

TANZANIA / JUDGMENT

20170830 TZHC Dar es Salaam 1

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TZHCDECIDED
30 August 2017

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IN THE HIGH COURT OF TANZANIA DAR ES SALAAM DISTRICT REGISTRY AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 231 OF 2017 HB WORLDWIDE LIMITED
APPLICANT VERSUS GODREJ HOUSEHOLD PRODUCTS LIMITED ... RESPONDENT

RULING

MKASIMONGWA, J. HB WOLDWIDE LIMITED, applies for an order that the Respondent (Plaintiff in Civil Case No. 9 of 2017) deposits, within a time fixed by the Court, a sum of USD 100,000 being security for costs for the payment of all costs incurred and likely to be incurred by the Applicant (1 st Defendant in the suit). The application is brought under Order XXV Rule 1 (1) of the Civil Procedure Code [Cap. 33 R.E 2002] and it is supported by the affidavit of one MOHAMED RAMZANALI VIRANI. The Respondent contests to the application so filed a Counter Affidavit sworn by SHIRAG SAVLA, the Principal Officer of the Respondent/Plaintiff. When the matter came up for hearing there appeared before me Mr. Gulamhussain Yusuf Hassan and Mr. Erasto Ngussa, the learned counsels representing the Applicant and Respondent respectively. 1 ' ' In his submission Mr. Gulamhussain contended that in a Civil Case No. 9 of 2017 instituted in this Court, the Respondent, a Foreign Company registered in India under the Laws of India sues the Applicant. The company does not have known movable or immovable properties within the jurisdiction of this Court nor does it possess a TIN Number, Certificate of Incorporation in Tanzania and has not been paying taxes. It does not even have a Bank Account in Tanzania. It only owns the Registered Trade Mark in Tanzania. The provision of the law under which this application is br-ought reqll.ires -that a foreign entify which do"es noChave known movable or immovable properties within the jurisdiction of the Court should provide for security for costs so that if the defendant wins the case he should not suffer in recovering the costs. As it was held in the case of STANBIC BANK (T) LTD Vs. PLEXUS COTTON LTD, CIVIL APPLICATION NO. 111 OF 2006 in this situation, deposit of security for costs by a Plaintiff (Respondent) is necessarily important to remove any fear on the part of the Defendant (Applicant). The applicant therefore prays that this Application be granted. On the other hand in his submission, Mr. Ngussa adopted the contents of the Counter Affidavit. He added that the Applicant has a Registered Trade Mark _in Tanzania. The Trade Mark is owned by an agent one SIGMA HAIR INDUSTRY LTD, the Subsidiary Company of the Plaintiff, who resides herein Tanzania. The agent is a reputable company incorporated under our laws. It was so incorporated sometime in 2012 with a Certificate of Incorporation 2

- I Number 95952. It has a temporary Industrial License issued under the National Industries Licensing Registration Act, 1967, Certificate from OSHA and the Registration Work Place Certificate No. 12691. The Company again possesses Business Licenses No. 2024568 and 2094169 and TIN Number with Certificate No. 2030070 from Tanzania Revenue Authority. The company owns properties in Tanzania and among others is the Manufacturing Industry situated at Mbagala Rangi Tatu. Mr. Ngussa referred the court to its decision in COMMERCIAL CASE NO. 20 OF 2007, MEWON B.V. Vs. PPSRC where the criteria for granting an application for security for costs were provided. Those are that; there must be a non-availability of the plaintiff after his action fails and that; there shall be non-availability of ascertained property which can be sold so that the defendant can realize his costs. The learned advocate submitted that since in the case at hand there are available resources to pay for costs and since the Respondent is capable of paying the costs, this application should be found devoid of merits. The same should therefore be dismissed with costs. In a short Rejoinder Mr. Gulamhussain submitted that the law provides to the effect that the plaintiff must have immovable property within the jurisdiction of the Court. There is no evidence adduced to show if the Applicant has such a property. If SIGMA HAIR INDUSTRY LTD is the Respondent's Subsidiary Company it ought to have been impleaded in the suit as a co-plaintiff. The 3., L company has no any relevance in this matter. Mr. Gulamhussain added that the rule enunciated in the case of MEWON (Supra) does not favour the Respondent. He reiterated his prayer as shown in the Chamber Summons to be granted. I have considered the submissions and I am satisfied that the Respondent is a foreign company. It is not incorporated under the laws of this country nor has it been shown if the same possesses a Certificate of Compliance for it to transact its business in Tanzania. It is said that what the Respondent possesses is a Trade Mark registered in Tanzania and which is owned by SIGMA HAIR INDUSTRY LTD which is alleged by the Respondent to be its Subsidiary Company and Agent. As submitted by Mr. Gulamhussain, although the Respondent transacts its business through its Subsidiary Company/ Agent the latter has not been impleaded as a co-plaintiff in Civil Case No. 9/2017. The Respondent in this matter appears to be the only and sole Plaintiff Company in the suit. Order XXV Rule 1 (1) of the Civil Procedure Act [Cap. 33 R.E 2002] reads that:- "Where at any stage of the suit it appears to the court that a sole plaintiff is or(...) that all plaintiffs are residing out of Tanzania, and that such plaintiff does not, or that no one of such plaintiffs does, possess any immovable property within Tanzania other than the property in suit, the court may either of its own motion or on the application of any defendant order the plaintiff or plaintiffs within a time 4
- ' ...t fixed by it to give security for the payment of all costs incurred and likely to be incurred by any defendant" As admitted the Respondent does not have any immovable property in Tanzania. In that circumstance and considering the fact that the Respondent is a foreign company with no a Certificate of Compliance to transact its business in this country, I find it is justified for the court to order him (Respondent/Plaintiff) within a time fixed to give security for payment of costs. I therefore order the Respondent to deposit security for costs within 30 days. As to the amount to be deposited as security, the applicant prays for a sum of

USD 100,000 to be deposited. Mr. Ngussa on the other hand shows the amount to be in the higher side. I share views with Mr. Ngussa and the amount prayed is reduced to USD 40,000 only. Dated at Dar es Salaam this 30 th of August, 201 7. a~ E. J. Mkasimongwa JUDGE
30/8/2017 5

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