

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA COMMERCIAL DIVISION AT
PAR ES SALAAM APPLICATION FOR EXECUTION NO.11209 OF 2024 (Originating from
Commercial Case No. 38 of 2014) MS. TAI FIVE HOTEL LIMITED..... DECREE
HOLDER VERSUS MS. GOLD CREST HOTEL LIMITED..... JUDGMENT DEBTOR

RULING

Date of Last Order:26/07/2024 Date of Ruling: 09/08/2024 MKEHA, J: The present ruling traces its origin from an affidavit filed by the Judgment Debtor's Managing Director in response to a summons to show cause served upon her, after the Judgment Debtor's bank accounts had been attached by this court, in view of executing the decree in Commercial Case No. 38 of 2014. The Judgment Debtor had to show cause why the attached funds ought not be transferred to the decree holder. When the matter came up for hearing, the judgment debtor was represented by Mr. Massaga learned advocate. On the other hand, Mr. Tibanyendera learned advocate represented the decree holder. 1 | Page On his part, Mr Massaga learned advocate adopted the contents of the affidavits for showing cause as his submissions. The learned advocate submitted that, the decree had been adjusted and afterwards fully satisfied. Regarding evidence proving that the decree had been satisfied, the learned advocate made reference to Annextures GCH 8, GCH 5B, GCH 5C and GCH 6B. Mr. Tibanyendera learned advocate commenced his reply submissions by adopting the contents of the counter affidavit as part of his submissions. He maintained that the decretal sum had never been paid. According to the learned advocate, the purported deed of settlement had never been signed, leave alone being registered in court. The learned advocate was insistent that, anything paid was in respect of the Memorandum of Understanding and not as satisfaction of the decree. The learned advocate pressed for issuance of garnishee order absolute. The affidavit by Ms. Bakhita Mathias Manga indicates that, on 21st May 2016 the Directors of the decree holder and the judgment debtor held a settlement meeting whereas among other things, the decretal amount was compromised and adjusted to an amount of TZS 140,000,000/=. That, the judgment debtor agreed to pay costs of the suit to the tune of TZS 35,000,000/=and the outstanding directors' allowances at the tune 2 | Page of TZS 35,000,000/=. In terms of the said affidavit, the decretal amount was adjusted at TZS 210,000,000/= in total. Reference was made to Annexure 'GCH 4'. The affidavit indicates further that, in line with the Settlement Resolution and as signified by the Decree Holder's acknowledgement of payment dated 15th June 2016 and a letter dated 20th June 2016, the Judgment Debtor paid the agreed

settlement amount leaving a balance of TZS 85,000,000/= in March 2018. Reference was made to Annexure 'GCH 5A, 5B and 5C'. Regarding evidence proving that the Judgment Debtor had indeed paid the agreed settlement amount, reference was made to Annexure GCH 6A and 6B. The said annexure indicates various payments made to the Directors of the Decree Holder Messrs Peter Mekere and Wilson Tarimo. The affidavit indicates that, from 13/04/2018 to 25/01/2022, as per the terms of the settlement Resolution, the Judgment Debtor had paid a total amount of TZS 85,927,000/= which was beyond the outstanding balance. In paragraph 15 of the counter affidavit of Mr. Wilson Christopher Tarimo (one of the Directors of the Decree Holder), there is an admission to the following extent: That, the Decree Holder had agreed with the Judgment Debtor to enter into a binding deed of settlement of the outstanding 3 | Page claims arising out of the Management fees which had accrued by default on part of the Judgment Debtor which was calculated at TZS 489,000,000/=. The counter affidavit indicates that, for failure of the Judgment Debtor to honour the terms and conditions of the said arrangement by not paying the money as agreed, the deed of settlement was not signed as per Clause 4 (h) of Annexure 'GCH 4'. The counter affidavit indicates further that, the correspondences referred to by the Managing Director of the Judgment Debtor are acknowledged as being pursuant to the Memorandum of Understanding and the mutual agreement to resolve the dispute between the parties. The said Director of the Decree Holder was insistent that, the arrangement entered into by the parties on 21/05/2016 was for the sum of TZS 489,000,000/= and not for the decretal sum of TZS 380,000,000/=. The issue for determination is whether the decree stands fully satisfied as alleged by the Judgment Debtor or whether the Judgment Debtor has never paid anything in view of satisfying the decree as maintained by the Decree Holder. The decree holder's Director admitted that there was an arrangement between the parties for adjusting the decree out of court only that, the Judgment debtor did not honour the terms of the said agreement. Despite 4J Page the judgment debtor's failure to pay within the agreed time, the decree holders continued accepting and receiving various payments made by the judgment debtor through the decree holder's directors. According to the decree holder, whatever payment made, was in view of satisfying the terms of the Memorandum of Understanding between the parties and not for settling the decretal sum. Mr. Wilson Christopher Tarimo was unable to renounce the fact that, through Annexure GCH 5C, Mr. Peter Mekere, the CEO and Director of the decree holder had written to the Managing Director of the Judgment Debtor confirming that, the outstanding debt as of 23rd March 2018, was TZS 85,000,000/=. As hinted earlier, even after considering that the judgment debtor had breached the terms of their settlement resolution, the decree holder continued accepting payments made by the judgment debtor. Annexure GCH 6B indicates that, from 13/04/2018 to 25/01/2022 a total of TZS 77,635,000/= was paid to the decree holder through Messrs Peter Mekere and Wilson Tarimo, the decree holder's directors. The decree holder's position was that, the payments were in respect of the MoU between the parties. The judgment debtor's position was that, the payments were for settling the adjusted decree. On strength of the decree holder's letter to the judgment debtor dated 23/03/2018, (after 5 | Page pronouncement of judgment and decree), I take it and hold that, the payments of TZS 77,635,000/= made by the judgment debtor thereafter, were for purposes of satisfying the remaining part of the agreed settlement amount. In the interest of justice, pursuant to Order XXI rule 2 (2) of the Civil Procedure Code, the said payments

of TZS 77,635,000/= are hereby certified as satisfied. On strength of Annexure GCH 5C, notwithstanding failure of the parties to timely record adjustment of the decree between them in court, the decree holder is estopped from denying the said fact. The said adjustment is accordingly recorded. From the foregoing, it follows therefore that, the outstanding amount is TZS 7,365,000/= only. Therefore, garnishee order absolute be issued for recovery of the said TZS. 7,365,000/= only. After deduction of the said amount from Account No. 3005211132020 in the name of MS. GOLD CREST HOTEL LIMITED held at EQUITY BANK(Tanzania) Limited, the said account be discharged. Garnishee Orders Nisi earlier issued against the other bank accounts of the Judgment Debtor held at NMB and CRDB Banks be lifted. JUDGE 09/08/2024 COURT: Ruling is delivered in the presence of Mr. Tibanyendera learned advocate for the decree holder and Mr. Massaga learned advocate for the judgment debtor. a C. P. MKEHA JUDGE 09/08/2024 7 | Page

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