

20040924 TZHC Dar es Salaam 1

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DECIDED
24 September 2004

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' ps:_ 1op_ _p. 1 & CD.LTD.-l'IZIZim NILL FF« l:0- : 255 022 2861140 IN Tfff HIGH CO(JJff 01,·
TAI']ZANIA (COMMERCJI|_L_ J>iVISJ<>N) ,AT OAR ES SALAAM _- ' .. . COMMERCIAL ~ASF.
NO. '46 OF 2004 SAID SAUM BAKHRESA ·& CO.LTMITED c:.;,s~·.·"~·~···"O:····~;., ..·. ',,")")~
·····. p1,AIn"flf,'FS/AJ>PLIC~TS. . -VERSUS· ·

- [illegible]

5. .io11let{t}Je;ln }u|j,,. 2004't.he Suppiier engage.d:the.[]4;l~r[ra~~ I . ' Limfreç,. London . through -- 'iheir. agent -Llladhiir.. ·Htisog· . ' Fqrw~rder . . PVT Limit~cl . to ship the. purchased Cargo . . fromtl'e. . . . Port of Kandla India, to. the :pod of Dar es Salaiim and to deliver the same to the Applicant ; .·.·!··: ..

6. · That MIS Den fer TracJ.e · Limited, · London (2,"J Defendant}

• .. \- . : assigned and use4 a }vfarihi?. Vessel Oiristeried MV DENIER PREMTER under the mastership of one Capt. Zinurov Analolij 04 05:llp p.4 ~ FAX NO. 1 2SS 022 2861140 Sep. 24 2004 03:23PN P4/10 (,S' Defendant) Jo transport the Cargo ·10 the Pfrt of destination Dar es Salaam Porf. .

7. ·1/ was an. implied Jenn of the carriage.· implied._ in. order to give bU\$in,ess . efficacy to the agreenien,t, . that the ·.~Pefendants shall . .·.uu1mi:'!;J¥hetit . Qra_l1:, 'irl :degh~ s~f({ofd.er,)cpn¢itfOn ·an in ·. . q!,Jcan.tity ~per:refevqnisltipp'i hg:<}ociune.{1/s: - . _.-· . . . - .. _ t .· . fffe:~tiiJffnitt. ~,J!~t&~J;fjflf!)&:~?t. 1 1 · whereupon' notice of the qanfri_ge:.was~dulytb(ought to. _the. ·. ' -: ! . . . ;;'~-. . . Cittentfoiz .am/ kn.owl edge. of the D¢Jenda:ntf- and Sea forth· .{~nerii/Ageilciei Limitdd ~h;/i{i;iihe~gen! 'o/the Ve~sei's :t,.. . unlerwnter atidlror Owners..· nid parties ila~/ dulj, witnessed the/amage and the loss,,~ ;,--~ : ... , .. ,:r.

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- Research copy · Verify against the source

0. 37 CPC appl,es_in differebt situations clearly spdt .our under Rule : .. l ili~rcof and which pro_vides; "Where in any suit it is proved bi,,aJfif!ilvif or Ot!le,-,.,.,tre - _
·ra) ::1td1::tt1i!Alj::i;~::;::;~·r:lit.····· to . ,fofi:of ;az~;-by recirf,/of-;/S cdntinu~d-wse by
anyparty i~e suJt, . . oi w~o'nglysold . . in;ex{c!uiion of·.,i"decr~e, . . "· ··· or . :
- (b) ikit. the , ;· defendantihredien..~·-~br;j~te.nds; : . ··· to r:(fm,ove ' . ,
ordisp9seo/. ·-· : . . . - ··· : , ·-· ·-· ~if f:'P{'f('!:: iw/J.!1i~;xt:e?{ti}~e!r1-
~t,ft.H:~f#li(erf, _ the court may by ordtrgrqntti te.>irporaij, irtjwiciio11 Jo res.train_sl}ch_
cict, or ;ake.su~h- pth~r dr/fer.fr>r t~e-ft~rpo~e of S/aytn;·_and. prew;iliing .the .wruting,
dm,nagili~, -illiellation. sale. loss in Vf'lIUC; . remova/~r disposil,iol1°of the property as the
courithitiks.ftt. until the disposal ofthe suit or ultd furthe; ord~rs. ., Here. the ship is not the
subject matt~ of the suit nor can sub - rule
- (b) be invoked as there is no threat to dcfhhJd credi.tors. The relevant provision of the law i~ 0,
\\36 CPC under a sub :- title !. "Attachment before judgrncnt" which_in pnrl provides: -
04,05:12p p.9 ,7/4 ,. F~ t-0. 255. 022 2861140 ,;s.-B _& co.LTD. --11Z1z1m MiLL ,. 0 "6. Where
a.I i"11;y ,~tage of a suil. !It<~ C.:ourt is saii~fied qffida~it by or otherwise, that the de)i.!
nda,u, wiih intent to obstruc(o_l'. _¢¢lay the e.xec~tion t.>]any decree ihaimay be passed
against him+. ' . (a) is about lo dispose oftJie wh<Jle or · °(h) ls abouilO re,riov; ihe.whole Qr
a~y part of his pr~p~ro};, . /rom . . . the .}occi! .. li,nit.1· . . of ~- the jurisdiction . . . - ofthe . .
comn; . -· : . . · · ihe iourt ,m,ry dii-ed (~.defqm!ant. v.,tfhJ,z atii1?~ ~ ,b<;_fu:ed iby';/;
(;-: . . ;t~::;::;tf17f.~7::;i;~:5!;I/ht]tl;l;l;f;~;· {h~;ebftif ,nq/::be sl!!fz~ient ~o satif./y -ihe Jiecr~
o~ ·io ·appear q?14 ··. show :c~use w~y:he}h.~ld TJO,tfi.Jrr/i(lh. s.ec;uri; _ - - . - . :?;- ,--
~·_!P!J?.{Cfi!JL/f 'f.lwl~(u.~l~s-s,/r:~::~qi{rt;:</t~<ftW.H?:4fr~4;- ,~qe~f/j:::· _· _· /
hepr_¢p~rty.required to .be;d!ldchedand:th(esii,nate4 ·v~lu.e -·'. ,ifertJ)JJ 3.. The
-couri .may al~o I~ · . i;w orqer. direci the co~ditio,a! ·· awzchnzeiit of th(! wliole. or any
portion of the property so' · specified. Where the defendant faifr to sl~ow cause why he
should iipt. furnir;h security;_ · ·or faffs . to furni.i;h the secu.r/ty . . . required, within the
time fixed by the court. the i::ourt may ~! · · . . . order that the properly specified, or
suc.ltportion ther~cif 1 I , / 7omim'-----=::;::;=====.....a.~-~- 0 4 0 5: 1 2 p ,;~:s.
t,& CO. LTD. :-MZlZlt"A Ml Li.. FF« t-0. 255 022 2861140 Se:p. 2 4 2004. 03:2~PM P10/10
- p. 1 0 . _-' _· 11s_appt;nrS~itJ.ficien1 . Lo saliify any decree which. _; . may he passed
in i¥ suit. he aaached.
- (2) Where . the.defendant .;hows . . <ruch cau.se.}r . ~-: ,. furnishers . _., the . . requir~d-
sdurity and the defeiiddnt shv"ws such cause ,ir ~ : furnishes l/ifa
requ.ired_ si!C!trity and theprope;,ty specified or any po/ton oj ,;-: has· been ai~ached. ihe.
~d~~I shall :-\$~ . . . - ·: : _· : :- . . . order the. iittachmeni io ,be withdraw!
f,-or,make .such : . . :~ro . ' , . . :· ,. ofheror_d~;[its;il ···· . . :·j}: _· lhinkf_jzl. :<
· ' , ;: . :The above said, f rc;grei:to ~ylhat this applica:uon is (Jooajed to fail . . . · from
·two ~pe~ts~ O.n.e js t~h\\lic_atan9 thi's is as r~gard{ d1~ ~jt,iti9n of the .. · . ' . . . :/: . . . -
· . . . :! -· . . . :

- [illegible]

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