IN THE HIGH COURT OF TANZANIA

COMMERCIAL DIVISION

AT MWANZA

MISCELLANEOUS COMMERCIAL APPLICATION NO. 4 OF 2021

(Arising from Commercial Case No. 04/2019 of the High Court of Tanzania Commercial Division)

NYARUGUSU MINE COMPANY LIMITED ..... APPLICANT

Versus

OXLEY LIMITED ..... 1st RESPONDENT

FERRANT PROCESSING LIMITED ....,. 2nd RESPONDENT

SILAS LUCAS ISANGI T/A S.L. ISANGI

AUCTION MART & COURT BROKER ..... 3rd RESPONDENT

Date of last Order: 07/12/2021

Date of Ruling: 10/12/2021

RULING

MKEHA, J

In this application, the applicant is moving the court to investigate the claim or objection with regard to the attachment order in respect of the applicant's mineral processing plant and find out that the said property is not liable to attachment. The applicant has asked the court to lift the warrant of attachment in respect of the property belonging to the applicant. The same was ordered to be attached in an endeavour to execute a decree issued in Commercial Case No. 4 of 2019. The application is made under Order XXI Rules 57 (1) and 59 of the Civil Procedure Code.

Whereas Mr. Akram and Chagula learned advocates represented the applicant, Ms. Paul learned advocate represented the 2nd respondent.

According to the submissions of Mr. Akram learned advocate for the applicant, and in terms of paragraph 5 of the applicant's affidavit, the attached property belongs to the applicant. Copies of Mineral Processing License and copies of minutes for obtaining possession of the land upon which the mineral processing plant is fixed were attached to the affidavit supporting the application. The learned advocate submitted further that, the plant is not liable to attachment in view of executing the decree in Commercial Case No. 4 of 2019 to which the applicant was not a party. Reference was also made to the applicant's supplementary affidavit which indicates at paragraphs 2 and 3 that, after execution of a Joint Venture Agreement between the 2nd respondent and the applicant, the mineral processing plant became the applicant's property on 01/04/2015. The learned advocate for the applicant went on to submit that up to when the attachment order was issued, the applicant was in actual possession of the attached mineral processing plant.

Ms. Paul learned advocate for the first respondent submitted in reply that the attached property belongs to the 2nd respondent the judgment debtor. She therefore urged the court to overrule the objection.

The only issue for determination is whether the applicant has proved to have had some interest in the attached property, when the attachment order was issued. The learned advocate for the decree holder could not dispute existence of a joint venture agreement between the applicant and the 2nd respondent which was to the effect that the plant would become the

applicant's property three months after 01/04/2015. That is not all, the learned advocate for the decree holder did not dispute the fact that, when the attachment order was issued, the applicant was in actual possession of the attached plant. Under Order XXI Rule 58 of the Civil Procedure Code, all what the objector is required to do is to adduce evidence to show that **at the date of the attachment he had some interest in, or was possessed of the property attached**. In this case, the objector has successfully discharged the said statutory duty.

Following the foregoing holding, I proceed to issue an order as I hereby do that, the warrant of attachment in respect of the mineral processing plant be lifted. I make no order as to costs. Application allowed.

Dated at MWANZA, this 10th day of December, 2021.

C.P. MKEHA

JUDGE

10/12/2021

Court: Ruling is delivered in the presence of Mr. Chagula learned advocate for the applicant, also holding brief of Ms. Paul for the 1st respondent.

C.P. MKEHA

JUDGE

10/12/2021