

**IN THE HIGH COURT OF TANZANIA
COMMERCIAL DIVISION
AT MWANZA**

MISCELLANEOUS COMMERCIAL CAUSE NO. 9 OF 2021

(Arising from Commercial Case No. 4 of 2019 of the High Court of Tanzania)

(Commercial Division at Mwanza)

BORASSUS CO. LTD. APPLICANT

Versus

OXLEY LIMITED 1ST RESPONDENT

SILAS LUCAS ISIANGI T/A S.L. ISANGI

AUCTION MART & COURT BROKER 2ND RESPONDENT

Date of last Order: 07/12/2021

Date of Ruling: 07/12/2021

RULING

MKEHA, J.

Through Ms. Lucy Kiangi learned advocate, the applicant is moving the court for an order lifting attachment in respect of properties in which the applicant claim to have interest. The properties in dispute are motor vehicles with Registration Number T783 DJD make Toyota Noah, Back Hoe Loader model 570T, Excavator model CX210B and motor vehicle with Registration Number T472 DHT make FAW model JIFANG. The properties listed hereinabove are subject of an attachment order issued by this court on 11/03/2021 in view of executing the decree in Commercial Case No. 4 of 2019. The application is made under Order XXI Rules 57 (1) and (2) and 59 as well as sections 68(e) and 95 of the Civil Procedure Code. The

same is supported with an affidavit deposed by the applicant's advocate. The application is contested by the respondents through Ms. Paul learned advocate.

Ms. Lucy Kiangi learned advocate commenced her submissions by adopting contents of the affidavit supporting the application as part of her submissions. She then proceeded to submit that, the applicant has some interest in the properties subject of the attachment order. As to motor vehicle with Registration Number T783 DJD Toyota Noah and T472 DHT FAW model JIFANG, the learned advocate referred to vehicle Registration cards and Sale Agreements which indicate that, the applicant is the owner of the two vehicles. Reference was particularly made to Annexure BR1 attached to the affidavit supporting the application.

Regarding the Back Hoe Loader model 570T and Excavator model CX210B, the learned advocate's submission was to the effect that, the same had been purchased by the applicant from one Achelis Tanganyika Limited. Reference was made to Sale Agreement, Bank Transfer Forms and Warranty Manual Instructions for Customer. These documents had been annexed to the affidavit supporting the application as Annexure BR2. According to the learned advocate, absence of registration cards in the name of the applicant was because the applicant had not finished paying for the two properties when the present application was filed.

The learned advocate submitted further that, the applicant was not a party to Commercial Case No. 4 of 2019 which was between the first respondent

and the judgment debtor. In the learned advocate's view the applicant is therefore not responsible to satisfy a decree to which she is a stranger. The learned advocate invited the court to investigate the execution process to determine correctness of the same. She finally made a prayer for lifting of the warrants of attachment.

Ms. Paul learned advocate submitted in reply that the applicant had failed to prove ownership in respect of the Back Hoe Loader model 570T and Excavator model CX210B. According to the learned advocate, the documents referred to in paragraph 3 of the applicant's affidavit do not prove that, the applicant is the owner of the two properties. As to the rest of vehicles the learned advocate for the respondent was of the considered view that, the applicant had succeeded to prove that she is the owner of the properties. The learned advocate could not challenge the fact that, the applicant was not a party to a civil suit which is the genesis of the execution proceedings.

The only determinative issue is whether the applicant has adduced sufficient evidence to show that at the date of the attachment she had some interest in the properties attached belonging to the applicant who was not a party to the main case. As to motor vehicles with registration number T783 DJD make Toyota Noah and T472 DHT FAW model JIFANG, the applicant has proved not only having some interest in the properties but also being owner of the same even before issuance of the attachment order. Copies of registration cards of the two vehicles were attached to the affidavit supporting the application. The learned advocate for the

repondents was also satisfied with the said proof as per her own submissions. The learned advocate however, entertained some doubt regarding proof of ownership of the other two properties for failure of the applicant to produce registration cards.

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**. Such evidence is available in the present application. The applicant produced Sale Agreements, Warranty Manual Instructions for Customer, Warranty Certificate and Fund Transfer Forms in court. All these documents prove that, the applicant bought the other two properties from one Achelis Tanganyika Limited in 2016, well, before issuance of the attachment order. Although she had not finished paying for the two properties when this application was filed, she had some interest in the two properties as required under Order XXI Rule 58 of the Civil Procedure Code. It is therefore the holding of the court that, the applicant has sufficiently proved that, when the attachment order was issued, she had some interest in motor vehicle Registration Number T783 DJD make Toyota Noah, Back Hoe Loader model 570T, Excavator model CX210B and T472 DHT make FAW model JIFANG. She has also managed to prove that she was not a party to Commercial Case No. 4 of 2019, now subject of execution properties.

Following the foregoing holding, I hereby issue an order lifting warrants of attachment in respect of the applicant's properties named hereinabove. The application is granted with costs.

Dated at MWANZA, this 7TH day of DECEMBER, 2021.




C.P. MKEHA

JUDGE

07/12/2021

Court: Ruling is delivered in the presence of the parties' advocates this 7th day of December, 2021.




C.P. MKEHA

JUDGE

07/12/2021