

TANZANIA / JUDGMENT

CARIBBEAN INVESTMENT CO

COURT
TANZLII

DECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (IN THE SUB-REGISTRY OF DAR ES SALAAM) AT DAR ES SALAAM. MISC. CIVIL APPLICATION NO. 20696 OF 2024 (Arising from Civil Case No. 20260 of 2024) CARIBBEAN INVESTMENT & CO. LIMITED.....APPLICANT VERSUS MINING & ENGINEERING EQUIPMENT LIMITED.....RESPONDENT

RULING

Date of last order: 16/10/2024 Date of Ruling: 31/10/2024 A. A. MBAGWA, J. This is an application for temporary injunction orders against the respondent namely, Mining & Engineering Equipment Limited pending determination of the main suit to wit, Civil Case No. 20260 of 2024. The applicant has preferred this application, under certificate of urgency, seeking the following orders; A. EX-PARTE:

- That this Honorable Court may be pleased to issue a temporary injunction 1 restraining the Respondent, her servants, agents, and other person(s) deriving title from her, from selling or order for sale by auction the, Mobile Crane QY55D531. 2R, Excavator ZE230E three units and Hammer Brand EDT registered T 935 DWG, Excavator Model No. ZE230E, Chassis No. ZMTZE040HL0002800, Engine No. 22322736, T 937 DWG Excavator, Model No. ZE230E, Chassis No. ZMTZEO40ELOOO2801, Engine No. 22307536 and T 932 DWG Mobile Crane QY55D531, Chassis No. L5E6B4D30LA001024, Engine No. Dd30LA00124, (1PC Hummer Brand EDT), Excavator Chassis No. ZMTZE040PL002799, Model No. ZE230E, Engine No. 22307201 pending the determination of the application inter-parties. B. INTER-PARTIES:
- That this Honorable Court may be pleased to issue temporary injunction restraining the Respondents, her servants, agents, and other person(s) deriving title from her, from entering, trespassing, selling or order to sale by auction, the, Mobile Crane QY55D531. 2R, Excavator ZE230E three units and Hammer Brand EDT registered T 935 DWG, Excavator Model No. ZE230E, Chassis No. ZMTZE040HL0002800, Engine No. 22322736, T 937 DWG Excavator, Model No. ZE230E, Chassis No. ZMTZEO40ELOOO2801, Engine No. 22307536 and T 932 DWG Mobile Crane QY55D531, Chassis No. L5E6B4D30LA001024, Engine No. Dd30LA00124, (1PC Hummer Brand EDT), Excavator Chassis No. ZMTZE040PL002799, Model No. ZE230E, Engine No. 22307201 pending the determination of the main suit.

2. That the costs of the application be in the cause;
3. Any other relief may the Honorable court deem fit to grant. 2 The above prayers were contained in a chamber summons made under Order XXXVII Rule 1(a) of the Civil Procedure Code [Cap 33 R.E 2019] (the CPC) which was supported by an affidavit of Emanuel Godson Moshi, the Managing Director of the applicant. On the other hand, the application was uncontested as the respondent failed to file a counter affidavit despite being duly served. In the supporting affidavit, the applicant contends that in 2020 she entered into sale and purchase agreement with the company located in China in the name of Zoomlion Heavy Industry Science & Technology Co. Ltd (the Supplier) for the purpose of buying the Mobile Crane QY55D531.2R, Excavator ZE230E three units and Hammer Brand EDT (the Equipments). The applicant contends further that she was provided with Purchase and Sale Contract, Bill of Lading, Letter of Credit and Proforma Invoice No. ZL-EM-NM-2011005. The applicant avers that she properly made the payments of USD 28,900, which is equivalent to Tshs. 67,597,100/= to the respondent who was the recognized agent as per the terms and conditions in the purchase and sale contract. It was further averred that, after the fulfillments of all the requirements by the applicant as per the agreement and after getting the original Letters of Credit, the 3 supplier issued the Bill of Lading and released the respective equipment from her factory for shipment to the Applicant in Dar es Salaam, Tanzania as a port of destination. The applicant contended further that, as per the Letter of Credit and the purchase and sale contract which was signed by the respondent as an agent and on behalf of the supplier, the loan was facilitated by Europa Bank Public Limited Company in the UK whereby the applicant was financed by the said Bank for a loan which was supposed to be paid at a life span of 365 days after the bill of lading was issued. The applicant averred that the Bill of Lading was bearing the names of Caribbean Investment & Company Limited, the applicant herein for her to make the clearance and take the properties at Dar es salaam Port. However, to the applicant's dismay, the respondent while knowing that the equipment belongs to the applicant, deliberately and without any color of right cleared the respective equipments and confiscated them and registered them as T 935 DWG, Excavator Model No. ZE230E, Chassis No. ZMTZE040HL0002800, Engine No. 22322736, T 937 DWG Excavator, Model No. ZE230E, Chassis No. ZMTZE040ELOOO2801, Engine No. 22307536 and T 932 DWG Mobile Crane QY55D531, Chassis No. L5E6B4D30LA001024, Engine No. Dd30LA00124, 1PC Hummer Brand 4 EDT, Excavator Chassis No. ZMTZE040PL002799, Model No. ZE230E, Engine No. 22307201. As such, the applicant has suffered loss and damage, among others, the outstanding amount of USD 28,900, which is equivalent to Tshs. 67,597,100/- and loss of failure to invest capital to the tune of USD 80,000, which is equivalent to the sum of Tshs. 180,000,000/=-, hence this application. According to the applicant, if the respondent is not restrained from completing the releasing of the equipments processes, there exist all possibilities the respondent shall act in gross violation of the sale terms and the law. It is the applicant's further lamentation that, the act complained of establishes a prima facie case with very high chances of success as the applicant stands to suffer loss which cannot be atoned. And further that, withholding of grant of the application will

render the applicant's suit nugatory and meaningless as the balance of convenience tilts on her side hence the application be granted as prayed. When the matter was called on for hearing on 16th October 2024, Mr. Mudhihiri Magee and Mr. Abraham Rupia, both learned counsel appeared for the applicant whereas Mr. Abdul Kalamba, learned advocate appeared holding brief of Mr. Bakari Ndeke, learned advocate for the respondent. 5 Submitting in support of the application, Mr. Magee adopted the applicant's affidavit to form part of the submissions. He submitted that in the injunction application, the Court is enjoined to consider three factors namely, existence of prima facie case, irreparable injury and balance of convenience. To bolster his submission, he cited the case of American Syanaamid Company vs Ethicol Limited 1975 AC 396 which was reiterated in the case of Atilio vs Mbowe 1969 HCD 284. On the prima facie case, he argued that the applicant has established under paragraph 7,8,9,10,12,13 and 14 of the affidavit as the properties are about to be sold to the third party hence the applicant has legal and equitable right to protect his interests. On the irreparable loss, he submitted further that the applicant stands to suffer if the application will be denied as the properties value TZS 1.5 billion as such, the applicant will not get the similar properties in the event the respondent disposes them to the 3rd party while considering another fact that the respondent is also a foreigner hence he may sell the properties and leave the country. He cited the case of National Chicks Corporation Limited vs National Bank of Commerce, Land 6 Application No. 222 of 2017, Land Division at Dar es Salaam to cement his submission. On the balance of conveniences, he submitted that the applicant will suffer more if the injunction order is denied as the respondent will not be affected in any manner because her business will continue as usual even if the injunction is granted. Having canvassed the depositions of the applicant and the supporting submissions, the central issue for the determination of this application is whether the temporary injunction orders are called for in the circumstances of this matter. The applicant, under paragraphs 7, 8, and 9 of his affidavit, avers that the bill of lading was bearing her name as the owner of the equipment for purposes of clearing the suit properties at the Dar es Salaam Port. He also admits that the suit properties were cleared and registered by the respondent illegally for purposes of being auctioned or sold to a third party. For clarity, I let the said paragraphs speak for themselves. They read;-

7. That, the Mobile Crane QY55D531.2R, Excavator ZE230E three units and Hammer Brand EDT as per the Bill of Lading were sent to the Applicant, reached at the Port of Discharge 7 in Dar es Salaam, Tanzania bearing the names of Caribbean Investment & Company Limited the Applicant herein for her to make the clearance and take the properties, but surprisingly, the Respondent while knowing that the Mobile Crane QY55D531.2R, Excavator ZE230E three units and Hammer Brand EDT and Hammer Brand EDT belongs to the Applicant, deliberately and without any color of right and will ill intents cleared the respective properties of the Applicant and confiscated them and registered as T 935 DWG, Excavator Model No. ZE230E, Chassis No. ZMTZE040HL0002800, Engine No. 22322736, T 937 DWG Excavator, Model No. ZE230E, Chassis No. ZMTZEO40ELOOO2801, Engine No. 22307536 and T 932 DWG Mobile Crane QY55D531, Chassis No. L5E6B4D30LA001024, Engine No.

Dd30LA00124, 1PC Hummer Brand EDT, Excavator Chassis No. ZMTZE040PL002799, Model No. ZE230E, Engine No. 22307201.

8. That, despite the repeated demand both verbally and written from the Applicant, the Respondent has totally failed, refused, neglected and/or denied to hand over the Mobile Crane QY55D531.2R, Excavator ZE230E three units and Hammer Brand EDT as indicated to be registered on paragraph 7 hereinabove, pay the sum of USD 526,012 being the value of the respective properties, pay the sum of USD 28,900 and USD 80,000 and or show the Bill of Lading which authorized her to offload the cargo. 8
9. That, following the Respondent's actions and omissions as above stated, the Applicant has suffered, and continue to suffer, unnecessary costs, expenses, and damages. The Particulars of Losses and Damages are hereunder... Having critically examined and considered the averments in the cited paragraphs I find that the applicant has established prima facie case as required in considering application of this nature. Coming to the issue of irreparable loss, considering the averments in the affidavit and the nature of complaint, I part company with the applicant. It is my considered view that the applicant's loss can still be atoned in monetary form in the event, the equipment in dispute is disposed of. Thus, it is not true that refusing this application will make the applicant suffer the irreparable loss per se nor will it render her main suit nugatory and meaningless as submitted by Mr. Magee. The last factor is whether, on the balance of convenience, the applicant would suffer more than the respondent if the application is not granted. On this, Mr. Magee is of the view that, it is the applicant who would suffer more than the respondent would. He said, as of now, the respondent has cleared and registered the equipments which in her 9 name. As such, the respondent will suffer less than the applicant would do in case the application is withheld. Upon scanning the submissions by Mr. Magee and having revisited the affidavit in support of the application, I am at one with Mr. Magee that if this application is denied the applicant will suffer more than the respondent would do. Thus, having dispassionately considered the whole circumstances obtaining in this application and upon taking into account the nature of the interim orders sought and the properties involved, I am opined that it is in the interest of justice to maintain the status quo. In the upshot, the application is allowed to the extent indicated. The respondent is ordered to maintain the status quo of the equipment. Each party should bear its own costs. It is so ordered. The right of appeal is explained. Dated at Dar es Salaam this 31st day of October 2024. A.A. Mbagwa JUDGE 31/10/2024 10 Court: The ruling has been delivered on this 31st day of October, 2024 in the presence of Mr. Rupia Abraham and Mr. George Muhanga learned advocates for the applicant, and Mr. Hemed Nassoro, advocate for the respondent. A.A. Mbagwa JUDGE 31/10/2024 11

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Prepared on 13 October 2026 · Esheria