

TANZANIA / JUDGMENT

Ruling CRDB BANK PLC V TANGANYIKA GENERAL

COURT
TANZLIIDECIDED
26 September 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SU-REGISTRY OF
MWANZA AT MWANZA MISC. APPLICATION NO. 13548 OF 2024 (Originating from Civil Execution
No. 30 of 2019 and Civil Case No. 30 of 2017) CRDB BANK
PLC.....OBJECTOR/APPLICANT VERSUS TANGANYIKA GENERAL
MINING COMPANY LTD.....1st HOLDER/1st RESPONDENT SELEMANI
MOHAMED KHAMESE.....2nd D/HOLDER/2nd RESPONDENT CATA MINING COMPANY
LTD3rd D/HOLDER/3rd RESPONDENT MAHUZA MUMANGI NYAKIRANG'ANI.....
4th J/DEBTOR/4th RESPONDENT S.L. ISANGI PROCESS SERVER AND COURT BROKER.....5th
RESPONDENT

RULING

29th August & 26th September, 2024. ITEMBA, J. The applicant CRDB PLC, hereinafter the bank, has filed these objection proceedings under Order XXI rule 57(1), 58 and 59 and section 95 of the Civil Procedure Code Cap. 33 R.E 2019. The application is supported by a chamber summons and an affidavit of Peter Museti counsel for the applicant. In the chamber summons in support of the application the following prayers are made:

1. That this honourable court be pleased to investigate the claim preferred by the Applicant against the execution order by Hon. C.M. Tengwa, DR made on April 27, 2024 for eviction of the 1st Judgment 1 Debtor 3rd Respondent from the Mining Area under Mining Licence No. 483/2013 and for handover of the Mining Licence No. 483/2023 to the 1st Decree Holder 1st Respondent, on the ground that the said Mining Licence No. 483/2023 and the respective mining rights over the Mining Licence are charged to CRDB Bank PLC, the Applicant herein to secure credit facilities advanced to 1st Judgment Debtor 3rd Respondent.
2. That upon finding that the said Mining Licence No. 483/2013 together with Mining rights are not subject of execution in satisfaction of the decree of this Court in Civil Case No. 3 of 2017 to order a release of the said Mining Licence from execution.
3. Costs of this Application.

4. Any other order as the Court may deem just. Brief background leading this application according to her affidavit is that; on 12th February 2013 the Minister for Energy and Minerals converted 16 the Primary Mining Licence (PML) with series numbers 0004116 to 0004131, held by M/S Mahuza Mumangi Nyakirang'ani (the 4th respondent), to Mining Licence (ML) no. ML 483/2013. On 20th March 2013, the Minister transferred the Mining Licence no. ML 483/2013 from the 4th respondent to CATA mining company, the 3rd respondent. On 27/1/2014 the 3rd respondent secured a credit facility with CRDB PLC Bank, the applicant herein, amounting to USD 2,500,000/=. The facility was later varied in 2016 for a further term loan amounting to USD 12,100,000. As of May 2024, the 3rd respondent was 2 indebted to the applicant the sum of USD 30,334,098.98. Among the securities registered by the 3rd respondent in the said credit facility in the mining rights and licence no. ML 483/2013. Meanwhile, it appears that, the 1st and 2nd respondents won a civil case No. 30/2017 at the High Court, Mwanza, against the 3rd and 4th respondents. Thereafter, the 1st and 2nd the respondents filed an execution application no. 30 of 2019 and attached the mining rights in licence no. ML 483/2013. The said attachment triggered this application as the applicant is claiming interest of the said licence and that execution will be prejudicial to the applicant. As mentioned hereinabove, the applicant prays for an order of release of the said mining licence from execution. The application is contested by counter affidavits of Selemani Mohamed Khamese for the 1st and 2nd respondents and of Lucas Silas Isangi for the 5th respondent. The 4th respondent Mahuza Mumangi Nyakirang'ani filed the counter affidavit supporting the application. During hearing Mr. Kyarige Kyarige learned advocate represented the applicant, Mr. Steven Makwegwa represented the 1st and the 2nd respondents, Mr. Godfrey Kange was for the 4th respondent. The 3rd and 5th 3 respondents were served but defaulted appearance. Therefore, hearing proceeded ex parte against them. It was the submission of Mr. Kyarige in support of the application that, in essence, the applicant is only supposed to prove that he either own or has interest on the attached property. That, there is do not dispute that 3rd Respondent took a loan from the bank in 2014 and up to now he is still indebted. That, security used were mining license No. 483/2013 which were converted from Primary Mining Licence (PML) owned by Muhuza Mumangi to Mining Licence on 20/3/2013. That, the judgment issued previously by this court was against the Primary Mining License (PML) which was not existing and the ownership has moved from 3rd to 4th respondent. He cited the case of Equity Bank (T) Ltd v. Prosper Rwechungura and Others Misc. Land Application No. 356 of 2021 (unreported), to the effect that if there is third part interest the property should be discharged from attachment. He prayed the licence to be released from attachment as they are used as security in favour of the applicant. In reply, Mr. Makwegwa submitted that, the affidavit of Peter Mseti shows that the respondent secured the loan with Licence. However, the 1st loan is of 27.1.2014 and the 2nd loan is of 1.2.2016. That, the 1st loan, according to 4 page 2 of the loan facility item iii the credit period is 24 months therefore it was to expire on 30.07.2017 whereas the 2nd loan was of the period of 60 months which was up to 30.6.2021. That, loans have a lifespan and in the applicant's affidavit there is no evidence of the 2 loans being restructured. Hence, to him, both loans have expired and the applicant has no interest whatsoever. On the ground that

when the loans were issued the mining licence has moved from 4th to 3rd respondent, he submitted that, the 4th respondent in her affidavit admits to have been indebted to the 1st respondent. That, even though the license has moved to the 3rd respondent before the said conversion the license was owned by the 1st respondent. Mr. Makwega argued further that, when the bank was issuing the loan they did not exercise their duty to due diligence, otherwise they would have noted that the licence had secured another loan. That, according to paragraph 3 and 5 of the affidavit, the same mining licence was used a security in a loan at the TIB Bank. He went on arguing that, in both loans, the directors pledged their personal properties as security therefore the bank can recover her debt by selling those private properties. 5 He finalised his submission by stating that, because the dispute emanates from Primary Mining Licence (PML) and 4th respondent agrees that he has debt, the previous judgement of this court supports the position that, it was not right for 3rd and 4th respondent to mortgage the licence because he was still has indebted to the 1st respondent. On his part Mr. Kange in support of the application submitted that, there is no dispute that the Mining Licence originates from Primary Mining Licence which was owned by the 1st Respondent and transferred from 1st to 4th respondent. That, by changing from PML to ML the former ceased to exist. That, the fact that the 4th Respondent is still indebted, the said debt is based on PML which does not exist. That, the act of 1st respondent transferring PML to 4th respondent before complete payment was done at his own risk. That, the pending debt, if any, can be claimed through other alternatives. That, since the ML is under the name of the 3rd respondent and were Mortgaged to the bank, it cannot be attached for execution. In rejoinder Mr. Kyarige was brief that, there is no dispute that the applicant has interest on the PL and how the mining licence were obtained is not an issue in this application. That, there is no proof that the loan ceases or expired because the bank statement attached herein which were 6 not objected shows that the debt exists. That regarding the issue of the bank exercising due diligence the counsel misled himself because the law allows the same property to be used in different loans based on its value. I have considered the submissions for and against the application. The application was made under Order XXI Rule 57(1), 58 and 59 of the Civil Procedure Code (the code). I will quote the provisions hereunder; 57.-(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respects, as if he was a party to the suit:

58. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.
59. Where upon the said investigation the court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of

or in trust for 7 some other person, or partly on his own account and partly on account of some other person, the court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.” (bolding rendered for emphasis). Therefore, the court has a duty to investigate and determine whether the applicant has an interest or owns the licence attached. Also, the applicant has a duty to prove that she has interest or she owns the attached property. Having considered the submissions of both parties, I will start with the concern that the applicant’s loan has expired and cease to exist. I am of considered view that, both parties are in agreement that the 3rd respondent is indebted to the applicant and the licence is among of the securities for that loan amounting to USD 30,334,098.98. It was stated in the affidavit supporting the application under paragraph 6 that, the 3rd respondent is still indebted to the applicant. Both counter affidavits of Seleman Mohamed Khamese replied to the said paragraph that; “that, the contents of paragraph six (6) of the applicant affidavit are within the knowledge of the applicant himself and the 3rd respondent, 1st respondent retaliates all what is stated in paragraph 5 herein above” 8 The 1st and 2nd respondents acknowledge the debt and mere words from the counsel cannot negate that fact. Therefore, the applicant’s loan still exists. I also disagree with the counsel for the 1st and 2nd respondents that the Bank can recover its money from other securities including the directors’ personal properties. If I can use the words of my sister, Hon. Msafiri J, in Equity Bank (T) Ltd v. Prosper Rwechungura and Others (supra) when a similar argument was raised, she stated that: ‘...this argument does not hold water because so long at the attached property is a mortgaged property which secured money lent to the 2nd respondent and giving the fact that bank money is public money, As for the moment, the said property is not available for attachment until it is fully discharged.’ Next, on the merit of the application for the purpose of brevity and being guided by Order XXI rules 58 and 59 of the CPC, this court will consider 3 key issues. One; what is the attached property? when was the property attached? And whether the property, when attached was in possession of the objector or the objector had interest thereof. Starting with the first issue, according to the loan facility letter (CRDB2), item 8 mentions properties which were used to secure the loan 9 facility. Among the properties, under 8(1) (4) there is mining rights over Mining License No. 483/2013 in the name of CATA Mining Company Limited. Therefore, the attached property it is neither Primary Mining License nor a mining license under the name of any of the 1st and 2nd defendants but the Mining License No. 483/2013 in the name of CATA Mining Company Limited. Moving to the second issue, it is in record that the property was attached on 27/1/2014, when the agreement between the applicant and the 3rd respondent was entered. (See the loan facility letter (CRDB2). And, in respect of the last issue, it is also in record that on 20/3/2013 the property was transferred from the 2nd judgment debtor/ 4th respondent to the 1st judgment debtor/3rd respondent. This is after the agreement was made between the applicant and the 3rd respondent. Therefore, at the time of attachment the property was under the ownership of CATA mining Limited who mortgaged the same to the applicant. The answers to these issues affirm that the applicant had interest with the license at the time of its attachment. Therefore, the application has merit and it is granted. I proceed under Order XXI Rule 59 of the CPC, to order release of the Mining Licence No.

483/2013 from attachment. Considering the nature of this application which resulted from the efforts by the 1st and 2nd respondent to execute the decree 10 of this court I order no costs. It is so ordered and right of appeal is fully explained to parties. DATED at MWANZA this 26th of September, 2024. L. K. J. ITEMBA JUDGE 26/9/2024 Ruling delivered in the presence of Advocate Libent Rwazo for the applicant also holding brief for advocate Geoffrey Kange for the 4th respondent, Advocate Steven Makwega for the 1st and 2nd respondent and Mr. Khamese Principal Officer of the 1st respondent and Ms. G. Mnjari, RMA. 11

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/320719/source_file/dd452871086a7de4/Ruling_CRDB_BANK_PLC_V_TANGANYIKA_GENERAL.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/objectiontoattachment-tanzlii-2024>

Prepared on 13 October 2026 · Esheria