

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM**

MISC.COMMERCIAL APPL. NO.94 OF 2021

(Arising from Commercial Case No.76 of 2021)

VIVO ENERGY TANZANIA LIMITED-----APPLICANT

VERSUS

ALCHEMIST ENERGY TRADING DMCC----1ST RESPONDENT

NATIONAL BANK OF COMMERCE LTD--2ND RESPONDENT

ODDO BHF AKTIENGESELLCHAFT.....3RD RESPONDENT

RULING

Date of Last Order: 21/03/2022

Date of Ruling: 06/04/2022

NANGELA, J.:

This application was brought under a certificate of urgency. It was based on Order XXXVII Rule 2 (1) and section 68 (e) of the Civil Procedure Code, Cap.33 R.E 2019, and any other enabling provisions of the law. Earlier this Court issued an order *ex-parte ad at interim* stage only pending the hearing of the parties *inter-partes*.

At the inter-partes stage the Applicant applied for the

for the following, that:

1. This Honourable Court be pleased to issue an order of temporary injunction and restrain the Respondents, their workmen, employees, licensees, agents and whoever acting under them from encashing the Letter of Credit No. 002LCNB210540001 dated 23rd February 2021- in respect of the sum of **US\$ 201,398.44**- issued by the Applicant in favour of the 1st Respondent, pending hearing and determination of the main suit.
2. Costs of the Application be provided for.
3. Any other relief the Court may deem fit to grant.

After issuing an ex-parte rulings on 9th July 2021 to maintain *status quo* pending determination of this Application, and when this Court was readying itself to hear the parties, a request was made by the 2nd Respondent to adjourn the matter as the 2nd Respondent was negotiating with the Applicant for an amicable settlement.

On 21st March 2021, Mr Joseph Nuwamanya who appeared in this Court for the 2nd Respondent briefed the Court about the status of the negotiations which were held between the Applicant and the 2nd and 3rd Respondents.

He told the Court that, the 2nd and 3rd Respondents agreed to refund (and, have, indeed refunded) EURO (€) **170,076.64** to the Applicant's Account, which amount was equal to the amount under the Letter of Credit. A letter signed by the 2nd and 3rd Respondents was submitted as proof.

Secondly, the Court was further informed that, the 2nd and 3rd Respondents have no objection to the granting

of the application as prayed but asked that costs be denied.

Mr Noah Samwel, the learned counsel who appeared for the Applicant confirmed what Mr Nuwamanya had informed the Court concerning the 2nd and 3rd Respondents. However, he pressed for costs against the 1st Respondent.

In view of such developments, this Court settles for the following orders:

1. That, since the 2nd and 3rd Respondents have refunded the Applicant EURO (€) **170,076.64** and do not oppose the applicant's prayers except the prayer for costs as against them, this Court do hereby grant this Application.
2. The granting of this application, however, is with no costs to the Applicant by the 2nd and 3rd Respondents, but the 1st

Respondent shall pay costs to
the Applicant.

It is so Ordered

DATED at DAR-ES-SALAAM, THIS 06TH APRIL 2022



A handwritten signature in black ink, appearing to read "Deo John Nangela".

.....
HON. DEO JOHN NANGELA
JUDGE

ORIGINAL