

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 36 OF 2023

(Arising from Execution Proceedings in respect of Commercial Case No. 143 of 2021)

BETWEEN

UKOD INTERNATIONAL CO LTDAPPLICANT

Versus

STANBIC BANK TANZANIA LIMITED1st RESPONDENT

JESCA W. L. MASSAWE

t/a JJ AUCTION MART LIMITED.....2nd RESPONDENT

Date of last Order: 21st March 2023

Date of Ruling: 22nd March 2023

RULING

MKEHA, J:

In the present application, the applicant is moving the court to be pleased lifting attachment orders in respect of fourteen (14) motor vehicles namely:

Nos. T 722 BAY, T 978 DNT, T962 DNT, T956 DNT, T949 DEW, T641 BMM, T 962 DNT, T 989 DNT, T981 DNT, T970 DNT, T965 DNT, T950 DNT, T 980 DNT and T 959 DNT. According to the applicant, the named motor vehicles

were attached as a result of an execution order issued in execution proceedings of Commercial Case No. 143 of 2021. The application is made under sections 68 (e) and 95 of the Civil Procedure Code as well as Order XXXVII Rule 1 (a) and 2 (1) of the Civil Procedure Code. The same is supported by an affidavit affirmed by Mr. Jamal Ibrahim Moalim, Managing Director of the Applicant. The application is on the other hand resisted by the 1st respondent through a counter affidavit sworn by one Loishiye Sikoi, the Legal Services Manager of the 1st respondent.

In terms of the affidavit supporting the application and submissions by Mr. Godlove Godwin learned advocate for the applicant, when the trucks were seized on 14/03/2023, they were on transit at Tunduma border carrying clients' petroleum to Congo. The applicant is thus asking the court to release the vehicles temporarily so that the applicant can deliver the said cargo to his respective customers. Technically, the applicant is asking for an injunctive relief against execution of this court's consent decree.

From the submissions by Mr. Sweetbert learned advocate for the 1st respondent and the counter affidavit in support of the 1st respondent's position, the trucks if released would be going outside the executing court's jurisdiction making it difficult to accomplish the task of executing the court's

decree. The learned advocate advised that the applicant be advised to offload his customer's fuel to other trucks which are not subject to the court's attachment orders. In view of the learned advocate, it was the applicant's fault to continue using trucks knowing that they were subject to court's attachment orders. The learned advocate insisted that, although the valuation report indicates that the attached immovable properties had a value of more than TZS 25,000,000,000 in 2020, it was proper to attach all the immovable properties and ninety -two (92) trucks in 2022 to execute the court's decree worth TZS. 19, 306,597,414.12.

Amongst other provisions, the applicant did cite Order XXXVII Rules 1 (a) and 2 (1) of the Civil Procedure Code as the enabling provisions. The applicant is thus asking the executing court to issue an injunction against execution of its own decree. This is unacceptable. No injunction can be granted against the decree holder in the execution of lawfully obtained decree. However, to ensure that justice is done to both the decree holder and the judgment debtor some orders and directives can be passed by the executing court from time to time through execution proceedings. Again in the course of executing the court's order, the executing officers should conform with what the law provides.

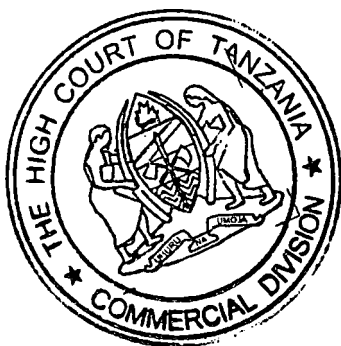
Rule 23 (1) of the Court Brokers Rules of 2017 provides that, the executing officer shall not, unless ordered by the court, attach property with a market value which exceed the value of the decree plus the execution expenses permitted under the Rules by more than five (5) percentum. This rule presupposes that before actually seizing or attaching the judgment debtor's property the executing officer has to satisfy himself that its value does not exceed the value of the decree and execution costs for more than 5%. That is only possible if valuation is carried out before actual attachment. Although practical implementation of the rule may seem to be difficult , that is what the law says. But with the leave of the court, in terms of the language of the Rule, the executing officer may effect attachment even when the value of the property proposed to be attached is still uncertain.

There seem not to be in place, leave of the court which allowed the executing officer to proceed seizing the trucks before establishing through valuation, whether the value of the properties listed for attachment was within the limits of the law. This is evidenced by the Court Broker's letter to the Deputy Registrar Ref. No 143 of 2021 dated 5th December, 2022 in which the executing officer was asking to be availed assistance which would enable her get the valuation report from qualified valuers. The sought assistance was

not obtained. In the absence of an inventory indicating value of the immovable and movable properties proposed to be attached, and considering the extensive list of immovable and movable properties sought to be attached, there is a likelihood of placing under attachment properties with a higher value than five (5) percent in excess of the value of the decree. This is what Rule 23(1) of the Court Broker's Rules seeks to guard against.

For the foregoing reasons, and in the interests of justice to both parties, warrant of attachment in respect of all the movable properties i.e all the vehicles listed under part (b) at the foot of the application for execution is hereby lifted. Prohibitory orders in respect of all immovable properties listed under part (a) of the application for execution to remain in force. The Court Broker is directed to comply with the dictates of Rule 23(1) of the Court Brokers Rules whenever executing attachment orders. It is so directed.

Dated at DAR ES SALAAM this 22nd day of March, 2023.




C.P. MKEHA

JUDGE

22/03/2023

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




C.P. MKEHA

JUDGE

22/03/2023