

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC.COMMERCIAL APPLICATION NO. 107 OF 2020

(Arising from commercial case No. 42 of 2020)

WIA COMPANY LIMITED..... APPLICANT

VERSUS

WESTCON GROUP AFRICA OPERATIONS

LIMITEDRESPONDENT

RULING OF THE COURT

K. T. R. Mteule, J

9/9/2021 & 7/12/2021

The Applicant in this application **WIA Company Limited** is praying for this Court to issue an Order that, investigation by Financial Intelligence Unit be conducted to determine fraud and forgery on the documents presented in the Winding up Petition, stay of this matter pending Financial Intelligence Unit findings in respect of fraud and forgery investigation referred to them and any other relief the court may deem fit to grant.



In the affidavit sworn by Farhiya Hersi the Applicant Principal officer in support of this application, it is alleged that between February and March 2017, the Respondent supplied certain goods and services to **WIA Group Limited** and issued invoices. That the invoices were not honored hence statutory demand notice was issued to **WIA Group Limited** to demand the outstanding dues.

According to the affidavit, in response to the demand letter, an employee of **WIA Group Limited** namely Simon Patrick who was neither an employee nor a person authorized to transact on behalf of the Applicant, wrote a commitment letter using the applicant's headed paper purporting to be the Applicant's Legal and Compliance Officer.

It is deponed further that the Statutory demand letter led to the winding up petition No. 124 of 2018 against **WIA Group Limited** and not the Applicant (**WIA Company Limited**).

The deponent denied any Applicant's acknowledgement of being indebted to the Respondent or having authorized Simon Patrick to make such acknowledgement and that the commitment letter was procured fraudulently putting the applicant's indebted to the Respondent. She denied Applicant's receipt of any goods from the Respondent.



According to the affidavit, the Compromise Decree in Commercial Case No. 124 of 2015 were fraudulently procured by Simon Patrick who had no capacity to do so.

The counter affidavit was sworn by Francis Kamuzora who is the Respondent's counsel in this matter and in **Misc. Commercial Cause No. 2020**. He swore that from the record of the Registrar of Companies, the **WIA Group Limited** and **WIA Company Limited** were at the material time owned by same directors Abdulrahman Kinana and Eric Mwenda hence whatever Simon Patrick did was authorized and supervised by the Directors of the two companies and there has never been a police report reporting the alleged fraud. Kamuzora disputed the fact that Misc. Commercial Cause was winding up proceedings against **WIA Group Limited**. In his knowledge it was winding up proceedings against **WIA Company Limited**.

Kamuzora deponed further that **WIA Group Limited** and **WIA Company Limited** though legally separate entity, they were being operated as a one and the same entity given that there were the same shareholders, the same directors, the same premises, same design of letterhead and using the same employees Simon Patrick inclusive.

The application was heard by written submissions. Mr. Eric Kamala from Aloys and Associates drew and filed the applicant's submissions while

 3

the drawer of Respondent's submissions introduced herself as Bowmans Tanzania Limited.

Mr. Kamara started his submission by recalling the previous business relationship between the Respondent and **WIA Group Limited** which led to the debt of USD 379,125.00 and the consequential demand letter to **WIA Group Limited** which was responded by Commitment letter by Simon Patrick. According to Mr. Kamara, it was on the basis of the commitment letter that the Respondent lodged the Winding Up petition in **Misc. Commercial Cause No. 124 of 2018** against the applicant in which Simon appeared without the authorization of the applicant who was not served.

Kamara stated that the Fraud was discovered on 4th April 2018 when the statutory demand was received, and on 6th February 2021 the fraud was reported to police and the Financial Intelligence Unit (RB No. OB/IR/671/2021) after her internal investigation was satisfied on there being a fraud.

Mr. Kamara challenged the allegations that **WIA Group Limited** and **WIA Company Limited** uses the same design of letterhead, same employees and same premises for not being substantiated.

Most of the submissions by Mr. Kamara continued to cement what was deponed in the affidavit trying to prove existence of fraud.

 4

In her reply submission, the Respondent challenged the competence of the application being made under Section 95 of the Civil Procedure Code seeking for an order to require the FIU to investigate the alleged fraud. This argument is premised on the ground that FIU is not a party to these proceedings and that Section 5(2) of the Anti-Money Laundering Act 2006 confers discretion to investigate a matter upon the Commissioner of the FIU.

According to the Respondent, Section 95 of the CPC has been misused to bring this application.

The applicant filed a rejoinder in which he continued to defend her position on existence of the fraud. Responding on the appropriateness of this application in this court, the applicant rejoined that Section 95 is properly used and that the order sought is not intended to encroach the powers of the Commissioner for the Financial Intelligence Unit.

Having analyzed the contents of the affidavit, counter affidavits and the submissions by the parties, one issue needs to be determined. The issue is **whether this court should order the Financial Intelligence Unit to investigate the alleged fraud.**

Primarily, every citizen is competent to report any crime to the police. It is expected that victims of crime immediately report the criminal acts to

the police for investigation. This is already done by the applicant as per her submission. It is not stated neither in the Affidavits nor in the submission as to what was the result of the report sent to the police and FIU vide RB No. OB/IR/671/2021 provided in the applicant's submission and why is that reporting not sufficient to move FIU without this Court's Order. I may agree with the respondent that this application may be a misuse of Section 95 of the CPC by seeking what is already done in a more rightful procedure. The alone is sufficient to conclude this application and I see no reason to dwell in other debated issued.

Since what the applicant is asking the court to do is already done, I find this application overtaken by event and therefore the answer to the issue at hand is in the negative. Consequently, the application is dismissed with costs.

Dated at Dar es Salaam this 7th Day of December 2021



A handwritten signature in blue ink, appearing to read "Katarina T. Revocati Mteule".

KATARINA T. REVOCATI MTEULE

JUDGE