Revenue Authority (TRA) executed on the 30TH May 2005.
3. THAT the Agreement places obligations on the Applicant to execute the contract works within stipulated periods and timelines. The Applicant will crave leave of the court to refer to these obligations as provided under clauses 2 and 3 of the Agreement.
4. THAT I am informed by Mr. Friday Mwamba and Mr. Evans Chissenga both employees of the 2nd Defendant that:
 - a. the agents, employees and authorized persons of the Applicant have been denied entrance, blocked, prohibited, restrained, threatened, harassed, evicted and interfered with by the agents, employees and authorized persons of the Respondent/Plaintiff;
 - b. the Respondent has even gone to the extent of threatening the said agents, employees and authorized persons of the Applicant with eviction from Tanzania and that they can influence the government to declare them prohibited immigrants (PI);
 - c. aggressive and unacceptable behaviour by one of the directors of the Respondent/Plaintiff, namely, Mary Anita Ngowi, and the evasive acts of the another director, namely, Ambassador Abubakar Rajab as well as the unaccountable character of another director, namely,

Adam Lyimo has made the Applicant question the intentions of such characters;

- d. given the foregoing, the Applicant has a genuine apprehension as to whether it can perform its obligations under the Agreement without the protection of the court.
 5. THAT under the Agreement should the Applicant fail to implement its obligations, the Tanzania Revenue Authority can terminate the Agreement and call upon the bond filed with it thus causing pecuniary and loss of income as well as loss of reputation on the Applicant.
 6. THAT unless a temporary injunction as prayed in the chamber summons is issued, the Applicant will suffer irreparable loss and damages.
 7. THAT this affidavit is deposed in support of the prayers made in the chamber summons.
3. All the parties hereto presented written submissions in support of their respective positions. It should, however, be noted at the outset that the third Respondent supports the application. That leaves only the plaintiff who controverts. The first Respondent opted not to file its submission in respect of this application.
4. I must admit that Dr. Ringo has given a well researched and argued submission. Summary of the facts leading to this application may well be restated here, as presented by Dr. Ringo.

" Summary of Pertinent Facts

1. On 20th January 2005 the Applicant and Respondents entered into a Joint Venture Agreement (JVA) to bid for a DTI project tendered

by the Tanzania Revenue Authority (TRA) whereby the project was to be effected by NECOR ZAMBIA;

2. The JVA required that the parties form a joint venture vehicle to implement the project. It was agreed that the Respondent would be the joint venture vehicle after: (i) the Respondent transferring 50% of its shares to the Applicant; (ii) a proper management and accounting structure was placed; (iii) a joint board of directors be formed; (iv) a deed of assignment of the Agreement be issued by the Applicant in favour of the Respondent.
3. On 30th May 2005 the Applicant entered into a Lump Sum Remuneration Agreement (Agreement) with the TRA.
4. The Agreement required that the applicant forms an independent subsidiary in Tanzania who would be responsible for the project and technical assistance procurement of licenses and permits supported by the Applicant;
5. The Applicant procured the services of professional accountants, Grant Thornton, to process the formation and incorporation of an independent subsidiary in Tanzania.
6. Prior to the formation and incorporation of an independent subsidiary in Tanzania and conducting business and pursuant to the Agreement the Applicant developed the site by providing technical assistance, training of personnel and supply of technology equipment for the project out of its own funds.
7. The Respondent obtained benefit of the services of the Applicant in the provisions of technical skills and technology to its personnel who attended training both in Zambia and Tanzania.

8. The Respondent after part of the project was implemented got rapaciously greedy and started acting contrary to the JVA because as the competence levels of the Respondent's personnel grew so did their exhibit of a rapacious greed and lack of professionalism which led to (i) sidelining of the Applicant's personnel; (ii) giving wrong information on roll out program; (iii) attempts to hood-wing the TRA that the Respondents could execute the project without the Applicant; (iv) avoidance of meeting with senior management of the Applicant by the Respondent's directors especially Mr. Alfred Adams Lyimo, the then acting general manager of the Respondent; (v) failure to set up proper corporate governance systems. (vi) wrongful invoicing TRA and payment for services rendered.
9. The Applicant informed the TRA of the wrongful payments made to the Respondent who have looted all of it by paying themselves handsomely and the TRA stopped honouring such invoices. However, the Respondents have yet to account to Applicants for monies that had and received from the TRA.
10. The Applicant recognizing the JVA invoiced the TRA and obtained payment of TZS of TZS300,000,000/- and after deductions gave 50% of that sum to Respondent as its 50% share. That money disappeared in less than one month and no account has been provided to the Applicant as a partner.
11. The Respondent current shareholders in their wolverine and rapacious attempt to access finance not due to them and in an act not uncommon to species termed hyenas embroiled themselves in a public spectacle and sacked each other.

12. Further, in utter contempt of civility the Respondent has: (i) refused access to the personnel of the Applicant; (ii) filed a suit paying for money not due to it from the TRA; (iii) sabotaging the implementation of the project which is of both national and regional strategic interests to Tanzania by refusing access to the personnel of the Applicant; (iv) abusing the court to obtain personal gain and contrary to contracts it has entered into.

5. The foregoing so called “summary” of facts leads to Dr. Ringo’s views that this is a fit case for granting the injunctive orders sought. He bases his arguments on the well settled principles in the much celebrated case of Atilio vs Mbowe (1969) HCD 284. He is right. After thoroughly considering the issue at hand, it is my view that in deed there is a prima facie case being shown. Whether it stands probable chances of success, that I leave to the trial judge to determine. What is evident, however, is that if the orders sought are not granted then the Applicant stands to suffer an irreparable injury which cannot be adequately compensated by an award of financial damages. If the issue is not addressed and resolved by way of the orders sought, the Applicant stands greater hardship when compared to that to be experienced by the Respondents. These views are eloquently supported by Mr. Lugua when he states the following in his submission:-

“...the law will never bar the contractor from having access to the work he has been contracted to execute. It is therefore our humble submission that the law, does not allow such lockout hence this court should honour this application for injunctive orders for restraining the Plaintiff/respondent from barring the principle officers of NECO ZAMBIA access to the project in issue...the two (sic) dees not follow the law and I am convinced if the means allow, they can cause the said NECO ZAMBIA LIMITED

to be whisked out of the project. But we are convinced that this being the court of law, will cause the law to reign and restore the order by ordering the said two officers of NECO DATA not to halt the officials of NECO ZAMBIA Ltd to enter and work in the project (sic) their installed...."

6. I have considered Mrs. Msuya's well presented arguments. But taken in their totality and given the early stage this case is still at, I am of the view that indeed any move to refrain the Applicant from having access to the premises/office, machinery, technology and other material facilities will not only harm the Applicant but it will also have far reaching consequences to the results of the main suit and justice at large.
7. Therefore all the above considered, the injunctive orders sought as restated in para (1) above are granted. Each party to bear its costs of this application. It is accordingly ordered.

Dr. S. J. Bwana

JUDGE

28/8/2006

1,777 words