

TANZANIA / JUDGMENT

hodrum benedict suleiman vs zhengzhou giant electric 2 others 2022 tzhccomd 26 23 february 2022

COURT
TZHCCOMDDECIDED
23 February 2022

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IN THE HIGH COURT OF TANZANIA COMMERCIAL DIVISION AT PAR ES SALAAM
MISCELLANEOUS COMMERCIAL CAUSE NO. 37 OF 2021 (Originating from Commercial Cause
No. 53 of 2020) HODRUM BENEDICT SULEIMAN..... APPLICANT VERSUS
ZHENGZHOU GIANT ELECTRIC EQUIPMENT CO. LTD..... 1st RESPONDENT
NIPO GROUP LTD (KELLOGG CONSTRUCTION & NIPOAFRICA ENG. CO.
JV..... 2ndRESPONDENT ROYAL RUNNERS AND GENERAL SUPPLIES
(T) LTD..... 3rdRESPONDENT Date of Last Order: 06/12/2021 Date of Ruling:
23/02/2022

RULING

M KE HA,J In this application, the applicant is moving the court for declaratory orders that the property on Plot No. 46/1 Western Industrial Area-Dodoma have i encumbrances and the applicant has interest over the property and that the court be pleased to postpone sale of the property as the applicant has interest in it. The application is made under Order XXI Rule 57 (1) and (2) of the Civil Procedure Code. The application is supported with an affidavit sworn by the applicant. Mr. Lugomo learned advocate represented the applicant. On the other hand, the application was contested by the 1st respondent through a counter affidavit sworn by one Yang Pengfei, Principal Officer of the 1st respondent. Ms. Lucy Kiangi and Mr. Nasri Hassan learned advocates represented the 1st respondent. It was submitted for the applicant that, the reasons in support of the application are contained in paragraph 2 of the applicant's affidavit. The applicant deposed that, the attached property contains encumbrances and that his interest would be jeopardized upon sale of the property. In paragraph 5 of the affidavit, the applicant deposed that, there has never been any matter in the court between him and the respondents to warrant execution against the property in which he has interest. He also deposed in paragraph 7 of his affidavit that, the attached property has never been the property of the second respondent. 2 As to the 1st respondent, it was submitted on her behalf that, the applicant has no interest in the attached property. This has reflection in paragraph 4 of the counter affidavit. Under paragraph 7 of the counter affidavit, it was deposed that, when the 1st respondent conducted official search at

BRELA, it came to her knowledge that, actually, the applicant is the shareholder and Director of the 2nd respondent hence, the application was nothing but a scheme designed to delay the execution process. The applicant did not dare to challenge this part of the 1st respondent's counter affidavit by way of filing an affidavit in reply to the counter affidavit. Therefore, whatever submissions of the applicant cannot outweigh uncontroverted evidence of the 1st respondent over this fact. The issue is whether the interest held by the applicant is protected by Order XXI Rule 57 (1) of the Civil Procedure Code. There is no denial that, the applicant is part and parcel of the 2nd respondent (Judgment Debtor). Under section 48 (1) of the Civil Procedure Code, all the saleable property, movable or immovable, belonging to the judgment debtor, is attachable for purposes of execution of a decree. Being part of the judgment debtor and therefore part to the decree, the applicant has no protection under Order XXI Rule 57 (1) of the Civil Procedure Code which is meant for third 3 parties. I hold the objection to be without merits. It is overruled. The application is thus dismissed with costs. Dated at DAR ES SALAAM this 23rd day of February 2022. JUDGE 23/02/2022 Court: Ruling is delivered in the presence of the parties' advocates. C. P. JUDGE 23/02/2022 4

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