

TANZANIA / JUDGMENT

Shan Ruling Final

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA GEITA SUB-REGISTRY AT
GEITA MISC CIVIL APPLICATION NO. 6806 OF 2025 (From Civil Case No. 6673 of 2025 of the High
Court of Tanzania, Geita Sub Registry at Geita) SHAN DEMING
.....APPLICANT VERSUS LU
QIANG.....1ST RESPONDENT CHANG SHENG
EQUIPMENT COMPANY LIMITED.....2ND RESPONDENT

RULING

Date of last order: 04/04/2025 Date of Ruling: 08/04/2025 MWAKAPEJE, J.: The applicant in this application is seeking an order for this court to attach before judgment, the properties of the respondents, valued at USD 196,000. The application is preferred under Section 95 and Order XXXVI Rule 6(a)&(b) of the Civil Procedure Code, Cap 33 and supported by the affidavit of the applicant, SHAN DEMING. This application, as per the applicant's affidavit, stems from a financial arrangement between the Applicant and the respondents, whereby it is alleged that the Applicant extended a loan to the 1st Respondent on behalf of the 2nd Respondent for the purpose of acquiring an excavator machine and meeting various office and operational Page 1 of 8 expenses. The understanding between the parties was that the Respondents would repay the loan in accordance with the agreed terms. Pursuant to that arrangement, it is further alleged that the 1st Respondent procured an excavator machine, made by DOMLION, model ZE370E, with an operating mass of 36,050 KG and Product Identification Number (PIN) ZLHZE251KP1B02125. The Applicant further avers that he has since incurred significant costs in maintaining the Respondents' office operations due to the Respondents' persistent failure to honour their repayment obligations. Despite numerous reminders, the Respondents have not settled the debt. In light of these circumstances, the Applicant believes that the Respondents are making attempts to dispose of or remove the said excavator machine or parts thereof beyond the local limits of the Court's jurisdiction, which would render the enforcement of any decree nugatory. Accordingly, the Applicant seeks the Court's intervention by way of an order for attachment before judgment in respect of the excavator, whose specifications are: DOMLION ZE370E, Operating Mass 36,050 KG, PIN ZLHZE251KP1B02125, Engine Model 6CTAAB-3-C250, Power 241 KW. The respondents, however, did not file the counter-affidavit in respect of what was stated by the applicant in his affidavit, When the application was called for the hearing, Mr. Sereri Nyagita, advocate, appeared for the applicant, while the 1st respondent appeared Page 2 of 8 in person and the 2nd

respondent was represented. Considering that the respondents did not file their counter-affidavit, the Court allowed them to address only the points of law. In his submissions, Mr. Nyagita stated that the plea for attachment before judgment was based on two main grounds. Firstly, that the respondents were in the process of removing all or part of their properties from the jurisdiction of the Court; and secondly, that the respondents were not citizens of Tanzania and did not own any immovable property within the country. Mr. Nyagita further contended that even the movable assets intended to be attached were not registered with the Tanzania Revenue Authority (TRA), which made them susceptible to concealment or disposal, potentially frustrating the eventual execution of a judgment in favour of the applicant. Expounding further, Mr. Nyagita submitted that the 1st and 2nd respondents resided in the Nyamtagata area and were in possession of two machines purchased using a loan of USD 200,000 advanced to them by the applicant. The said loan, he explained, was extended under a written agreement drafted in the Chinese language. The terms of the agreement required the respondents to repay the loan in monthly instalments of USD 15,000, commencing in October 2024 and concluding in September 2025. However, he stressed that to date, the respondents had not honoured a single clause of that agreement. Page 3 of 8 Mr. Nyagita asserted that the financial position of the respondents was rapidly deteriorating, raising genuine fears on the part of the applicant that recovery of the debt might be rendered impossible. He pointed out that, according to paragraph 5 of the applicant's affidavit, the two excavator machines were the only known assets of the respondents. Given the respondents' foreign nationality and the lack of asset registration with TRA, there was a real risk that the machines could be moved or sold before the matter was concluded. On the basis of these facts, counsel urged the Court to grant the application under Order XXXVI Rules 6(a) and (b) of the CPC. He cited and relied upon the authority in *Tanzania Industrial Service Limited vs Sae Power Lines Srj* (Misc. Land Application No. 525 of 2020) [2020] TZHCLandD 3831 (13 October 2020), in which the High Court granted a similar prayer for attachment before judgment under comparable circumstances. He concluded by submitting that if the respondents were willing to furnish adequate security for the debt, the attached properties could be released into proper custody pending the determination of the main suit. He prayed for the costs of the application and for any further relief that the Court may find appropriate and just. In response, Mr. Qiang submitted briefly that the underlying transaction was conducted in the Chinese language, and according to the Page 4 of 8 terms of the agreement, the one-year repayment period had not yet expired. In a brief rejoinder, Mr. Nyagita stated that he had nothing further to add and reiterated the applicant's prayer for the application to be granted as presented. Having considered the submissions by the parties, I am now invited to determine whether the application is meritorious. The applicant herein seeks an order for attachment before judgment in respect of certain movable properties allegedly owned by the respondents, as well as costs and any other relief this Court may deem just. The applicant's central claim is that he extended a loan facility to the respondents, who are allegedly non-citizens, for the purpose of acquiring machinery and covering office expenses. It is averred that the respondents have defaulted on the repayment terms and are in the process of removing or disposing of the said assets, specifically, excavator machines, beyond the jurisdiction of this Court, thereby frustrating the main suit and compromising the applicant's right to recovery. However, upon careful examination of the

record, this Court notes several material deficiencies that render the application legally untenable. The applicant alleges the existence of a loan agreement purportedly executed in a foreign language (Chinese), yet no such agreement has Page 5 of 8 been annexed to the affidavit. It is a well-established principle that where an application is premised on specific contractual terms, the underlying agreement must be duly produced to enable the Court to ascertain the nature and extent of the parties' obligations and to properly assess the merits of the claim. Notably, the applicant refers to the agreement as being in Chinese and allegedly annexed as "Annexure AA1" to the plaint. However, paragraph 3 of the affidavit misleadingly suggests that the agreement is attached to the application itself, which is not the case. Even assuming, *arguendo*, that the agreement does exist, its evidential value is negated by the absence of an official translation, as required under the governing procedural standards. This omission deprives the Court of the ability to verify critical elements such as the existence of a contractual relationship, the specific terms of the loan, and the extent of the alleged default. Secondly, the assertions made by Mr. Nyagita during his oral submissions: namely, that the respondents are not citizens, that the assets sought to be attached are unregistered with the Tanzania Revenue Authority (TRA), they possess no other known properties within the country apart from the said machinery, and that the respondents' financial position is rapidly deteriorating, were not pleaded in the applicant's affidavit. These constitute new factual allegations which this Court cannot entertain, as it is trite law that parties are bound by their pleadings. See Page 6 of 8 *Paulina Samson Ndawavya vs Theresia Thomasi Madaha* (Civil Appeal No. 45 of 2017) [2019] TZCA 453 (11 December 2019), which emphasised that no party should be allowed to depart from their pleadings, thereby changing their case from which they had originally pleaded. Moreover, even assuming that the issue of non-registration had been properly raised, the applicant has not produced any certificate, report, or official correspondence from TRA to substantiate the claim. The Court cannot rely on bare assertions in such matters. In applications for attachment before judgment, the applicant bears the burden of establishing a concrete factual foundation, supported by admissible evidence, to justify the exercise of the Court's discretion under Order XXXVI Rule 6 of the Civil Procedure Code. Additionally, the reliance on *Tanzania Industrial Services Ltd vs SAE Power Lines SRJ* (*supra*) is misplaced. That case involved demonstrable risk of asset dissipation. By contrast, the present application lacks foundational evidence, including the key agreement and asset verification, that would justify invoking such equitable intervention. It bears noting that attachment before judgment is an extraordinary remedy that should be exercised sparingly and only upon satisfaction of strict conditions. Rule 6(1) of Order XXXVI requires, among others, that the applicant must satisfy the Court of the allegations contained in the Page 7 of 8 affidavit, considering that the burden of proof lies squarely with the applicant. See Section 110 of the Evidence Act and the case of *Anthony M. Masanga vs Penina (Mama Mgesi) and Another* (Civil Appeal No. 118 of 2014) [2015] TZCA 556 (18 March 2015). In view of the above, the Court finds that the applicant has failed to meet the legal threshold required for granting an order of attachment before judgment. The application is speculative, procedurally flawed, and lacks sufficient material evidence to support it. Accordingly, the application is struck out in its entirety with costs. It is so ordered. DATED at GEITA this 08th day of April 2025. G.V. MWAKAPEJE
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