

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

COMMERCIAL CASE NO. 17 OF 2007

ADEPT IMPEX LIMITED.....APPLICANT

VERSUS

1. NATURAL WOOD (T) LIMITED.....1ST DEFENDANT

2. FRANK ROGER NINDIE.....2ND DEFENDANT

3. FARAJI SALUM JUMA.....3RD DEFENDANT

R U L I N G

Date of Last Order: 11th May, 2009

Date of Ruling: 22nd May, 2009

Werema, J

The Defendants had under O. XXV R. 1 of the Civil Procedure Act [CAP 33 R.E. 2002] applied for security of costs from the Plaintiff on the ground that the majority of shareholders of the Plaintiff's Company are foreign based and the Company does not have substantial properties within the jurisdiction to be relied upon as security for the suit. The application was granted with costs by Oriyo, J (as she then was) on the premises that refusing to grant the application will defeat the object of Order XXV r. 1 (1) of the

Civil Procedure Act. According to the Court, the refusal to grant such order will amount to denying the applicants the legal protection they need in the event of their success in the suit because of the anticipated difficulties in realizing their costs from the Plaintiff.

The Court ordered the Plaintiff's Company, who were the Respondent in the application, to deposit a total sum of Shillings 10,000,000/= (Ten Million) being security for costs. That deposit was to be made within 21 days from 17th February 2009 when the order was made.

The Court was prepared to vacate the order if the Respondent produced evidence to show that it was not entitled to pay security of costs. The Respondent was required to submit such evidence on its registered office, documentary evidence of title on immovable properties in Tanzania within 14 days; and Annual Returns which are current. The Plaintiff has now invoked the provisions of Order XXV. rule 1 (1) of the Civil Procedure Act, [CAP 33 R.E. 2002], by way of Chamber Summons supported by an Affidavit of Joseph Sylivester Ndazi, an Advocate, by filing an application praying that the Court be pleased to set aside the order of the Court (Oriyo, J as she then was), dated 17 February 2009, ordering a deposit of security for costs. The

basis for this is stated in paragraph 3 of the Affidavit to be that:-

"The Plaintiff has effected statutory compliance with respect to its company by updating its annual returns, and has secured a verification of its registered office premises and property from the local authorities."

The 3rd Defendant who is a Director of the 1st Defendant Company filed a Counter Affidavit disputing the prayer made in paragraph 3 of the main affidavit. It is asserted that the location of the Plaintiff's office and annual returns purported to be updated are all questionable. Reliance is pegged to a letter attached to the Counter Affidavit by FARAJI SALUM. That letter was written by the Ward Executive Officer of Kisutu Ward, within the Municipality of Ilala District of the Metropolitan City of Dar es Salaam. The letter informs that the plaintiff had requested for a letter of identification from the Ward Executive Officer (WEO) and was granted a letter of identification on 2nd March 2009 through a letter with Reference No. IMC/KST/08/157. The attached letter informs that the letter was withdrawn by the Local Authority. It has denied to have known the applicant's Company.

I have studiously read the Ruling of the Court which contains an order for the Plaintiff to deposit security of costs. While it may be true that the Plaintiff's Company is a local resident in terms of the law, it is an undisputed fact that the majority shareholders are not. The discretion exercised by the Court to ask for concrete evidence on the registered office and on immovable properties were meant to alleviate fears that the Plaintiff's Company did not possess of sufficient immovable properties within this jurisdiction. It does not seem to me that this has been alleviated by what has been filed.

It is not the intention of this Court to review the decision of Oriyo, J. (as she then was). The purpose of the application, as I understand it, is to set aside that order. In doing so, the court must be satisfied that the applicant has succeeded in showing that the Defendants will not be prejudiced, in case a case against them is dismissed, as to their costs of the suit. What is on record is no concrete evidence showing that the Plaintiff's Company, whose majority shareholders are non-residents, has sufficient immovable properties within this jurisdiction. I think, I need to say, that if the corporate veil is pierced, the Company is nothing but a compendium of **Prened Holding Inc of Ontario**, Canada which has 234 shares; and **Milkins**

Holdings Ltd of British Virgin Island, an offshore jurisdiction, which has 234 shares. It cannot be ruled out at this stage, that a need for piercing the Corporate veil will not arise. The Local resident directors have only two shares, which holding is insignificant. This is a sufficient ground to refuse the application. That notwithstanding, even the Annual Returns of the Company are not credible. They have not been authenticated by the Business Registrations and Licensing Agency (BRELA). It will be dangerous and blind justice to grant this application on such smoky grounds. The application to set aside the order for Deposit of security for costs made on 17th February 2007, is refused. The Respondent shall have his costs of the application.

Order accordingly.

F.M. Werema

JUDGE

This ruling is read on 22nd May, 2009 in the presence of Mr. Majembe, Advocate and Mr. Martin, Advocate for the plaintiff and defence respectively. Joyce Grison, present.

F.M. Werema

JUDGE

955 words

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I Certify that this is a true and correct
of the original order Judgement Ruling
Sign _____
Registrar Commercial Court Dsm.
Date 25/05/09