

TANZANIA / JUDGMENT

19981231 TZHC Dar es Salaam

COURT
TZHCDECIDED
31 December 1998

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IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL CASE NO. 39 OF 1985 .· M/S
GEOMIN ···~ PLAINTIFF VERSUS THE NATIONAL BANK OF COMMERCE
· DEFENDANT

RULING

Messrs Geomin is foreign Company. It is in~?'lOratedin Romania whose objects include mining and geologi9al co-operation. Its registered Office is ,at 109 Galea Victoriél, Bucharest .. - It. brought these proceedings against the National Bank of Tanzania to recover money from a third party which the defendant had guaranteed .. \$x part; judgment having been entered for the plaintiff execution of decree was a~pl.ied for and was allowed. In exe<lution of the decree the following Motor Vehicles were at~ached; SU 29053, SU 3181, SU 33050, SU 25896 1 ; SU 33168 SU· 33256 and SU 32444; 1At the time of attachment the defendant had ceased to exist as a legal entity~ In its place three banks had been created, including the National . Bank of ~ommeree (1997) Ltd. It seems that the motor vehicles in question:were vested in the la~ter bank when the parrent bank was dissolved. The National Bank (1997} Ltd has filed ,_- I objections against the attachment, contending that it did not inherit liability:r in respect of the decree that is sought to be executed~ ·Fer this argument I they rely on section 10(1) of the National Bank of Commeree (Rec,rganisatipn / "ld vesting of Assets and Liabilities) Aet, No~ 23 of 199?. It provid~:- rv10(1) Consequent upon the split into the Company (ie NEC (1997' · fbl.,) the NMB. and the Corporation, all assets and liabilitiea relnting t,«, ~anking business, to which the former bank was entitled or subject, immediately before the vest1-11g date shall, with effect from the 1st 'day of October· 199f', by virtue of this sec~ion and without further asauranee

- (a) in respect of the banking business in. the s:pecified brm:lkeJE constituting the Conq,any, be transferred to and to vest in the company
- (b) (c)
- (d)
- (e) in respect of non-banking assets, all other re;idual assete and liabilities, whether arising from hanking .ir non-banking asse~s and business of the former bank not transferred and vested by paragraph~ (a),(b),(e) or (d) of this subsection be t n.sferred to and be vested in the Corperationrrw. - . . . , ,... ;, - 1 are supported · . ch have been' instituted by chamber summons

The objections, Whl. t~ th objector's Corporation Secre ""J~ by the affidavit of Shuma w.I. Kisenge, , e . . attachment of . . . t obJ'eetor did not inherit th_e decree, He swears that since ne. . its property was made in error. . . . learned counsel ~ror the respondent/ In his counter affidavit Mr. Kl.ll@lJ~, ... ~ 1 t th t the pa,:3sing of, legl.S a ion w ~ hich vested. assets decree .holder, swears a , . ransf'er tG and liabilities to the objector _fer~ de>es not a.ut~tically t. . . "-. l -.2er attachment. The objector having fa~lled to comply it the IDOtor Y-.,;!<: es Unu , . . f 19rn .. f t. n 16 of the Road Trafic Act, No. 30 o t.Jt with the provisions o sec 1.o . 1 . . the pro~_e, rt_'v, ef the judgment debtor~ . the said motor vehicles remain r J I 1 ,, . t;on by' ~ay of written t' . Learned counsel were a i::c uppli' ~ ir -ted to argue ' :i . ' !

- .. : ,10 ~ none.did so as no such documents have.been submi::sions but it seems that . ' ,I I th~ ng would have changed the ~1"1'led in the these proceedings. In :.my pas.e no l. . . ' ~ ti ally the f such documents were filed because pr~c c ~ character of the ca.so 1 .. " issue is one of construction of law. I will deal with section 16 of the ' Road Traffic Act first. The relevant part ~f this legislation provides that:- I, ' I H 16(1) Within seven days attter theisale or other disposition I of any kind whatsoever of any r~gister~d motor vehiele ~:I' trailes . the person selling or othendse I . disposing of . it shall.~" 1,1 There follow obligations which must be~ , dtscharged by the sellor or whoever disposes of a registered motor vehi~les. S~ there must be a ~ 'I .. er some . other dis:position. .. Obviously therei' : ! j\ was , ' no sale in the . instant ~e. Wa:3 there any other. kind of disposition? N~ the wttrd "disposition" entails Jhe transfer by one person to another ef som~thing the_tormer owns; it means transferring that thing to the care or possession of another. St in order for . " I section 16 of the ~ad Traffic Act to apply, \it \must be shown. the easwhile National Bank of Commerce had power to.dispos~ of ite property in favour of the ' . objector. If that were proved, then it is the dissolved bank that would have. had the dut; to comply with the said section 1'6 1 ' Doe~ this, then, mean that the object/doe~ not have pro:pritory rights in'.respeot of motor vehicles which were transferred to it from former bank? I do ,not think so, beea.use subsection
- (1) of section 10 of the NFC Holding Corporation Aet. ,Nt 1 23 of 1997, states categoric:llly that "~.. all assets and the liabilities relating . ' to ~ing business, ls ' to which the former bank was entitled or sbject. immediately
- I before the v~ating date shall, with effect~fr~m.the , , : 1st day c,f October, 1997, by viture of this section a:1ld without further 1 ' , assurance.: \ I I I, 1: It would appear, therefore, that kind of liabilty is covered under sectton
- ' 10(l)(e) of the NBC Holding Corporation Art,~ No. 23 of 1997~ :1' ' .i' . Now Mr. Kinguji, lear:ned counsel fo~ll th~ respondent, has raised~.the pofut that the affidavit of.Shuma Kisenge is defective as it did not comply with requirements of the law. In his submissions;; Mr. Kinguji contends that the ' . rubber stamp affixed at the last page of that affidavit is one used in oridnary correspondence showing generally! th~t it was being u~sed in offices of the Attorney - General. So should one assume that the person who _alleg~s fl I " to have attested that affidavit was the Attorney-General himself, a state~ I - I; I~ ,. attorney or a registry clerk? It is Mr. Kinguji's contention that the document was merely stamped by a registry clerk an4

~at it was attested, where attestation means the deponent was prese~t before a proper person at the 11 · , time the oath is supposed to have been taken. 11 ! i_l 11 I'i _Another defect'that has been pointed:out is that the affidavit does not indicate that the jurat admincstering theJoath personally lmew the deponent or that the deponent was identified to hii• 1The objector has attempted to make . good the defect by filing a supplementnry :! affidavit by Gerson Mdemu, a . 1• State Attorney, who swears that he adminiJte~ed the orath. ! My examination of Shuma Kisenge's aff,idavit leaves no doubt that indeed it is defective as contended by Mr. Ki.ngu~;i. ; For it does not show whether or not the deponent was known personally ~!o , the jurat who administered to oath. Nor does it show that whoever purported to administer it has authority ' , I, . to do so. And this explaiJ?s why the objector saw the need to file a supplementary affidavit. In view the sup~lementary affidavit of Gerson Mdemu, , · ~ l . - · ~- _;;a State Attorney, who swears th.3.t . he admin;istered I, " the oath has cured the irregularity which appears in Shuma Kiseng~'s affidavit. The i~regularity is curable under section 9 of the oaths (Judi:cia:1. Proceedings) and statutory . , I• .. r Declarations Act, No. 59 of 1966 which provides thus:- 0 9. Wher'3 in any judicial proceedillils an oath or an affirmation li -i has been administered and b lken, such oath or affirmation shall II : , be-deeined to have been properlyY adrninistered·or taken, notwithstanding any irregulari~y :in the administration or the administration or the taking thereof,, or any substitution of an oath for an affirmation, or of an affirml.'l.tion for an ! ' oath, or of one form of affirmation.for I . • another. • 11 If I,. Upon the foregoing considerations a.nd::observations the application (· succeeds, hence the objections are sustained., ∴: 4

- (a) in respect of the business in the specified branches constituting the company, be transferred to and to vest in the company"• The acompany 1 is the National Bank of Commerce (1997) Ltd. Thus if the motor vehicles one assets n. o o in respect of the ba:ri...king businessso •• 19 they vested in the objector :i. •• without any further assurance. 19 It has not been established that the motor vehicles which were attached in the execution of the decree are do n-t fall under the provisions of the above statute. It is my judgment, therefore, that the provisions of the• N.B.C Holding Corporation A.ct, Noo 23 of 1997, exclude and override the provisions of section 16 of the Road Traffic Act. Thus, the disposition in favour of the objector having been sanctioned by parliament, the objector became the proprietor of the motor vehicle which have been attached. The objector has taken the point that it is not the heir to the liability which arises from the decree that has been ;xecuted. The decree arises from a guarantee to which the former National Bank ~,as a party. In effect the objector argues that the liability under the quarantee is covered under . . section 10(l)(e) which provides that:-
- (e) in respect of non-banking assets, all other residual assets and liabilities, whether arising from banking or non-banking assets and business of the former bank not transferred and vested by paragraphs (a),(b),(c), or (d) of this subsection be transferred to and be vested in the Corporation." It seems to me that the guaranteeing of third parties does not, strictu sensu, fall under the words "banking business11• For as Black's Iaw Dictionarz,Abridged Sixth Edition, at page 100 says this of the business of banking:- "The business of banking,

as defined by law and custom, -consists in the issues of notes payable on demand intended to circulate as money when the banks are banks of issue in receiving deposits payable on demand; in discounting commercial paper; making loans of money on collateral security; buying and selling bills of exchange; negotiating loans and dealing in negotiable loans and dealing in negotiable securities issued by the government..." The guaranteeing of loans negotiated and secured by third parties from other financial institutions is not, therefore, part of banking. Hence liabilities arising from such activities cannot be said to arise from banking; such liability arises from residual transactions to which a bank may be a party. It is 'i.l, I l' !i :i ; it II ~ l . . The attachment of the following motor vehicles s/i,29053, su,31817, SU,32896, su.33168, su33256 and SU, '32444 is hereby rate.ii. The applicant/ objector shall have his costs. . . .

- I . 11•
- : • ~j Delivered. • •r. Mujnlizi, Advocate:) Mr. Kinguji, Advocate: , I I \ r . - - - - - ... - .

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