

TANZANIA / JUDGMENT

AMC TRADE VS SANLAM GENERAL APPL

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (COMMERCIAL DIVISION) AT
PAR ES SALAAM APPLICATION FOR EXECUTION NO. 26943 OF 2024 AMC TRADE FINANCE
LIMITED..... DECREE HOLDER VERSUS SANLAM GENERAL INSURANCE (T)
LIMITED..... JUDGMENT DEBTOR

RULING

Date of Last Hearing:19/12/2024 Date of RuHng:20/12/2024 MKEHA, J: On 13th November 2024, the executing court issued Garnishee Orders Nisi attaching the judgment debtor's eight (8) bank accounts maintained at Stanbic bank Tanzania Limited, Eco Bank (T) Ltd, Exim Bank Tanzania Limited and NMB Bank Pic. Subsequently, the judgment debtor filed an affidavit showing cause why Garnishee Orders Absolute ought to be denied. In the affidavit for showing cause, the judgment debtor stated that, it was within the decree holder's knowledge that there was a stay order issued by the Court of Appeal on 9th September 2024. In addition to the 1 | Pa ge affidavit for showing cause, the judgment debtor wrote a complaint letter, condemning the decree holder's advocates for lack of courtesy, for having rushed to procure execution orders while aware that, there was a stay order of the Court of Appeal which was still intact. In the counter affidavit filed on behalf of the decree holder it was stated that, the decree holder moved the executing court at a time when the stay order had expired. Arguments for the parties were made by Mr. Oscar Msechu learned advocate for the judgment debtor and Mr. Idrissa Juma learned advocate for the decree holder. Their rival arguments were as brief as summarized hereunder: Mr. Oscar Msechu learned advocate submitted that, after the judgment debtor had procured stay order from the Court of Appeal, it was improper for the decree holder to move the executing court for execution orders while the stay order was still subsisting. Heavy reliance was put on the decision of the Court of Appeal in HAMMERS INCORPORATION CO.LTD VS. THE BOARD OF TRUSTEES OF THE CASHEWNUT INDUSTRY DEVELOPMENT TRUST FUND, CIVIL APPLICATION NO. 93 OF 2015, CAT, AT DAR ES SALAAM. Mr. Idrissa Juma learned advocate submitted in reply that, the stay order had been issued subject to a condition that, the judgment debtor 2 | P a ge had to furnish security for due performance of the decree in a form of bank guarantee within 30 days since the date of the Court's ruling. That, the judgment debtor failed to furnish the said security within the time given. The position taken by the learned advocate for the decree holder was that, on lapse of 30 days' period within which security had to be furnished, the stay order expired automatically. Initially, the learned advocate for the decree holder appeared to have no authority backing his

position. However, he later on supplied to the court the decision in BYBLOCK CONTRACTORS LIMITED VS. SALUM SAID HAMED AND ANOTHER, CIVIL APPLICATION NO. 773/17 OF 2024, CAT, AT DAR ES SALAAM. The only issue for determination is whether a stay order by the Court of Appeal expires automatically on lapse of time given for furnishing security if the ordered security is not timely furnished. To the issue hereinabove, the learned advocate for the decree holder responded in the affirmative. The learned advocate for the judgment debtor responded in the negative. In the case cited by the learned advocate for the decree holder, in BYBLOCK CONTRACTORS' case, the Court of Appeal was specific on what would be the status of the stay order on default of the applicant to 3 | P a g e furnish security within a given time. The Court recalled its previous order as hereunder: "...the execution of the decree of the High Court dated 2nd August, 2023 in Land Appeal No. 234 is hereby stayed pending hearing and determination of the intended appeal. The said stay is, however, subject to the applicant depositing in the Court within thirty days of the delivery of this ruling a bank guarantee for the sum of TZS. 191,664,000.00. Accordingly, the said guarantee shall remain in force until full hearing and determination of the intended appeal by this Court. In default, the order of stay shall lapse automatically." After the foregoing, the Court continued to hold that, when time for furnishing security expired, the stay order was no longer there as the consequences of failure to timely furnish security had already been pronounced by the Court in its order granting the stay application. This holding supports the position of the learned advocate for the decree holder. The immediate question that arises is whether the stay order granted to the judgment debtor in this case was also couched in similar or substantially similar wording with the one in BYBLOCK CONTRACTORS' case. 4 | P a g e In granting stay order to the judgment debtor, the Court stated as follows: '7/7 the circumstances, I grant the application. Consequently, I order stay of execution of the decree of the Court in Civil Appeal No. 393 of 2020 which substituted the judgment and decree of the High Court in Commercial Case No. 9 of 2019 pending hearing and determination of Civil Application No. 735/16 of 2023. The order made is conditional upon the applicant depositing bank guarantee for the sum of USD 863,967.23 which is the decretal sum as security for due performance of the decree within 30 days from today. Costs to abide the outcome of the review." See: SANLAM GENERAL INSURANCE (T) LTD VS. AMC TRADE FINANCE LTD, CIVIL APPLICATION NO. 189/16 OF 2024, CAT, AT DAR ES SALAAM. In this case, the Court did not pronounce the would-be status of the granted stay order, if the judgment debtor was to default furnishing the ordered security within the given time. The position in this case therefore, differs with what the Court held in BYBLOCK CONTRACTORS' case. What then resolves the puzzle now before the court? The long-standing position has been that, stay order granted by the Court of Appeal remains intact until it is varied or rescinded by the Court on any application by any person affected by it. In the absence of specific 5 | P a g e pronouncement of the Court of Appeal at the time of issuance of a stay order, once granted, it remains intact until it is vacated by the Court. That is the import of Rule 64 (2) of the Court of Appeal Rules, 2009. See: HAMMERS INCORPORATION CO. LTD VS. THE BOARD OF TRUSTEES OF THE CASHEWNUT INDUSTRY DEVELOPMENT TRUST FUND, CIVIL APPLICATION NO. 166 OF 2014, CAT, AT DAR ES SALAAM (Per Massati, JA) and HAMMERS INCORPORATION CO. LTD VS. THE BOARD OF TRUSTEES OF THE CASHEWNUT INDUSTRY DEVELOPMENT TRUST FUND, CIVIL APPLICATION NO. 93 OF 2014, CAT, AT DAR ES SALAAM.

2015, CAT, AT DAR ES SALAAM (Per Rutakangwa, JA). For the foregoing reasoning, I hold that, the judgment debtor has succeeded in showing cause why Garnishee Orders Absolute should be refused. As the stay order of the Court of Appeal has not been varied or rescinded in terms of Rule 64 (2) of the Court of Appeal Rules, the orders sought by the decree holder are not grantable. Consequently, the previous garnishee order nisi issued by the executing court in respect of the judgment debtor's bank accounts: USD AC NO.00310154008669201 and TZS AC. NO. 0030015400869201 at ECO BANK TANZANIA LIMITED, USD AC NO.624701178445 and TZS AC NO. 624770177679 at EXIM BANK TANZANIA LIMITED, USD AC NO. 6 | Pa ge 91200008644461 and TZS AC NO. 9120000619467 at STANBIC BANK TANZANIA LIMITED, USD AC NO. 20110025007 and TZS AC NO. 20110007788 at NMB BANK PLC is hereby lifted. It is so ordered. I make no order as to costs. DATED at DAR ES SALAAM this 20th day of DECEMBER 2024. C.P. MKEHA JUDGE 20/12/2024 COURT: Ruling is delivered in the presence of the parties' advocates. C.P. MKEHA JUDGE 20/12/2024 7 | P a ge

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