

IN THE HIGH COURT OF TANZANIA

COMMERCIAL DIVISION

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 114 OF 2020

YARA TANZANIA LIMITED.....APPLICANT

Versus

DB. SHAPRIYA & CO. LTD.....RESPONDENT

Last Order: 01st Sep, 2020

Date of Ruling: 22nd Oct, 2020

RULING

FIKIRINI, J.

This application under certificate of urgency has been preferred under Section 38 (1) and 95 of the Civil Procedure Code, Cap. 33 R. E. 2019 (the CPC), section 2 (1) and 2 (3) of the Judicature and Application of Laws Act, Cap 358 R.E. 2019 (the JALA), Rules 2 (2) of the High Court (Commercial Division) Procedure Rules, 2012 (the Rules) and any other enabling provisions of the law.

The gist of the application which in both *ex parte* and inter-parties, as supported by an affidavit and reply to the counter-affidavit of William Olotu, the applicant's Principal Officer is for the lifting of the Garnishee Order Nisi issued by this Honourable Court on 3rd July, 2020 in respect of the applicant's bank account numbers 22307300018 and 22301300026 of National Microfinance Bank Plc and bank account number 18010763 of ABSA Bank of Tanzania Ltd. The respondent

filed counter affidavit contesting the application and arguing that the payment of Usd. 489,196.00 was deserved by the respondent.

At the hearing Mr. Robert Reuben appeared for the applicant while Mr. Roman Masumbuko appeared for the respondent, both learned counsel. In their oral submissions both counsels essentially do not dispute the payment deserved by the respondent. However, their point of departure is on what interest amount should be paid. According to Mr. Reuben paragraph 4 of the Default Decree issued two types of interest: one, interest at the rate of 3% per annum from the date of filing the suit to the date of judgment, and two, interest at 1% from the date of judgment to the date of full payment. This is completely different from what and how Mr. Masumbuko interpreted the decree. In his view the second part of interest which was at 4% was from the date of the judgment to the date of final payment. The 4% of his was gathered from 3% and further 1% as interpreted by him added up to 4%. The basis of his argument is, the word “further” used meant in addition to what already existed, meaning 3% plus 1% which would total to 4% and start computing from there. Mr. Masumbuko furnished the Court with three (3) different scenarios of computing the interest subject of this application.

A Court decree is an important document since its upon it the decree holder gets to enjoy the fruits of the decision in her favour. However, this can only proceed swiftly if there are no errors or omissions in the decree to be satisfied. That is not

any interest charged after the date of judgment and decree was penalty interest, whilst is not totally overruled, but that does not mean the two interest amounts need be added and computed together covering the whole time. The computation of interest as pointed out above, that first limb covered the time from filing of the suit till judgment and the second limb, from judgment and decree up to final payment. The resultant amount in most cases should reflect different figures. Furthermore, had the trial Judge, wanted the 1% interest to be added assuming Mr. Masumbuko's assertion is correct, he would have said so. The formation:

“further interest of 1% per annum from the date of judgment to the date of full payment of the decretal sum.”

This paragraph is self-explanatory that it covers period after judgment date till full payment. Combining the two to get 4% means the computation period would be one which is from the date of filing the suit till payment in full, I am confident is not what the order meant.

In view of the above, I object to Mr. Masumbuko's interpretation and desired manner of computation. I thus pursuant to section 38 (1) of the CPC, proceed to grant the application by lifting the Garnishee Order *Nisi*, issued dated 3rd July, 2020 in respect of the applicant's bank account numbers 22307300018 and 22301300026 at the National Microfinance Bank Plc as well as bank account

the case presently as the amount reflected in the decree of the Court differed with the one in the Garnishee Order *Nisi*. I have carefully read the decree ensuing from the Default Judgment, in which the Court has clearly stated what should occur thereafter which for ease of reference the item 4 of the decree is reproduced below that;

“The defendant shall pay interest at 3% per annum from the date of filing the suit to the date of judgment and further interest of 1% per annum from the date of judgment to the date of full payment of the decretal sum.”

While I agree Mr. Masumbuko’s interpretation that the word “further” to mean in addition to what already exists or has already taken place, but my close reading of the order gave me a different interpretation. My interpretation is the same as that of Mr. Reuben, that those are two distinct orders. The first part concentrated on interest covering the period from filing of the suit up to when judgment and decree were pronounced. That is the interest charged at 3%. The second part covered the time from the date of judgment and decree up to the full payment of the time the Court decree in favour of the decree holder is satisfied. This is the portion where the 1% interest comes in. The further did not in my view mean the initial 3% plus the 1%. Actually had the Judge wanted it to be like that he would have directly stated 4% without breaking it into two piece. Mr. Masumbuko’s submission that

number 18010763 at ABSA bank Tanzania. This order has to be followed if desired by an amended application for execution which its interest computation should be 3% from the date of filing the suit till judgment and decree and 1% from the date of judgment and decree till full payment. It is so ordered.



P. S. FIKIRINI

JUDGE

22nd October, 2020