

TANZANIA / JUDGMENT

T BETTER HOLDING COPORATION T LTD VS AFRICAN BANKING CORPORATION T COMM CASE NO

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TANZLIIDECIDED
1 January 2015

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA COMMERCIAL DIVISION AT
PAR ES SALAAM (Arising from Execution Proceedings of Commercial Case No. 03 of 2015)
BETWEEN T-BETTER HOLDING CORPORATION (T) LTD..... D/HOLDER VERSUS AFRICAN
BANKING CORPORATION (T) LTD..... J/DEBTOR

RULING:

Date of Last Order: 13/06/2024 Date of Ruling: 21/06/2024 MKEHA, J: When the Directors of the Judgment Debtor were invited to show cause why they should not be arrested and detained as civil prisoners on account of failure of the Judgment Debtor to satisfy the decree in Commercial Case No. 03 of 2015, a notice of preliminary objection was filed on behalf of the said Directors. Although the notice contained four points of preliminary objection, when the learned counsel for the Judgment Debtor was invited to argue the objections, he opted to drop two of them and remained with two points of objection as hereunder: 1 | Page

- (i) That, the application is untenable in law and liable to be dismissed for the reason that the decree holder has applied to arrest the Directors of the Judgment Debtor, a corporate entity, without first applying for, and obtaining orders lifting the corporate veil of the said Judgment Debtor. (ii) That, the application is untenable and unmaintainable in law as the same has been filed by the advocate for the Decree Holder instead of the Decree Holder's Principal Officers, contrary to law. The points of preliminary objection were argued by way of written submissions. Whereas Mr. Edward Chuwa learned advocate represented the decree holder, Mr. Omari Msemo learned advocate represented the judgment debtor. Submitting in support of the first point of preliminary objection, the learned counsel for the judgment debtor stated that, the Directors sought to be arrested and detained were not parties (in their personal capacities) to Commercial Case No. 03 of 2015. In view of the learned counsel, the decree holder was bound to assign reasons, why would execution orders be sought against strangers to the civil suit which yielded the decree subject of execution. The learned counsel for the 2 | Page judgment debtor submitted that, the

application for execution against personal capacities of the directors, ought to be preceded by a distinct application stating reasons for lifting of corporate veil. The learned advocate was insistent that, it is only after success of the application for lifting veil of incorporation, that is when the decree holder would be justified to proceed against the directors. It was submitted in respect of the 2nd point of preliminary objection that, an application for execution of decree ought to be preferred by the decree holder or its Principal Officers. According to the learned advocate for the judgment debtor, an advocate would only be allowed to make such an application if authorized to do so by the decree holder. In view of the learned advocate, the mode of assistance sought presupposed that, only the decree holder could be able to state in an affidavit, the reasons for seeking arrest and detention of strangers to the decree. Regarding the first preliminary point of objection, it was submitted in reply that, there was no statutory requirement for lifting veil of incorporation before executing a decree against a company's director. That, veil of incorporation would be lifted even in the absence of a formal application depending on the court's discretion. The learned 3 | Pa ge advocate for the decree holder insisted that, the application for execution had been preferred against the actual judgment debtor and not against the directors. The learned advocate invited the court to dismiss the objection. Regarding the 2nd point of preliminary objection, it was submitted in reply that, there was nothing wrong for an advocate conversant with the facts of the case to file an application for execution on behalf of his client. The learned advocate called to his aid, the dictates of Order XXI rule 10 (2) of the Civil Procedure Code. The only determinative issue is whether the objections are meritorious. Order XXI rule 10 (2) of the Civil Procedure Code provides unambiguously that an application for execution of a decree can be signed and verified by any person acquainted with the facts of the case. There was no allegation that the person who signed and verified the application lacked the qualification cited hereinabove. The application having been signed and verified by the decree holder's advocate, was to that extent quite in order. The 2nd point of preliminary objection is thus dismissed for being unmeritorious. Regarding the first point of preliminary objection, it is trite that, execution proceedings can only proceed against a person who 4 | P age happened to be a party to a civil suit which resulted into the decree under execution. Arresting and detaining a company's director is one way of executing a decree against personal capacity of such a director. To be able to do so, such a director should have been a party to the civil case which resulted into the decree under execution. Short of that, the decree holder has to explain under oath, the reasons for preferring execution proceedings against a stranger to the suit. I am therefore I agreement with the learned advocate for the judgment debtor that, a formal application is necessary for lifting of corporate veil for one to execute a decree against personal capacity of a company's director if the latter was not made as one of the parties to the suit which resulted into the decree under execution. I thus uphold the 1st point of preliminary objection for being meritorious. For the foregoing reasoning, the application is struck out for being unmaintainable. I make no order as to costs. DATED at DAR ES SALAAM this 21st day of JUNE 2024. 5 | Page COURT: Ruling is delivered in the presence of the parties' advocates. C. P. MKEHA JUDGE 21/06/2024 6 | P a ge

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