

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 18 OF 2021

(Arising from Commercial Case No. 64 of 2017)

BETWEEN

ALIASGHAR HALAI (As the Legal Representative of

NILOFER RAFIK HALAIAPPLICANT

AND

EXIM BANK (T) LIMITED1st RESPONDENT

HALAIS PRO CHEMIES INDUSTRIES

LIMITED.....2nd RESPONDENT

RAFIK HALAI.....3rd RESPONDENT

ALIASGHAR HALAI.....4th RESPONDENT

ALLAN REUBEN MOLLEL T/A FIRST WORLD

INVESTMENT & DEBT COLLECTORS.....5th RESPONDENT

Date of last Order: 30th May, 2022

Date of Ruling: 17th June, 2022

RULING

MKEHA, J:

In this application, the applicant is moving the court for an order of amendment which would lead to the joining of the applicant as the legal representative of the late NILOFER RAFIK HALAI in the pending execution proceedings of a decree in Commercial Case No. 64 of 2017. The applicant is also praying for an interim order suspending any further execution processes pending hearing and determination of questions relating to execution of the decree in Commercial Case No. 64 of 2017. The application is made under Rule 24 (1), (3) (b) and 6 of the High Court (Commercial Division) Procedure Rules, sections 38 (1), 68 (e) and 95 and Order XXII Rule 5 of the Civil Procedure Code. The application is supported by an affidavit of Aliasghar Halai. On the other hand, the application is contested through counter affidavits of Ms. Witness Joseph Mhosole and that of Mr. Edmund Aaron Mwasaga.

The application was argued by way of written submissions. Whereas Mr. Mpaya Kamara learned advocate represented the applicant, Mr. Zacharia Daudi learned advocate represented the 1st respondent and Ms. Witness Mhosole learned advocate represented the 2nd and 3rd respondents. The other respondents did not contest the application.

According to the submissions by Mr. Kamara learned advocate the decree in Commercial Case No. 64 of 2017 emanates from a deed of settlement allegedly executed on 12th October 2017 leading to a consent judgment and decree dated 12th October 2017. According to Mr. Kamala learned advocate, one of the alleged signatories to the deed of settlement was one Nilofer Rafik Halai who passed away on 17th July 2016. The said Commercial Case No. 64 of 2017 was instituted on 11th May 2017. According to the learned advocate, a dead person is alleged to have negotiated and ultimately signed a deed of settlement leading to a consent decree in Commercial Case No. 64 of 2017.

From the respondent's side, there was no denial that, it is the applicant who has letters of administration. There was also no denial to the fact that, when the purported deed of settlement was signed the late NILOFER RAFIK HALAI had long passed away. The respondents could not deny the fact that the purported signing of the deed of settlement was done before appointment of the administrator of estate of the late Nilofer Rafik Halai. However, according to the respondents' advocates it is too late for the applicant to rely on death of the late Nilofer Rafik Halai in view of challenging the decree in Commercial Case No. 64 of

2017. In their views, there was no illegality in the proceedings leading to the decree sought to be executed.

The issue is whether **there exist grounds for ordering amendment of the application for execution at this later stage of a case.**

Given the fact that appointment of the applicant as the administrator is not challenged by the respondents, it is in the interests of justice that, the amendment sought be allowed so that the applicant can have an opportunity of defending interest of the late Nilofer Rafik Halai through execution proceedings.

I thus issue an order directing the decree holder in Commercial Case No. 64 of 2017 to amend the application for execution by joining the applicant as the legal representative of the late Nilofer Rafik Halai (the 4th defendant/Judgment debtor) in the pending execution proceedings relating to the aforementioned Commercial Case. The application succeeds to such extent. I make no order as to costs.

DATED at DAR ES SALAAM this 17th day of June, 2022.




C. P MKEHA

JUDGE

17/06/2022

Court: Ruling is delivered in the presence of Mr. Laurent Leonard
learned advocate for the 1st Respondent.



A handwritten signature in black ink, appearing to read "C.P. MKEHA".

C.P. MKEHA

JUDGE

17/06/2022