

TANZANIA / JUDGMENT

yara tanzania limited vs mexons investment limited and another

2021 tzhccomd 3368 22 october 2021

COURT
TZHCCOMDDECIDED
22 October 2021

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IN THE HIGH COURT OF TANZANIA COMMERCIAL DIVISION AT DAR ES SALAAM
COMMERCIAL CASE NO. 45 OF 2019 YARA TANZANIA LIMITED..... DECREE HOLDER
VERSUS MEXONS INVESTMENT LIMITED..... 1st JUDGEMENT DEBTOR COODLUCK
MEXONS SANGA..... 2nd JUDGEMENT DEBTOR

RULING.

MKEHA, J. When the judgement debtors were invited to show cause as to why an application for execution of a decree passed against them should not be granted, they entered appearance through Mr. Lusiu Peter Learned Advocate. The learned Advocate commenced his submissions by adopting the 2nd respondent's affidavit. The reasons advanced by the learned advocate which are also contained in the affidavit of the 2nd respondent were such that, whereas one of the properties is encumbered in favour of Mkombozi Bank Limited, the other two properties had been transferred to other individuals hence issuance of attachment orders against the said properties would cause more disputes. Mr. Lusiu Peter submitted further that, since the judgement debtor claims a lot of money from the government, it would be in the interests of justice for the decree holder to be lenient awaiting the said payment. The learned advocate told the court that, the judgment debtor had already paid TZS. 8,000,000/= thereby reducing the decretal sum to TZS. 96,547,475/=. Mr. Denga learned advocate commenced his submissions in reply by adopting contents of the affidavit of Mr. Januari Fabian, Principal Officer of the Decree Holder. He then conceded that indeed, the judgement debtors had so far paid TZS. 8,000,000/=. He then insisted that, nothing from the letters of offer indicates that there was an encumbrance in favour of Mkombozi Bank. The learned advocate submitted further that, whereas the purported loan agreement was executed on 1/2/2021, the application for execution was filed way bank 21/10/2020 and served upon the judgement debtors on 3/11/2020. Therefore, if at all there is an encumbrance, the loan agreement was entered in bad faith. Regarding properties on Plot No. 435 Block "Y" Mjimwema Njombe and Plot No. 416 Block "Y" lirnga, the learned advocate submitted that, there is no evidence that the two properties do not belong to the judgement Debtors. The [earned advocate insisted that the two properties were being owned by the

Judgement Debtors when the application for execution was filed. According to the learned advocate, the indebtedness of the government to the 2nd judgement debtor has nothing to do with the decree holder's claims against the judgement debtors. The only arising question is whether the court should desist granting the application for execution because the judgement debtor says the properties sought to be attached do not belong to him but to 2 third parties or that the property is encumbered in favour of a particular financial institution. The law is very clear on the question raised. Interests of third parties are determined when brought under Order XXI Rule 57(1) of the Civil Procedure Code after attachment of properties in which they claim to have interests. Objections have to be brought by the said third parties and not the judgment debtor. It is for that reason I hold that the judgement debtors have failed to show cause why the application for execution should not be granted. I thus grant the application in the manner prayed in the application. Let prohibitory orders be issued against the properties listed in the application for execution pursuant to Order XXI Rule 53(1) of the Civil Procedure Code. Dated at DAR ES SALAAM this 22nd day of October 2021. JUDGE 22/10/2021 Court: Ruling is delivered in the presence of Ms. Atuganile Nsajigwa for the decree holder. 3

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