

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

Original  
3

**MISC. COMMERCIAL APPLICATION NO. 128 OF 2018**

(Originated from Commercial Case No. 25 of 2018)

**BETWEEN**

BYTRADE TANZANIA LIMITED ----- 1<sup>ST</sup> APPLICANT  
HARISH J. DHUTIA ----- 2<sup>ND</sup> APPLICANT

**VERSUS**

BASF SOUTH AFRICA (PROPRIETARY) LIMITED----- RESPONDENT

**RULING ON EX-PARTE APPLICATION.**

**SONGORO, J**

By Trade Tanzania Ltd and Harish J Dhutia the 1<sup>st</sup> and 2<sup>nd</sup> Applicants are defendants in Commercial Case No, 25 of 2018 which was filed BASF South Africa (Proprietary ) Ltd, the Respondent who their place of business is 852-16<sup>th</sup> Midrand, Gauteng Province South Africa.

In response to the filed suit the 1<sup>st</sup> and 2<sup>nd</sup> Applicants also filed a counter- claim and also application for security for cost.

Thus when the court and applicants were waiting for respondent`s response on counter claim and an application for security for costs, Mr. Brian Mambosho who appeared for Respondent and Plaintiff on 3/5/2017 informed the court that he is unable to respond to the counter claim and application for security for costs because has experience problem and difficulties in communicating with the Directors and officials of BASF South Africa who are residing at Gauteng Province, South Africa.

In view of the above, Mr. Ringia Advocate, Learned Advocate of the applicants/defendants made an Ex-Parte application relying under Rule 2(2), Rule 4 of the High Court (Commercial Division) Procedure Rules, 2012, Sections 25 and 95, Order V Rule 29 (c) and order XLIII, Rule 2 of the Civil Procedure Code, Cap 33 [R.E 2002] praying for essentially two orders.

One, that the court be pleased to issue an Order to service a court summon via the High Court of Gauteng, South Africa to the respondent, on the counter claim, and on application for security for costs.

Also, the applicant prayed that the court makes an Order that pleadings of counter claim and application which were served to Clyde and Co Tanzania, be returned to applicant so that they may be served to the respondent company physically in South Africa.

The court has considered the details of ex-parte application filed by Applicants plus the fact that respondents company is residing in South Africa, and Mr. Mambosho statement before this court that, he may not respond to the "counter claim" and application to deposit security for costs because he has no instructions and find the interest of justice will be better served if the court issue and grant prayer, pleaded in the application. In view of the above the court hereby makes the following orders.

1. That pursuant to Rule 29 (c) of Order V of the Civil Procedure Code Cap 33 [R.E 2002] I hereby make an Order that BASF South Africa (Proprietary Limited who are plaintiff in Commercial Case No., 25 of 2018 be served with the counter claim of Commercial Case No. 25 of 2018 and copies of Misc. Commercial Application No. 128 of 2018 and Misc. Commercial Application No. 52 of 2018, and Court Summon through High Court of Gauteng, Republic of South Africa. The order takes into account that the Respondent have provides their physical address as 852 16<sup>th</sup> Road, Midrand, Gauteng Province South Africa.
2. Secondly, the court Orders Clyde & Co Tanzania who were served with counter claim and copies of applications which Mr. Brian Mambosho claims has failed to respond to surrender them to the deputy Registrar Commercial Court so that they may be properly served to respondent. The surrendering of the said pleadings to be done within 12 days from today and the service of the pleadings to respondent in south Africa to be done within 30 days.

The costs of serving documents in South Africa shall be borne by Applicants. Currently I make no order as to costs.

Dated and Delivered at Dar es Salaam this 20<sup>th</sup> day of June, 2018.



  
H.T.SONGORO  
JUDGE

**The Ruling on Ex-Parte application was delivered in the presence of Mr. Ringia and Ms Involata Wangoma, Learned Advocates of applicant and absence of Respondent and his counsel**