

TANZANIA / JUDGMENT

19980730 TZHC Dar es Salaam

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT PEGTSTRY) AT DAR ES
SALAAM CIVIL CASE NO. 2915 OF;_ 9q7 SAID MNIMBO & OTHERS
PLAINTIFFS\DECREE HOLDER VERSUS STATE TRAVEL SERVICE LTD
DEFENDANT\JUDGEMENT DEBTOR AND

1. TOURISM SERVICES TANZANIA)

2. PRESIDENTIAL PARASTATAL) .. OBJECTORS\APPLICANTS SECTOR REFORM
COMMISSION) R U L I l'. ____Q KALEGEYA, J. This ruling is in respec~ of an application by
Tourism Services Tanzania and Presidential Parastatal Sector ~eform Commission~(PSRC) as
1st and 2nd Applicants\Objectors respectively praying for the lifting of a garnishee Order
issued against 4 Bank(Accounts at Stanbic Bank Arusha branch; 4 ·Bank Accounts at Stanbic
Bank Dar es Salaam Branch; 2 Accounts with NBC (1997) Ltd, Samora Avenue Branch, Dar es
S~laam, and one Account with NBC 1997 Foreign Branch, Dar es Salaam in response to a
decree entered by this Court against STATE TRAVEL SERVICES, LTD, Defendant (as
judgement-debtor) in f ;:wour of Said Mnimb.o, John Nyange, Silvano Kagya and 74 oth~rs'~s
plaintiffs\decree holders. For clarity let us detailedly go thr0ugh the facts leading, relating
and sorrounding this matter which Rre as follows:- Said Mnimbo, John Nyange and Silvans
Kagya filed a representative suit on behalf of them~JvQR ~n~ 74 others ~gain~, the STATE
TRAVEL SERVICES Ltd for terminal benefits following their retrenchment. Upon the
plaintiffs' ~dvocate's submission 1 before a brother judge that the defendants hnd refused
service they (plaintiffs) were allowed to prove their case exparte which they did by affidavit
and judgement was accor~ingly entered in their favour. A decree to a tune of shs.
185,697,985/= was drawn up and this led to the garnishee order whirh i.s being challenged.
In order to have full appreciation of this matter I should pose here and touch another set of
relevant f~ctors leading to the filing of the suit. Vide Act No. 16 of 1993 (the Public
Corporations (Amendment), Act, 1993) the Public Corporations Act, No. 2 of 1992 was
amended. Under this amendment, ~ Special creature called the Presidential Parastatal
Sector Reform Commission (PSRC) was created [S.21] and given very wide powers (S.22). For
clarity and in view of what will subsequently be discussed,~even~at the danger of making
this ruling unnecessarily I, long, I will qu~te relevant sections of the said Act, extenso:- "S.
21 (1) · There --is hereby es·tablished a Commission to be known as the Presidential
Parastatal Sector Reform Commission which shall be an ~utonomous organ of the

Government.

- (2) The Commission shall be a body corporate with perpetual succession and common seal and shall be capable in its corporate name of-
 - (a) suing, and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of both movable and immovable property;
 - (c) borrowing and lending money;
 - (d) entering into contracts;
 - (e) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate".
- "S.22 (1) The principal functions of the Commission shall be- :,,
 - (a) to prepare and maintain an up to date list of all public corporations and make recommendations to the Minister on which public corporation should be declared to be specified public corporations; 2
 - (b) to formulate and prepare detailed plans for the restructuring of all specified public corporations;
 - (c) to supervise, monitor and enforce the restructuring procedures and agreements in relation to specified public corporations;
 - (d) to liaise as necessary with responsible ministries and other organs of the Government with a view to ensuring that the objectives of the Commission are achieved; (e) to make such other recommendations as it considers necessary to enable the Commission to achieve its objectives under this Act.
- (2) Without prejudice to subsection (1), during the period of its existence as specified under section 21 of this Act, the Commission shall- (a) be responsible to the President for ensuring the implementation of Government policies on the reform of the public corporations sector;
 - (b) implement the policies and programs of the Government with respect to the reform of the public corporation sector;
 - (c) develop operating policies, procedures and guidelines for the implementation of the public corporation restructuring reforms decided by the Government; (d) review and make recommendations on specific policies and legislation pertaining to the public corporations sector;
 - (e) liaise as necessary with responsible ministries in monitoring the performance of public corporations and in participating in the development and supervision of statements of corporate strategy;" Again, under Sr- 4A of Act 16\93 "Every public corporation ' existing on

the coming into operation of this Act shall be deemed to be established pursuant to this Act ". Under S. 38 (1) "The Minister may upon the recommendation of the Commission (PSRC) by Order published in the Gazette declare a public corporation to be a specified public corporation to which the provisions of this Act shall apply". 3 The Commission's powers are further strengthened by s. 39(1) which provides, among other things:- "Where a public corporation has been designated a specified public corporation, the commission shall from the effective date be responsible for the restructuring of that specified public Corporation. "(2) Without limiting the generality of subsection (1) the Commission may, in respect of any specified public corporation-

- (a) cause a detailed financial and operational analysis of the specified public corporation to be carried out;
- (b) determine the means by which the restructuring of the specified public corporation may be implemented;
- (c) cause a valuation of assets of the specified public corporation to be carried out;
- (d) invite expressions of interest from potential purchasers or lessors of the specified public corporation or of the assets of such corporation;
- (e) publish guidelines for bidding and valuation procedures and criteria for the selection of purchasers or lessors; (f). determine the price at which the shares in or the assets of the specified public corporation may be purchased or leased;
- (g) hold discussions with the members of the Board and officers and employees or their representatives of the specified public corporation with a view to achieving a fair, reasonable and harmonious restructuring of that specified public corporation;
- (h) determine, in consultation with responsible ministries fair and reasonable severance, pension and other payment arrangements that may be appropriate following restructuring of the specified public corporation;
- (i) negotiate and cause to be executed such agreements as may be necessary with any party for the purchase, lease, management or control of shares in or assets of the specified public corporation; 4 \
- (j) negotiate and cause to be executed such agreements as may be necessary with any party or the purchase, settlement or discharge of the liabilities or any other indebtedness of the specified public corporation;
- (k) cause proceedings for the recovery of any debt owned to or by a specified public corporation or for the winding up or liquidation or dissolution of the specified public corporation to be initiated; And

- (1) do all such other acts as may be required to effect the restructuring of any specified public corporation". The wide powers of PSRC do not end there. Under S. 43 the Commission is given a wider perspective as it is provided, again among others, that, "(1) Notwithstanding any other law to the contrary, with effect from the date of publication of an Order declaring a public corporation to be a specified public corporation the Commission shall—
- (a) without further appointment have the power to act as the official receiver of the specified public corporation; and
- (b) have the power and all the rights of a receiver appointed in accordance with or pursuant to the Bankrupt Ordinance.
- (2) Without prejudice to subsection (1) of this section the Commission, shall— (a). in relation to a public corporation which is insolvent— ;
- (i) have power to determine whether the public corporation should be liquidated, (ii) have power to determine an alternative restructuring option. Provided that in the event of terminating an alternative restructuring option the Commission shall prior to proceeding with such option, inform all the interested parties in writing of the reasons for preferring that alternative option; 5 (~ ." { ! :
- (b) in relation to the debts of private creditors, but after negotiating with them; private persons; in relation with the consent of the Treasury have the power—
- (i) to write off any debt½; {ii} to reschedule the payment of any debt or . // interest on such debt; and (i-i) to suspend the accumulation of interest on any debt for a specified period". Under (c) and {d} the Commission (PSRC) can exercise powers under
- (b) above in relation to government debts where the Corporation is wholly owned by government, and where the govt. owns just shares, with consent of the Treasury and shareholders. Treading on the powers granted under the law (S.38(1)), the Minister for Finance, vide GN 324 of 25\10\96 declared various public Corporations ::1.1.: to be "Specified public corporations" and in the list included is "State Travel Services Ltd" (present defendant/judgement debtor). PSRC informed the general public of the existence of this GN and other GNs on similar subject in a public Notice contained in Daily News paper dated 27th May, 1997, displaying over 30 specified public corporations and, which, again for clarity, the relevant part need to be quoted at length, "Accordingly, the PSRC is now fully responsible for the devising and implementing divestiture of these companies. No action would be executed on the assets of the companies without the knowledge or prior approval of the PSRC. The PSRC will ensure orderly privatisation of those companies and secure the interests of all the creditors and all other parties concerned in accordance with the law. Notwithstanding, the specification order the management of the companies is still vested in their respective Board of Directors which are obliged to ensure continuation of business operations. The Boards are obliged to consult and get approval of PSRC before making any decisions in relation to disposal, acquisitions of the assets and signing of any loan/credit or lease agreement. All creditors are informed to register their debts with PSRC

through P.O. BOX 9252 Dar es Salaam within twenty five days from the date of this notice i.e. 24th May 1997". 6 On 16/9/97, the Government of the United Republic of Tanzania represented by PSRC and referred to as the vendor (on first part); Tourism Services International Ltd referred to as purchaser (on 2nd part) and State Travel Services Ltd (on third part) and referred to as the company, entered into a sale agreement by which the purchaser bought 75% of the shares of the Company which had earlier on been owned 100% by the government, leaving the latter with just 25% shares. Meanwhile negotiations had been going on between PSRC and the employees of the State Travel Services (and regard being had to the facts available I will take it that they include the plaintiffs\decree-holders) possibly under s. 39(2)(g) of Act 16 of 1993, which negotiations resulted in retrenchment, of decree-holders in July, 1997. In accordance with the plaint whose contents have not been disputed by the Defendants (as it decided not to appear in its own defence) alone filing a written statement of defence, coupled with the fact that in the course of arguments in this matter Mr. Mujulizi for objectors was open enough to state that PSRC is arranging to pay the claims signifying that the claims are not disputed) it seems, during the retrenchment negotiations it was agreed between the plaintiffs and PSRC, that, among others, the plaintiffs\decree holders would be paid "a golden handshake of two months' salary for each year of service for the first ten years of service plus one month's salary for each year of service for years eleven to twenty years" which decision was approved by the government. However not only were the "golden handshake" benefits not paid but also the severance allowance did not comply with the legal requirement of 5% of the annual salary times the number of years of service. Embittered by the non-payment of the above-mentioned benefits, on 21/10/97, exactly 36 days after 75% of the shares of the State Travel Services Ltd had been sold to Tourism Services International Ltd, the plaintiffs\decree-holders\Respondents filed an action against State Travel Services Ltd, claiming among others, "Tshs. 103,991,471 being the total golden handshake payment for the 77 plaintiffs as well as for a sum of Tshs. 8,243,033/= being the unpaid balance of total severance allowance for the 77 Plaintiffs," interests and costs which after the pendency of the judgement have totalled up to a decretal sum of shs. 185,097,985/=, the subject of the disputed garnishee order. Again, it would seem the State Travel Services Ltd business is also being traded under the Tourism Services. The Applicants' attack is geared at blocking the 11 Bank Accounts referred to above. In support of the application to lift the garnishee Order :- 1. Mr. Mujulizi's (for the applicant) lengthy arguments (including the accompanying affidavit) can be summarised as follows - that from the date the State Travel Services was declared a specified Public Corporation it came under PSRC as a Receiver hence the provisions of the Bankruptcy Ordinance, Cap. 25, became operational necessitating that all debts and claims including the suit leading to the decree, the subject of this controversy, against that Corporation, had to proceed against PSRC as a Receiver to protect investors from proliferation of suits which would render the objectives of the Act futile; that the garnishee Order itself, on its face value is confusing, vague and capable of causing grievous and irreparable harm to the 1st objector. (Tourism Services) as it was issued against all accounts operated by 1st Objector a trade name adopted after the 75%

shares had been sold to Tourism Services International Ltd; that the accounts which have been affected are Trust Accounts - that due to operations of air services and 'Tourism'; which involve the selling of tickets on behalf of various Airlines some of these Accounts contain monies from other parties, and that the garnishee order would paralyse the 1st Objector's Operations, adding that if the said garnishee order is to be upheld let it be varied to hold only the monies of the State Travel Service Ltd. Mr. Lutema's equally lengthy and forceful submission in response can conveniently be summarised in the following words - that although under Act 16\96 (under which it was created) PSRC was given a wide range of powers as provided under various sections which include S.22, 37 and 43 it was not made an automatic official Receiver to all specified public Corporations as S. 43 may purport to indicate, urging the Court to note that in construing one section of an Act regard should be had to the other provisions of the same Act to avoid making the other such provisions superfluous (cited New Insurance Coy Ltd vs Lilian Evelyn Criss and another 1966 EA 90), and that in interpreting statutes the court should recapitulate to what was the intention of the legislature; by understanding the objectives and history of Act; that the purpose of the Public Corporations Act (Act 2\92) as Amended by Act 16\93 was not limited to simply dissolving the various corporations and putting them under Receivership but was to make better provisions for their establishment, management streamlining and related incidental matters thereto which included restructuring, dissolution and selling; that PSRC became an official Receiver only to a Corporation dissolved for non-performance in which case all powers of a Receiver would be exercised but it would not be in any other situations of restructuring like in the present case where State Travel Services did not cease to exist but merely its share holding changed from 100% government owned to 25% while 75% went to a private investor; that as a result there was no Receivership of the state travel services Ltd thus the said corporation has never ceased to exist and could therefore be properly sued as was the case here and a garnishee order issued. 9. Mr. Lutema's arguments did not end there. He argued in the 'alternative' that the court should hold that there was no sale agreement as such as S.5 of the Stamp Duty Act, Act 20\72, a 'mandatory provision, requiring payment of Stamp Duty was violated ... thus ... dealing in the ... state travel services as it was before the purported sale agreement; that there should have been other supporting affidavits regarding the sources of the information (citing Bakari Ben and Jumaa Ben v Zainabu Arna Beni Jumaa (CA) Civil Application No. 85\97 (unreported) referred to in the affidavit which accompanied the chamber summons; that in the unlikely event it is found that the wrong party was sued the court should exercise its powers provided under O.1, Rule 10(2) CPC and add the right party, PSRC, and finally that if the court finds that there is need to lift the garnishee Order the judgment-debtor should be called upon to deposit the sums stated to guarantee ... payment to his clients in the event they win; 5:1 ... In reply Mr. Mujulizi maintained that depositing the decretal ... can it be legally ordered as there would be no pending proceedings before the Court; that regarding the trust Accounts the decree-holder was duty bound to investigate and execute on the right accounts of the judgment-debtor; that the stamp duty was supposed to be paid only on the share transfer

certificate... that _as the purpose of the Act was to allow amicable and smooth restructuring of public corporations and place them in the hands of private entrepreneurs I a Special Receiver

- PRSC) different from a Receiver appointed under cap. 25; 212 or appointed by court, was appointed under s. 43 of Act 16\93, with wide powers going beyond the mere dissolution of the corporation hence PSRC's public announcement in the Daily News paper that all claims against the specified Public Corporations should be registered with it, and finally that the garnishee order is not the only remedy and more so when PSRC does not disclaim liability. 10 ... Let us now turn to the core of the controversy - whether PSRC and Tourism services have established that they have an interest in the Accounts against which the garnishee order has been issued as against the judgement debtor - State Travel Services. As rightly pointed out by both the learned Counsel the Amendment (Act 16\93) was geared at restructuring public corporations and this is spelt out in the "Objects and Reasons" for its enactment prescribed in the Bill to that Act and which reflect the following, "This bill is designed to effect amendments to the Public Corporations Act, 1992, so that the Act becomes an appropriate vehicle for effecting the restructuring of public corporation. In effect, the Bill intends to narrow the scope of the Act to encompass only public Corporations that are solely owned by the Government or majority owned by the Government". This was, a time when the government was moving away from being the 'Kipig' in the commanding heights of the economy and switching over to privatization. This can be discerned from the wide ranging powers given to PSRC as can be seen from the provisions of the Act already quoted above. The move was hastily and ambitiously hatched. It could not, in the circumstances be water-tight in each respect and some flaws on the legal side is a telling factor. I will start with the main argument - whether PSRC automatically becomes a Receiver of the public Corporation immediately it is designated a specified public Corporation. s. 43 of Act 16 of 1993 is already quoted. As rightly submitted by both Counsel S. 43 can't be interpreted in isolation as that would lead to superfluity of other provisions. 11 ... It has already been demonstrated that the objectives and reasons for the enactment of the Act (16\93) was to restructure Public Corporations in which the government controlled 100% or majority shares. The provisions of the Act already quoted clearly show that in restructuring some specified corporations could be liquidated or restructured otherwise. S. 43 { 2) specifically authorises PSRC; in insolvent Corporations, to decide on whether they should be liquidated or be put on alternative restructuring option which includes selling. It was in the exercise of these powers that PSRC did not liquidate the State Travel Services Ltd but sold the majority of its shares to a private investor (Tourism International Services). The Bill to the relevant Act, giving "Objectives and Reasons" for the enactment of S. 43 provided, "It is proposed in S.43 that the Commission should act as the official receiver of a specified public Corporation .

- ~. . . . I . . . ; It should be entrusted with the power to make decisions on liquidation or alternative restructuring option" Reading the intention of the Legislature in the provisions of S. 43 and other provisions of the Act above quoted and as guidedly pointed out in the quoted objectives and reasons found in the Bill to the relevant Act one is left in no doubt at all that indeed PSRC was appointed an automatic official Receiver of any Public Corporation', upon the same being designated 'a Specified Public Corporation'. With respect to both learned Counsel the heated argument on this seemingly issue seem to have emanated from a misapprehension of what an official Receiver is. The way I understood their arguments they seemed to propose that a Receiver is; only appointed in ventures which have to be liquidated or under liquidation. With respect this is not necessarily the case. A distinction here should be made between Receiver and liquidator although the former may also be appointed the latter and also between Receivers appointed by courts and those by individuals or specific statutes 12 --, : -- --, ... As defined in the Halsbury's Laws of England (Fourth Edition), Vol. 39, para. 801, "A receiver is a person appointed for the collection or protection of property. He is appointed either by the Court or out of Court by individuals or corporations. If he is appointed by the Court, he is an officer of the court deriving his authority from the court's order. If he is appointed out of court, he is an agent and has such powers, duties and liabilities as are defined by the instrument or statute under which he is appointed and derive from the general law of agency". A receiver is often appointed in general terms over all the property and assets, and his powers and duties must depend on the terms of his appointment. This would depend on the object of the appointment. It could be for the purposes of determining the rights of parties or to ascertain what encumbrance exist on a venture and what their priorities are or to settle dispute as to title. A receiver, could also at the same time be appointed a manager of the venture. What the above exposition leads to is that a Receiver can be appointed even for ventures not under liquidation nor expected to be liquidated, the controlling purpose for such appointments being the collection or preservation of the relevant property for the benefits of persons who have an interest in it. It was under this principle that; by statute, PSRC was formed and appointed an official Receiver of all 'Specified Public Corporations' so designated under Act 16 of 1993. I should reiterate that some distinction should be made between court appointed Receivers and other receivers. Generally, it is true that receivers appointed by courts are so appointed for the preservation of a debtor's property pending an action against him or applying the said property to satisfy a creditor's claim or right in situations where the possibility of injury, loss or removal of that property is looming but for Receivers appointed outside the Court, as earlier hinted upon, it could be for the purpose of ascertaining the incumbrance or the exact state of the venture in preparation for another step to be taken. Act 16 of 1993 took both courses and appointed PSRC as official Receiver for both type of corporations - those which seemed insolvent hence were to be put on death roll by liquidation, and those which needed restructuring as the State Travel Services came to be. Mr. Lutema's argument is caught up in the very web he knotted for the Applicants: that we should look at the intention of the legislature when passing that Act (I have already quoted the objects and reasons

contained in the bill). I must concede that s. 43 could have been better framed, but notwithstanding the wanting wording, reading subsection 1(a), reinforced by 1(b), and supplemented by the intention of the Legislature as put in the objects and reasons for the enactment of the relevant law which were glaringly revealed in the very wide range of powers bestowed on PSRC, one is left in no doubt at all that the said PSRC was appointed an automatic official Receiver in any specified Public Corporation upon being so designated. Having so concluded, then what is its effect on the application before us? Mr.

Mujulizi says that as a Receiver, then all actions must proceed against PSRC in order to protect other investors. S. 43, as already expressed appointed PSRC, out of Court, as an official Receiver. It however did not do so there. This statute (Act. 16/93) did not merely appoint PSRC in a mere capacity of a Receiver appointed by individuals; it pushed it into the domain of court appointed Receivers! It "shall have the power and all the rights of a receiver appointed in accordance with or pursuant to the Bankruptcy Ordinance (s.43 (1)(b))". An official Receiver under the Bankruptcy Ordinance is so considered for a particular matter after the Court has issued a "receiving order" for the protection of the estate - this is after the debtor has committed an act of Bankruptcy, or upon presentation of bankruptcy petition by either creditor or debtor. Among others, the "Receiving Order" would specifically mention who the official Receiver is. However this situation is not applicable in our case because this Special "Official Receiver", PSRC, is not the creature of the Court and in any case State Travel Services was/is not under bankruptcy apart from the limitations of s. 11(8) of this law - Bankruptcy Ord., Cap. 25, which categorically provides, "A receiving order shall not be made against any corporation or against any association or company registered under the Company Ordinance". Without attempting to reconcile the effects of this provision (s.

- 118) to the case at hand as against the other relevant laws like the companies ordinance it suffices to say that there was no receiving order. The above observations notwithstanding however we have the glaring s. 43: (1)(b) of Act 16 of 1993 before us. This prescribes that PSRC has all powers and all rights of a receiver appointed in accordance with or pursuant to Bankruptcy Ord. It is under this clause that Mr. Mujulizi says he prays to be allowed to take shelter. What powers are those? Are they of the nature and type as referred to by Mr. Mujulizi? 15. An "official receiver" under the Bankruptcy Ord. has indeed wide powers all geared at the protection and preservation of both the debtor and creditors' interests. Under s. 75(1) " ... the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate". Receiver has a duty and power to investigate the conduct of the debtor as a whole (s. 76). Under s. 77 Receiver, among others, has to make sure that the estate is not wasted, can act as manager or trustee when those vacancies are open and even after their appointment, Receiver has to keep a keen eye on the said manager or trustee (s.83). Other sections on incidental powers and privileges are not relevant to the situation at hand except s. 9(1) which states that after the estate or property of a debtor has been placed under an official Receiver, " ... the

after, except as directed by ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect

- 1. of the, debt : cir, shall commence any action or other legal proceedings unless ... with the leave of the court and on such terms as the court may impose. Of all the powers of an "official Receiver" indicated above those under s. 9 of Cap. 25 should have been the ones specifically targeted by s. 43(1)(b) of Act. 16 of 1993. I am saying so because the other powers of the Receiver under Cap 25 are almost covered under a string of wide powers bestowed on PSRC under Act 16 of 1993. But these alone would not have sufficed. We have already observed that the intention of the legislature was to afford a smooth restructuring of Public Corporations 100% or majority share owned by the government in the wake of privatization. Indeed if private investors were to be attracted there were to be some kind of guarantee on their investments and a guarantee cushioning against debts and liabilities by the said Corporations as is the case in this case. I am fortified in my opinion on this by another factor that the sale agreement 1016 (in which Tourism Services International Ltd bought 75% of the State Travel Services Ltd) does not provide protection for this kind of liability - I believe this was due to the fact that it was thought that s. 43 of Act 16 of 1993 taken care of all this otherwise the private investor could not simply dump in money which would only soon be fished out by creditors as the decree-holders are trying to do. Due to this, s. 43 of Act. 16 of 1993 created a Special official Receiver in the form of PSRC under which all properties of Specified Public Corporations were placed in terms of s. 9 of Cap. 25 saving them from being proceeded against by way of remedy by creditors apart from the barrage against the said creditors that they cannot file an action thereof without the leave of the court. With respect to Mr. Lutema no distinction was made between corporations that were to be placed under liquidation or restructuring. To attach any other interpretation would go counter to the intention of the Legislature when passing the relevant act. Thus under Act 16 of 1993 the Accounts of the State Travel Services were placed under PSRC as an official Receiver, and in terms of s. 9 of the Bankruptcy Ord. they cannot be attached as the garnish order purports to do. I have so concluded without going to the other side of the matter of whether the decree on which the garnishee order is found is legally proper as no Court's leave was sought and secured before the action was filed in terms of s. 9 C-1p. 25 because that is not the issue before me apart from lack of jurisdiction to question its existence of other avenue if relevant parties find it necessary to pursue it. While still on this I should respond to Mr. Mujulizi's contention that in the premises only PSRC can be proceeded against by any deserving creditor. While possibly desirable I have failed to see the basis of his proposition. S. 9 of Cap 25 17 ... : : . . . is silent on who should be sued. In my opinion, with Courts leave, the debtor, in this case, state travel services Ltd, can be sued alone or jointly with PSRC as the former is still a corporate entity capable of suing or being sued. The above disposes the matter before us making it unnecessary to discuss other submissions, contentions and propositions made by both

learned Counsel. However I should make 2 more observations. The law as it is leaves the creditors's plight at the mercy of PSRC. Speaking on the case at hand, having exercised its powers, possibly under s. 38 (2)(g) and (h) - discussing with employees leading to retrenchment and having agreed on a package of terminal benefits, subsequent refusal to pay the same can't earn PSRC a good name nor can it attract sympathy in case of any eventuality. As much as it hastens to clamour for its rights and privileges as a receiver it should equally urgently and diligently pray its proper role as a Receiver for creditors' benefit. Its inaction can lead to embarrassments to various parties including the investors and defeat the very purpose for which the whole restructuring process was embarked upon. This is so because in this situation it is not hard to envisage creditors seeking and securing court's leave to file actions against the relevant corporations and PSRC itself which will in turn lead to something even worse than a garnishee order exemplified in this case. Also the existing law may need some plugging to avoid such embarrassments. - secondly, the manner in which the garnishee order was sought and drawn up leaves a lot to be desired. It is no wonder that Mr. Mujulizi attacked it as being vague and unfair as it involved other parties' accounts. The decree-holders reacted wildly in their application for garnishee orders against 11 Bank accounts. While I agree with Mr. Lutema that there is no proof that other 18 parties' accounts were attached, the way the application was made and the garnishee order issued should not prove either that the 11 accounts belong to State Travel Services Ltd. Considering that the garnishee order simply directed respective Bank Managers to block Bank Accounts so and so without specifying who the owner was there is a possibility of involving other unrelated Accounts. The Court Registry should always make sure that in drawing up garnishee orders the name of the account holder is specifically mentioned to guide bank officials in their relevant actions and of course this goes hand in hand with the effect of decree-holders to be more particular in information they furnish to the court. In conclusion the application to lift the garnishee order is allowed, first for lack of particularity as to whether the 11 Bank accounts attached belong to the judgment-debtor, State Travel Services, not liable to Ltd and, secondly, even if they were, they are such order being under PSRC as an official Receiver of State Travel Services Ltd exercising its powers under s. 43 of Act 16 of 1993 read together with s. 9 of the Bankruptcy Ordinance. Considering the role played by each party in the matter leading to this situation - inaction by PSRC in not honouring what was agreed upon with the decree-holders hence the filing of the suit, and, the decree-holder's failure to follow the prescribed procedure, under -

- s. 9 of Cap. 213 - I order that each party meet own costs (L. B. Kalegeya) JUDGE Delivered today the 30th July, 1998. AT DAR ES SALAAM (f. B. Kolegeya) JUDGE.

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