

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA**

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISC. COMMERCIAL APPL. NO. 174 OF 2021

(Arising from Commercial Case No.105 of 2021)

NAS HAULERS LIMITED.....FIRST APPLICANT

EVEREST FREIGHT LIMITEDSECOND APPLICANT

TANGA PETROLEUM COMPANY LTD.....THIRD APPLICANT

VERSUS

EQUITY BANK TANZANIA LIMITED...FIRST RESPONDENT

EQUITY BANK KENYA LTD.....SECOND RESPONDENT

Date of Last Order: 22/11/2021

Date of Judgment: 23/11/2021

RULING

NANGELA, J.:

The Applicants herein brought an application before this Court under a certificate of urgency. Their Application is brought under Order XXXVII, Rule 2 (2), section 68 (e) and section 95 of Cap. 33 R.E 2019 by way of a chamber

summons supported by an affidavit of Mr Ally Ahmed Said, a Director of the 1st, 2nd and 3rd Applicants herein.

The Applicants are praying for the following:

Ex-parte,

- (a) That, the honourable court be pleased to make a finding that sufficient grounds exist to dispense with the notice requirement;
- (b) That, the honourable court be pleased to make an interim order to restrain the Respondents or their agents, servants, or whomsoever will be acting under their instructions or authority, from selling any collateral and from taking any step towards recovering a sum of USD (\$) 18, 710, 737.00 and any interest and penalties therefrom, from the Applicants, resulting from the banking facility dated 22nd May 2019, pending

hearing and determination
interpartes.

(c) Costs be in the main application.

Inter partes:

(a) That, this honourable court be pleased to make an interim order to restrain the Respondents or their agents, servants, or whomsoever will be acting under their instructions or authority, from selling any collateral and from taking any step towards recovering a sum of **USD (\$) 18,710,737.00** and any interest and penalties therefrom, from the Applicants, resulting from the banking facility dated 22nd May 2019, pending hearing and final determination of the Commercial case No.105 of 2021.

(b) Costs of this Application be provided for by the Respondents.

(c) Any other orders as this honourable

Court deems just and fit to grant.

On the 22nd day of November 2021, the application was called on before me in chambers. Mr Juventus Katikiro, learned advocate appeared for the Applicants while Mr Dilip Kesari and Ms Jasbir Mankoo appeared for the Respondents.

Although the prayers were ex-parte and inter-parte, I proceeded to hear both parties. In his submissions, Mr Katikiro stated that, the Applicants have been necessitated to bring up this application under a certificate of urgency because, they have been brought to a notice that the Respondents intends to sell the properties of the Applicants.

According to Mr Katikiro, the notice came to the knowledge of the Applicants on the 10th of November 2021, although it was dated 28th September 2021. He contended that, there is a dire danger that the properties of the Applicant which are also subject to the suit pending in this Court in Commercial Case No.105 of 2021 will be

sold. He told the Court that the notices referred to herein are annexed to the supporting affidavit as Exh.NAS 15 which he craved leave to rely on as part of his submissions.

That being the fact at hand, the Applicants sought to approach this Court asking for an order that would eventually maintain the *status quo*. He thus urged this Court to grant the orders sought, pending determination of the Commercial Case No.105 of 2021 scheduled to be heard on the 7th December 2021.

For his part, Mr Kesaria told this Court, having been allowed to address the Court, that, this application arises from the main suit, which is Commercial Case No. 105 of 2021. In that main suit, he contended, the 1st Defendant has raised a preliminary legal issue objecting to the jurisdiction of this Court. He also stated that, the 2nd Defendant is yet to file its written statement of defense, as the filing dates lapse on the 30th of November 2021.

He intimated that, the 2nd Defendant is also inclined to raise a preliminary objection as to the jurisdiction of this Court. In his submission, Mr Kesaria held a view that, the respective collaterals referred to by the Applicants arose from a security trust agreement between the parties, a copy of which is annexed to the Applicant's affidavit as Annex.NAS 8. He referred to paragraphs 10 and 11 of Annex. NAS 8 and stated that, as per these paragraphs the parties agreed to have their matters dealt with by the English Courts. He contended that, that has been the reason the Defendants seek to object the main suit.

According to Mr Kesaria, if the Court lacks jurisdiction, it cannot make any order including orders of maintaining status quo. On the other hand, Mr Kesaria laid a proposal to the Applicants' counsel to the effect that; wisdom would call for the parties to hold their patience till this Court makes a ruling on the objections filed and intended to be filed under the main suit. He

proposed that, in the event the objections will sail through, the application will automatically fall away, but if the objections are overruled, then, the Respondents would be ordered to file their counter affidavit and proceed with the hearing and determination of this application.

Mr Kesaria submitted that, the Respondents were willing and make an undertaking to this Court that, they will not take any enforcement action against the collaterals pending determination of the objections filed in respect of the jurisdiction of this Court in the main case, i.e., Commercial Case No.105 of 2021.

In brief a rejoinder, Mr Katikiro was contented by the submissions of Mr Kesaria. He noted, however, that the issue of jurisdiction is yet to be determined by this Court but was satisfied by the proposal.

From the above submissions, since it is clear that the Applicants are contented by the proposals made by the learned counsel for the Respondents, and, given that

the proposal to undertake not to do or take any enforcement action in respect of the properties which the Applicants are worried that may be sold by the Respondents before this Court hear and determine the main case has the same effects as the orders sought by the Applicants, then this Court settles for the following orders:

- (a) That, the Respondents undertakes and this Court does hereby certify that, the Respondents shall not take any step or enforcement measures in respect of the Properties that are subject of this application and which forms part of the pending Commercial case No.105 of 2021 till the hearing and determination of the said case or any part of it.
- (b) That, in case the main case is disposed of at the preliminary stages of hearing objections raised by the Defendants (Respondents'

herein) then, the Application herein will cease.

(c) That, in case the preliminary objections raised by the Respondents (Defendants) in the main case are unsuccessful, then this application will proceed by ordering the Respondents to file their counter affidavits.

(d) This Court does not make any orders as to costs.

It is so Ordered

DATED at DAR-ES-SALAAM, this 23th DAY OF NOVEMBER, 2021



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HON. DEO JOHN NANGELA
JUDGE