

TANZANIA / JUDGMENT

sodetra sprl t limited vs usangu logistic limited another 2022 tzhccomd 153 2 june 2022

COURT
TZHCCOMDDECIDED
2 June 2022

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IN THE HIGH COURT OF TANZANIA (COMMERCIAL DIVISION) AT DAR ES SALAAM (ARISING FROM EXECUTION PROCEEDINGS IN RESPECT OF COMMERCIAL CASE NO 6 OF 2008)
BETWEEN SODETRA (SPRL) LIMITED..... DECREE HOLDER Versus USANGU LOGISTIC (T) LIMITED..... 1st JUDGMENT DEBTOR BENSON MWALUSAMBA.....
2nd JUDGMENT DEBTOR Last order: 28th April, 2022 Date of Ruling: 2nd June, 2022

RULING

MKEHA, J. When the judgment debtors were invited to show cause why the decree holder's application for execution should not be granted, they cited pendency of civil application No. 47/1 of 2021 before the Court of Appeal as the sole reason for staying execution of the decree of this court. The 1st Judgment debtors preferred that line of argument through Mr. Fikiri Liganga learned advocate. That, because of pendency of a suit between the decree holder and the judgment debtors before the Court of Appeal, an order for stay of execution has to be issued. Through the submissions of Mr. Erasmus Buberwa learned advocate, the decree holder submitted in reply that, the application cited by the judgment debtors had not been served upon the decree holder and that, even if there was such an application, a formal application for stay of execution would have been inevitable before the court vested with jurisdiction to entertain the same. The only issue for determination is whether mere pendency of a suit between the decree holder and the judgment debtor operates as an automatic order for stay of execution. According to the judgment debtors there is a pending suit between the judgment debtors and the decree holder. In terms of Order XXI Rule 27 of the Civil Procedure Code, it is the court in which the suit is pending that is authorised to stay execution. Again, under Order XXXIX Rule 5 (2) of the Civil Procedure Code, the jurisdiction of the trial court to grant an order for stay of execution of its decree ends on lapse of time for appealing. 2nd Judgment The judgment debtors are now asking the executing court to stay execution of a decree passed on 6th March 2012. Save under Order XXI Rule 27 of the Civil Procedure Code, the trial court lacks jurisdiction to grant the order informally sought by the judgment debtors. However, before this court, there is no suit pending between the judgment debtors and the decree holder. Therefore, not even under Order XXI Rule 27 of the Civil

Procedure Code is the stay order grantable in the circumstances of this application. In the course of making arguments for suspension of these execution proceedings, the learned advocate for the judgment debtors put reliance on the decision in AHMED M BARAKA Vs MWANANCHI ENGINEERING AND CONTRACTING CO LTD, CIVIL APPLICATION NO. 229 OF 2014, CAT (Unreported). I am mindful that, in MBARAKA'S CASE, the court expressed views that, it would be prudent for officers authorizing execution to do so in cases whereby there is no appeal pending or where none of the parties has initiated the appeal process. However, the position hereinabove was shortlived. In the case of TANZANIA BUREAU OF STANDARDS Vs ANITA KAVEVA MARO, CIVIL APPLICATION NO. 54/18 OF 2017, CAT (Unreported) the Court held that, the observation of the Court in Mbaraka's case that the 3 | Page execution process ought to stop on initiation of the appeal process was a mere obiter dictum. Therefore, in the circumstances of this case, the decision in Mbaraka's case is of no assistance to the judgment debtors. For the foregoing reasons and holdings, I make a finding that the judgment debtors have not succeeded in showing cause why the decree holder's application for execution should not be granted. It is so held. DATED at DAR ES SALAAM this 2nd day of June, 2022. JUDGE 2/6/2022 Court: Ruling is delivered on this 2nd day of June, 2022 in the presence of Mr. Buberwa learned advocate for the decree holder. 4 | Page

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