

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

MISC. LAND APPLICATION NO. 525 OF 2020
(Arising from Land Case No. 44 of 2020)

TANZANIA INDUSTRIAL SERVICES LIMITED.....APPLICANT

VERSUS

SAE POWER LINES S.r.l.....RESPONDENT

Date of Last Order: 09.10.2020
Date of Ruling: 13.10.2020

RULING

V.L. MAKANI, J

The applicant is seeking for order to attach before judgment properties of the respondent with estimated value of TZS 490,520,000/=.

The application was made under Order XXXVI Rule 6(1)(a)(b), 6(2) and 7(1) of the Civil Procedure Code RE 2019 (the CPC) and was supported by the affidavit Andrea Tumiotto the principal officer of the applicant.

The brief background of the matter is that the applicant entered into a lease agreement with the respondent with an option to renew in respect of premises on Plot No.146 Kiwalani Area, Dar es Salaam. The respondent was renting part of the yard, some offices and some houses (the **suit premises**) at a monthly rent of USD 16,000 plus 18% VAT. Since January 2018 the respondent defaulted in payment

of the rent and all demands by the applicant were ignored and the amount owing reached up to USD 152,904.40 which is the basis of the suit. Unfortunately, officers of the respondent are nowhere to be located, though there is a security guard company guarding the properties that the respondent company left in premises. The applicant has filed a suit claiming for breach of contract and an order for payment of USD 152,904.40, interest of the outstanding amount at commercial rate from September to the date of judgment, interest on the decretal amount and other costs of the suit.

At the hearing Mr. David Elisha, Advocate represented the applicant. The respondent though summoned was not able to enter appearance or file counter affidavit so the application proceeded in her absence.

Submitting in support of the application Mr. Elisha adopted the affidavit of Andrea Tumiotto, Principal Officer of the applicant, and further stated that the applicant has filed Land Case No. 44 of 2020. He said there is disposition of properties by the respondents from the suit premises which is subject of the lease. He said the respondent has no other properties in this jurisdiction known to the applicant other than the properties which are on the said premises and listed in the Chamber Summons. He said before the filing of the suit there was no movement of the said properties. But after the filing of the suit, properties have started to move out of the premises and the applicants do not know where the said properties are moving to. He said if the disposition of the properties continue it would render the execution of the decree a nugatory if the court decides in favour of

the applicant/plaintiff because the applicant does not know any other properties of the respondent. He further showed concern that there are no officers of the respondent at the premises or contact with the respondent. For these reasons, Mr. Elisha prayed for attachment before judgment of all the properties that are listed in the Chamber Summons so that if judgment is in favour of the applicant/plaintiff there would be something to execute. He said the attachment would not render any loss to the respondent as the properties have not been used by the respondent since 2018. To support his argument Mr. Elisha relied on the case of **East African Cables Limited vs. Spencon Services Limited, Misc. Application No. 61 of 2016 (HC-Commercial Division-DSM)** (unreported).

Order XXXVI Rule 6(1) and (2) and 7(1) of the CPC provides for attachment before judgment and states:

"6(1) Where, at any stage of a suit, the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him:

(a) is about to dispose of the whole or any part of his property; or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court, the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value thereof.

7(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the court, the court may order that the property specified or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached."

The provisions above depicts that the court has the power to grant orders for attachment before judgment provided that it is proved that: (a) the defendant is about to dispose of the whole or any part of his property and; (b) that the disposal is with intention of obstructing or delaying the execution of any decree that may be passed against him.

I have gone through the affidavit which is the evidence given by the applicant and which has not been controverted. I have also read the submissions by Mr. Elisha. It is apparent that the efforts to locate the respondent has proved futile and there are no available officers of the respondent to assist as their offices are closed. The applicant has gone to the lengths of even advertising in the newspaper giving notice to the respondent of the suit filed in this court (see paragraphs 3, 4,5,6 and 8 of the affidavit) but the respondent has not entered appearance. According to the affidavit, though the offices are closed but there are properties of the respondent still within the confines of the premises and there are security guards who are claiming that they are under a contract of security with the respondent. It is further

stated that since 2018 the properties have been on the premises but after the filing of the main suit, there are attempts to remove properties from the premises (paragraphs 7 of the affidavit). With the circumstances at hand, if an order of attachment is not granted, then judgment if issued in favour of the applicant/plaintiff would be rendered meaningless as they would have nothing to execute.

In the result, the application is granted, and an order for attachment before judgment is hereby granted, in respect of all the properties listed in the Chambers Summons estimated at TZS 490,520,000/=. Costs shall be in the cause. It is so ordered.



V.L. Makani

V.L. MAKANI
JUDGE
13/10/2020