

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL REVIEW NO. 02 OF 2023

(Arising from commercial case No. 99 of 2021)

DANVIC PETROLEUM (T) LIMITED..... 1st APPLICANT

VICTOR ASANTE NDONDE.....2nd APPLICANT

OPTATUS CHRISSANTUS NDONDE3rd APPLICANT

Versus

HASS PETROLEUM (T) LIMITED RESPONDENT

Date of last order: 3rd May 2023

Date of Ruling: 3rd May 2023

RULING

In the present application, the applicants are moving the court for an order of review resulting into setting aside a prohibitory order issued in respect of a property located on Plot No. 312 Block "D" Sinza Area, Kinondoni Municipality in the name of Optatus Chrissantus Ndonde. According to the Memorandum of Review and the submissions by Mr. Samwel Shadrack learned advocate for the applicants, the said property, does not form part

of the list of properties agreed to be attached in the deed of settlement signed by the parties in Commercial Case No. 99 of 2021. In view of the learned advocate, the decree holder is precluded from attaching and selling any of the judgment debtors' properties which was not agreed that would be attached in the event of default on part of the judgment debtors.

Ms. Shiza Ahmed learned advocate for the respondent submitted in reply that, the three landed properties located at Mwetemo Village in Bagamoyo District and the landed property at Sinza in Kinondoni Municipality were all put as securities by the applicants for credit supply of petroleum goods. In view of the learned advocate therefore, the respondent was at liberty to attach the house at Sinza just as she did in respect of the three properties at Mwetemo village. The learned advocate insisted that, the owner of the house at Sinza was one of the judgment debtors in Commercial Case No. 99 of 2021 hence the prohibitory order was in order .

The only issue for determination is **whether there is an error on the face of the record worth to be reviewed.** There is no denial that all the attached properties had been charged in one way or the other so that the applicants could be supplied with petroleum goods by the respondent. That is what the undisputed part of the Plaint in Commercial Case No. 99

of 2021 reveals. See: The contents of paragraphs 9 and 10 of the Plaintiff and paragraph 4 of the Written Statement of Defence thereto. That being the position, attachment and sale of the house at Sinza cannot be considered as a surprise to the applicants.

The learned advocate for the applicants put reliance on the agreement of the parties on what could be attached and what not. It is important to remember that, the agreement of the parties is not a formal determination by the court of liability of one party to the other. The operative portion of the consent decree between the parties is not that part which attempts to list properties that would afterwards be attached but that part referring to the actual liability of the defendants/judgment debtors which was determined at TZS. 281, 403,390.00 being the settlement amount plus 126,436,106.48 as interest if the settlement had to be paid beyond six months from the date of signing the settlement deed.

Whereas the compromise of the parties gave rise to the decree now under execution, the compromise itself was not a decree as Mr. Samwel Shadrack learned advocate would seem to insist. Once a decree is obtained, it has to be executed in a manner provided under the Civil Procedure Code. In the

circumstances of the present application, I find nothing worth being reviewed.

For the foregoing reasoning, the application is dismissed with costs for being unmeritorius.

Dated at Dar es salaam this 3rd day of May 2023.




C.P.MKEHA

JUDGE

03/05/2023

Court: Ruling is delivered in the presence of Mr. Mtui learned advocate for the applicants and Ms. Shiza Ahmed for the respondent.




C.P.MKEHA

JUDGE

03/05/2023