

IN THE HIGH COURT OF TANZANIA

COMMERCIAL DIVISION

AT DARESSALAAM

MISCELLANEOUSE COMMERCIAL CAUSE NO 75 OF 2021

(Arising from Execution Proceedings in Respect of Commercial Case No. 10 of 2017)

BETWEEN

ALLIANCE FINANCE CORPORATION.....APPLICANT

Versus

MANTRAC TANZANIA LIMITED.....1st RESPONDENT

SELEIMMAN MASOUD SELEIMAN.....2nd RESPONDENT

NCHIMBI'S TRANSPORTERS LIMITED.....3rd RESPONDENT

JUNIOR CONSTRUCTION COMPANY LIMITED.....4th RESPONDENT

Date of Last Order: 10/03/ 2022

Date of Ruling: 24/03/2022

RULING

MKEHA, J.

In the present application, the applicant is through Mr. Nzaro learned advocate, moving the court to investigate claim or objection with regard to

the attachment of motor vehicles with Reg. Nos: T282 DUY, T298 DUY, T291 DUY, T287 DUY, T283 DUY and T296 DUY bearing the names of the applicant and find out that, all the Motor vehicles are not liable for attachment. The applicant asked the court to lift the warrant of attachment in respect of her properties. The application is made under Order XXI Rule 57 (1) & (2) and section 95 of the Civil Procedure Code, Cap 33, R.E 2019. During the hearing, Mr. Nzaro learned advocate appeared for the applicant, Mr. Roman Masumbuko learned advocate appeared for the 1st respondent and Mr. Mohamed learned advocate represented the 2nd, 3rd and 4th respondents.

According to the submissions by Mr. Nzaro learned advocate for the applicant, the said properties are not liable for attachment in view of executing the decree in Commercial Case No. 10 of 2017 to which the applicant was not a party. The learned advocate for the applicant went on to submit that in terms of paragraphs 7, 8 and 9 of the applicant's affidavit and paragraphs 3, 4, 5, 6 & 11 of the reply to counter affidavit, the applicant annexed copies of registration cards bearing her own name. Therefore, when the attachment order was issued, the applicant was in

possession of the attached Motor vehicles with Reg. Nos: T282 DUY, T298 DUY, T291 DUY, T287 DUY, T283 DUY and T296 DUY.

Mr. Roman Masumbuko learned advocate for the 1st respondent submitted in reply that, the applicant has to show that, when the attachment order was issued, he had legal interest or that he was in possession of the attached properties. He further submitted that, the properties under attachment were purchased through a sale agreement between the 4th respondent as the buyer and Tata Africa Holdings (Tanzania Limited) as the seller. This is reflected under paragraph 7 of the counter affidavit. He further insisted that, the interest of the applicant is based on a loan agreement which offends section 39 (2) of the Companies Act. The contract does not have the company seal.

According to Mr. Roman learned counsel, the owner and the title holder is the 4th respondent, Junior Construction Limited and the machines were not purchased by Alliance only. He also submitted on pendency of Commercial Case No 55 of 2021 before the court in his endeavour to prove that the sale did not involve the applicant. To buttress his position, he cited the case of **DORIS KENETH RWAKATARE VS NURDIN ABDALLAH & 5 OTHERS, MISCELLANEOUS LAND APPLICATION NO 300 OF 2019**

to conclude his argument that, had there been hypothecation, the applicant would not have been forced to file the suit. According to the learned advocate, the vehicles were not in the applicant's possession and neither did the applicant prove having interest in the same.

In rejoining, the learned advocate for the applicant submitted that, paragraph 2.7 of the Facility Agreement indicates how the relationship of hypothecation arises in favour of the applicant. He also submitted on how paragraphs 3 to 6 of affidavit in reply to counter affidavit explained why there were different cards. He finally made reference to paragraph 11 of the same affidavit which indicates that, as on 9/09/2021, the judgment debtor was still indebted to the applicant to the tune of TZS 702,251,097/=, being the outstanding balance for the loan granted to the judgment debtor for purchase of the vehicles.

The only issue for determination is **whether the applicant has proved to have some interest in the attached properties when the attachment order was issued.**

It is a settled position that, it is a duty of the objector to adduce evidence to show that at the date of attachment he had some interest in the

property attached. See: **KWIGA MASA V SAMWEL MTUBATWA (1989)**

T.L.R 103.

The following facts stand undisputed at all: The order of attachment was issued by this court on **10th November 2021**. The applicant granted a loan facility of TZS 804,301,304 to the judgment debtor for purchase of motor vehicles and the said motor vehicles were to be securities for the loan through a loan agreement dated 2nd December 2020. The title holder of the said Motor vehicles with registration Nos: T282 DUY, T298 DUY, T291 DUY, T287 DUY, T283 DUY and T296 DUY appeared to be the applicant up to when the attachment order was issued. (Paragraph 6 of the affidavit in reply to the 1st Respondent's counter affidavit).

It was stated in paragraph 9 of the 1st respondent's counter affidavit that, the judgment debtor had already paid for the disputed vehicles. However, there was no documentary annexure proving the said fact. To the contrary, a copy of demand letter and loan statement annexed to the affidavit in reply to the 1st Respondent's counter affidavit indicates that, as on 09/09/2021, the judgment debtor was still indebted to the applicant for TZS 702,251,097/=.

In terms of the decision in **NITRO EXPLOSIVE (T) LIMITED VS TANZANITE ONE MINING LIMITED, CIVIL APPEAL NO 175 OF 2019, CAT AT DODOMA**, documents annexed to the affidavit have to be considered without the need for tendering them. Affidavit being evidence, the annexure thereto is intended to substantiate the allegations made in the affidavit. Unless it is controverted, the document can be relied upon to establish a particular fact. On strength of the authority cited hereinabove, I hold that, the fact that the judgment debtor was still indebted to the applicant when the attachment order was issued stands uncontroverted.

Under Rule 58 of Order XXI of the Civil Procedure Code, all what the objector is required to do is to adduce evidence to show that, at the date of attachment, he had some interest in or was possessed of, the property attached. The analysis of affidavital evidence hereinabove indicates how successful, was the applicant, in adducing evidence to the effect that at the time of the attachment, she had some interest in the properties attached. I thus hold the application to be meritorious.

For the foregoing reasons, I proceed to issue an order that, the warrant of attachment in respect of Motor vehicles with registration numbers: T282

DUY, T298 DUY, T291 DUY, T287 DUY, T283 DUY and T296 DUY be lifted.

Application allowed. I make no order to costs. It is so ordered.

Dated at Dar es Salaam, this 24th day of March 2022.


MKEHA

JUDGE

24/03/2022

Court: Ruling delivered in the presence of parties' advocates.


MKEHA

JUDGE

24/03/2022

