

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT DAR ES SALAAM**

**MISCELLANEOUS COMMERCIAL APPLICATION NO. 92 OF 2023**

(Originating from Commercial Case No. 63 of 2020)

**BETWEEN**

**XUEMEI YAO.....1<sup>st</sup> APPLICANT**

**CHANGQING INTERNATIONAL**

**INVESTMENT CO. LIMITED.....2<sup>nd</sup> APPLICANT**

**Versus**

**SOLVOCHEM HOLLAND B.V.....RESPONDENT**

Date of Last Order: 27/06/2023

Date of Ruling: 28/07/2023

**RULING**

**MKEHA, J**

The applicant is moving the court to lift the warrant of arrest in execution of a decree of the court in Commercial Case No. 63 of 2020, earlier issued against him. The application is made under Order XXI Rules 35 and 36 sections 44(1) and 95 of the Civil Procedure Code. The chamber summons is supported with an affidavit affirmed by Xuemei Yao, the applicant. On

the other hand, the application is resisted through a counter affidavit affirmed by Mitul Raninga, the Principal Officer of the Respondent.

In the affidavit supporting the application and the submissions made by Mr. Deogratius Lymo learned advocate for the applicant, it was stated that, the applicant was neither a part to Commercial case No.63 of 2020, nor the judgment debtor's Director. According to the learned advocate, the applicant was merely an employee of the judgment debtor in the capacity of a General Manager. In view of the learned advocate, a General Manager was merely an employment post which could not turn the applicant into being the judgment debtor's Principal Officer.

Mr. Dennis Tumaini learned advocate submitted in reply by conceding to the fact that, the applicant was not one of the Directors of the judgment debtor company. However, according to the learned advocate, there was no dispute that the applicant had previously executed the Judgment debtor's documents as the principal officer which could make him a responsible person for purposes of execution of decrees against the judgment debtor company. Reference was made to two affidavits signed

and deponed by the applicant on behalf of the judgment debtor, in which he identified himself as the General Manager of the Judgment Debtor.

Apart from the applicant introducing himself as the judgment debtor's General Manager, there was no evidence produced by the decree holders to prove that, the applicant was indeed the Principal Officer or Director of the Judgment debtor company. The learned advocate for the decree holder conceded that, the applicant was not one of the directors. In the absence of the said evidence, the arrest warrant against the applicant is without justifiable reasons. It is hereby lifted.

DATED at DAR ES SALAAM this 28<sup>th</sup> day of JULY, 2023.



  
**C. P. MKEHA**

**JUDGE**

**28/07/2023**

**Court:** Ruling is delivered in the presence of Ms. Geraldina Paul learned advocate for the applicant.



  
**C.P.MKEHA**

**JUDGE**

**28/07/2023**