

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 126 OF 2022

(Arising from Commercial Case No. 10 of 2017)

AMANA BANK LIMITEDAPPLICANT

VERSUS

MANTRAC TANZANIA LIMITED.....1st RESPONDENT

JUNIOR CONSTRUCTION

COMPANY LIMITED.....2nd RESPONDENT

SULEIMAN MASOUD SULEIMAN.....3rd RESPONDENT

NCHAMBIS TRANSPORTERS

LIMITED.....4th RESPONDENT

Date of Last Hearing: 14/09/2022

Date of Ruling: 26/10/2022

RULING

MKEHA, J:

The present application moves the court to investigate the attachment of Account No. 00210033050001 owned by the 4th Respondent at Amana

Bank, to see an interest held by the Applicant in the said account. The application is made under Order XXI rule 57 (1) and (2) of the Civil Procedure Code. The Applicant further asks the court to stay execution of the decree in Commercial Case No. 10 of 2017. The application is supported by an affidavit affirmed by Mr. Fahd Ahmed Afif, Principal Officer of the Applicant.

In the affidavit supporting the application, the applicant admits to be the 4th respondent`s banker. She also admits to have received a Garnishee Order Nisi issued by this court against the Applicant`s client (4th Respondent) who is the Judgment Debtor in Commercial Case No. 10 of 2017. The said order directed the Applicant to withhold USD 3,091,864.00 the property of the 4th Respondent. According to the Applicant, whereas she was not a party to Commercial Case No. 10 of 2017, she has an interest in Account No. 002110033050001 which commenced operations prior to issuance of the Garnishee Order Nisi in question.

The affidavit shows that, through Land Case No. 224 of 2021, the Applicant claims TZS 3,572,826,484.97 by of a counterclaim from the 3rd and 4th Respondents. See: (Paragraphs 2 to 6 of the Applicant`s affidavit). Therefore, it is the Applicant`s position that, she holds sufficient interest in

the Judgment Debtor`s account, justifying lifting of the Garnishee Order Nisi against the said account.

When Mr. Rutakolezibwa learned advocate for the Applicant was on 14/09/2022 invited to argue the application, he merely adopted the contents of the affidavit supporting the application as part of his submissions. He then prayed for grant of the application.

Mr. Roman Masumbuko learned advocate for the 1st Respondent submitted in reply that, the responsible account belongs to the 4th Respondent. That, the Applicant was a mere custodian of the said account, whose obligation in the circumstances of this case, was to comply with the Garnishee Order Nisi and nothing more. The learned advocate submitted that, whereas the order sought to be lifted was issued on 03/11/2021, the present application was filed on 27/07/2022, out of time. In his considered view, the Applicant had no right to ask for stay of execution. The learned advocate pressed for issuance of a Garnishee Order Absolute.

The issue is whether the garnisher has an option of not honouring a Garnishee Order Nisi when the same is issued by the court in view of satisfying court`s decree. It is true that, currently, we do not have in place,

rules instructing banks what to do upon receiving Garnishee Orders Nisi. Notwithstanding absence of the said rules, in practice, the following are expected to be some of the important questions to be dealt with by a prudent bank immediately after receiving a Garnishee Order Nisi: Satisfying itself whether the named judgment debtor is indeed its client holding the account sought to be freezed; Whether the account is in credit; If the account is in credit, whether the balance of the account suffices to cover the decretal sum as specified in the court`s order; Balance of the account when the court received the court`s order; Whether the bank asserts any right to the money in the account pursuant to a right of set off or otherwise and if so, giving details of the grounds for that assertion; Whether the right or interest of the bank to the money sought to be attached dates back to the date of the court`s order or before. Answers to the pertinent questions hereinabove, should promptly be communicated to the court that issued the garnishee order nisi for it to issue further directives to the bank or parties to the case.

In the Applicant`s letter to the court dated 13th September 2022, reference was made to this court`s garnishee order nisi dated 03rd November 2021 without any disclosure pertaining to the Applicant`s interest in the bank

account against which garnishee order nisi was issued. However, the purported interest is explained in paragraph 6 of the Applicant`s affidavit that, on 12th May 2022 the Applicant claimed by way of a counterclaim in Land Case No. 224 of 2021 at the Land Division, TZS 3, 572,826,484.97 from the holder of the account in respect of which garnishee order nisi was issued by this court.

In terms of rule 58 of Order XXI of the Civil Procedure Code, the Applicant was obliged to adduce evidence showing that, at the date when the court`s order was issued, i.e. on 03/11/2021, she had some interest in the 4th Respondent`s account number 002110033050001. Such evidence has no trace in the Applicant`s affidavit. The purported interest finds remote explanation in the Applicant`s counterclaim against the 4th Respondent which is yet to be decided in favour of the Applicant. The Applicant neither sought an order of attachment before judgment against the said 4th Respondent`s property. In the circumstances, the Applicant/bank has no choice except honouring the court`s garnishee order nisi. The court`s order must be honoured.

While I agree with Mr. Roman Masumbuko learned advocate for the 1st Respondent that, no person other than the judgment debtor is competent

to make an application for stay of execution, I must point out the exception that, objection proceedings under Order XXI rule 57 (1) and (2) of the Civil Procedure Code in a way, operates as an automatic stay order. This is because, when any objection is filed against the attachment by any objector, the executing court is under obligation to investigate and decide the objection before proceeding further with the matter in pursuance of the attachment. Even when the property to which the objection relates has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection. **Read:** Rule 57 (1) and (2) of Order XXI of the Civil Procedure Code.

For the foregoing reasoning, I dismiss the application for not being meritorious. The Applicant is condemned to pay costs of the application to the 1st Respondent.

DATED at DAR ES SALAAM this 26th day of October 2022.




C. P. MKEHA

JUDGE

26/10/2022

Court: Ruling is delivered this 26th day of October 2022 in the presence of the parties' advocates.




C. P. MKEHA

JUDGE

26/10/2022