

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM.

MISC. COMMERCIAL APPLICATION NO. 19 OF 2019

(Coming from Commercial Case No. 27 of 2019)

APEX COMMODITIES LTD ----- APPLICANT

VERSUS

KILOMBERO PLANTATIONS LTD -----RESPONDENT

RULING

B.K. PHILLIP, J

Before me is an application for an injunctive order, made under the provisions of rule 2(2) of the High Court (Commercial Division) procedure rule 2012, Order XXXVII Rule (1) (a) and (4), Section 68 (e) and Section 96 of the Civil Procedure Code, Cap 33. R.E. 2002. In this application the applicant prays for the following specific injunctive order

EXPARTE ORDER

- a. To avoid unnecessary delay and untold suffrage this Honourable Court be pleased to dispense with issuance of notice to the

Respondent and proceed to hear and determine this application ex parte.

- b. That this honourable court to issue interim order to restrain the Respondent whether acting by its directors, officers, servant or agent or any of them or otherwise howsoever from removing or interfering with 725 metric tonnes of rice from Respondent's warehouses located at farm no. 411 Mgeta Morogoro and Tazara Goodshed-Nyerere Road, Dar es Salaam or any other place where the respondent has storage facility of the rice pending determination of this application inter-parties.

INTERPARTIES ORDER

- a. That this honourable court to issue interim order to restrain the respondent whether acting by its directors, officers, servant or agent or any of them or otherwise howsoever from removing or interfering with 725 metric tonnes of rice from respondent warehouses located at farm no. 411 Mgeta Morogoro and Tazara Goodshed Nyerere Road, Dar es Salaam or any other place where the respondent has storage facility of the rice pending determination of the suit.
- b. That costs to be in the due cause.
- c. Any other relief(s) this honourable court may deem fit and just to grant.

The application is supported by an affidavit sworn by Saif Champeli and a counter affidavit sworn by Graham Anderson has been filed in court in response to the application.

At the hearing of this application the Learned Advocate Zephania Msuya and Francois Kwelukilwa appeared for the applicant and respondent respectively.

The back ground to this matter is well stated in the affidavit in support of this application, that is, there is a pending Commercial Case No. 27 of 2019 that has been lodged by the applicant herein against the respondent, in which the applicant prays for orders that the respondent be compelled to hand over to the defendant a total of 725 metric tonnes of rice 5% broken, in the alternative to the above the respondent be ordered to refund the applicant total of USD 357,600/= being outstanding purchase price of undelivered tonnes of Rice plus interests.

The affidavit reveals that, there is an agreement between the applicant and respondent for purchase of rice, which was entered into by the parties in August, 2018. In execution of the said agreement the applicant paid for the purchase price for the supply of rice as agreed through the respondent's Bank account No. 20110005372 maintained at NMB Bank PLC. Also, it is stated in the affidavit that, despite payments of the purchase price as agreed, up to date the respondent has failed to supply to

the applicant the 725 metric tonnes of rice. The applicant has alleged that he requested to be supplied with the said tonnes of rice several times, but the same have not been supplied, later on it realized that the respondent is having disputes over payment of debts with a third party, that is why it failed to fulfill the terms of the agreement for supply of rice. The applicant alleged further that there is a danger of the said rice being removed or interfered with and the applicant will become a loser, as it will fail to satisfy its business plans of selling the rice to its clients in Mauritius, Kenya, Rwanda and Burundi.

In his submission the Learned Advocate Zephania Msuya started by adopting the content of the affidavit in support of the application and proceeded to submit that in this matter there are serious issues to be determined by this court in the main case, and that the court's interference is necessary. He referred me to the case of **Attitlio vrs Mbowe 1969 HCD, 256**. Mr. Msuya submitted further that, the counter affidavit filed in court by the respondent reveals that the respondent is not contesting this application and is conceding on the alleged payments of the purchase price.

On the other side, in his submission the learned Advocate Kwelukikwa, was very brief, basically he conceded to the prayers made in the application and informed this court that, the respondent is very willing to deliver the stocks of rice to the applicant, only that the National Microfinance Bank ('NMB') has ceased all the stocks of rice which were to be supplied to the applicant due to some financial disputes between the Bank and the

applicant. Mr. Kwelukilwa told this court that the respondent is solving the dispute with NMB and soon will be able to deliver the claimed 725 metric tonnes of rice to the respondent. He also prayed to be allowed to transfer the stocks of rice in Mgeta, Morogoro to Dar es Salaam so that they can be treated with the required insecticides for protection purposes. In his rejoinder Mr. Msuya did not object to the prayer for transferring the stock of rice in Mgeta, Morogoro to Dar es Salaam stores as prayed.

Having analyzed the submission of the learned advocates appearing herein and read the pleadings, I am of a settled view that this application has merits. It has met the prerequisite conditions for granting injunctive orders sought. I have noted that, in the main case there are issues to be determined pertaining to the execution of the contract, but also the interference of this court is necessary to protect the applicant from the losses which are evident will fall unto its business as failure to get the stocks of rice will definitely have negative impact in its business and goodwill to clients in general. Also, looking at the facts of this matter, the applicant will suffer more hardship if the order prayed in this application will not be granted. On top of that the respondent is not resisting the application. As regards the prayer to transfer the stocks of rice located at Mgeta, Morogoro to Dar es Salaam for the purpose of treating them with the insecticides, since the same is not resisted by the respondent's advocate and it appears is for protection of the goods (rice), I think it is prudent to allow it as I hereby do.

In the upshot this application is granted. The respondent is restrained whether acting by its directors, officers servant or agent or any of them or otherwise howsoever from removing or interfering with 725 metric tonnes of rice kept in the respondent's warehouses located at farm No. 411 Mgeta Morogoro and Tazara goodshed – Dar es Salaam Nyerere Road Dar es Salaam or any other place where the respondent has storage facility of rice pending determination of the Commercial Case No. 27 of 2019, save for the leave I hereby grant that the stocks of rice stored at the respondent's warehouses located at Mgeta Morogoro, are allowed to be transferred to the respondent's warehouse located in Dar es Salaam, Tazara goodshed for storage and treatment of the same with proper insecticides.

No order as to costs. It is so ordered.

Dated at Dar es Salaam this 5th day of April, 2019.



B.K. PHILLIP

JUDGE