

TANZANIA / JUDGMENT

20000830 TZHC Dar es Salaam

COURT
TZHCDECIDED
30 August 2000

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JN THE HIGH COURT OF TANZANIA A'r DAR ES -----:--e SALAAM ,,,,-, F•v CIVIL REVLSION
Neic1 · 22/02 TR.AMICO INVESTMEN"IB COMPANY LTD _Versus•• , KAHIZ ILT:::T BAHIGANJ'i &
ANOTHER RESPONDEN'.11 , .. ; _~ RULING ~-;-;---. ~ This .is a revision in which
this •court is being asked to tmllify a warrant .of a-rt:b~.e:::~t issued- against. a vessel' named
m\ BANUSSO: IJ; ~- . the ground that- the vessel .is the property of the -applicant who is. no't.
~. a party to the proceedings which led -to the attachment order. ~- . - •, . - The
applicant is TRAMICO JNVESTMENT COMPANY LIMITIID~ One !Wiizil.\$ge ' B ~ a filed a
chamber 'application under S_ection 12 (2) o~ the Marchant Shipping Act and Section 133 of the
Employment .Ord:mance Catt' ,, _ , , ;66 and Section 95 •of the Civil Pl-QCedure Code 1966
prayfug fo~ •p-ymment .. . ~- " ' - X. ••: ... _cf wnges.. The Mruioging J>:lr~i-or •
DEN...TAXI RESOURCES LTD in th~ chamber ~-- ... - /• applictltion .is ~ r~ndent. _ ibe
applicetion ws :filed in court on •.. .. ~ 19/12/~+ ~ .. Kalizilt\ga Bohigone :i.s~the •respondent
in this revisional . ' ' .. : • ~is a~licctio .in the subord~t~ court wns heord e,;-p!rte. A t t ~ to
hove ttus exparte doer~ set aside w!la not euceees:f'ul~ It was in the oo~tton •of the decree tho~
the vessel which -i:~>h::c the subj9ct ~tt-er of theao proceedings \-JM ~.t:tce:::-a~. Objection
proceedings were filed in tb&_ subor-dincite court to c~D.llenge the attachmi;nt but were
diomi.s~a., ,i. Tho d;sm~l of -ttze o1)Joc~io• 1"-~c~:~).dlt,g,, ie. 3'lhot h"S led to the f'U'-'blg_ of
this re~sion. ~ r~ion hne l>wGn-filed under ~ (1 1 1 \$ 44 (1) •of the Mogistratas. Courts Act 1984 as
"811 zu, &c-t&m ~{1) ond Secti.<>: 1 95 -o~ the Civil ~edur-e Code 1966 os well !.l6 Order XXI rtlle
24 (2) ond Rule 57 of the Civil Procedure Code, 1966. The opplic[.Int is being reprea~ted 'Ly Mr •.
Dutx:on. learned A.dvocete. ~ peepon.dont- .Lt: 'Jot-rep1:QSe1-i:~ad. 'The
respondent ::,~:t.r.<:>t ~~,,"? -1,-,,,,-1 ... ,,,, ,,,, ... ~t" .of -Objection. The portiea~ filed written
subrnissio:it for !:ind o.gtdn""t the opplic""tion under the. diz&etion of this court. iJJ29 S!lme with
the prelimin~ry objectic1~, APPru-ently, the !'espondent •btl's n_o't filed ~-- repl.y to the
preliminary obje~ llOr a r ~ to- the ~in application. Although he h~s filed tl t,t'••••/2. .. ~ ~- 2
- . t-1.me •chtlmbel' ,CLpplicati.o;i seeking for ~ension o / to• file the smne. ii; is not worthy
ol.lowing the .applicotioil to proceed to .fulJ.heoring of the chomber. .: application beco.use ot
the enc" of the d~y it mgltd:t not ll1tet' th& out ..1 • come of the re,rision. This view is being
expressed oter e thorough study of the proceedings in the trbl court os well us the •iresent
txppliootion ond the submissions filed •. It is important for me to mention that the research done
by the porties is o.pprecio.ted, I tho.nk them for their efforts. Their submission• is •of• ossistance
in. the disposal of this application. The first point of prelimin~ry objection is that. the etpplice-

tion is time barred. Having inspected the record of the trial court and the time when the revision was filed, I will say that this objection has merit. The ruling in which this revision is being filed was delivered on 13 February 2002. This revision was filed on 19th February 2002. While I appreciate the submission made by the respondent on this point, jointly, the truth of the matter is that he is mistaken; Mr. Duncan submitted his application as filed on the same day after delivery of the ruling. It was filed while the second point of objection, .. the Respondent is to be concerned why Mr. DuDean cited both Section 79 (1) of the Civil Procedure Code 1966 and Section 44 (1) of the Magistrates Courts Act. His opinion, .. ~ Mr. Duncan should have been applied on which interpretation of the law he is relying. Other than quoting both of them. In other words the applicant ought to say whether she is relying on Section 79 (1) of the Civil Procedure Code 1966 or Section 44 (1) of the Magistrates Courts Act. Mr. DuDean's response is detailed. However the point raised by the respondent has substance. The provisions of Sections 79 (1) and 44 (1) of the Civil Procedure Code 1966 are restrictive. They are limited to jurisdiction without jurisdiction or exercising jurisdiction. Section 44 (1) is broader covering all cases where there is a question of law or fact involving the exercise of discretion. Given that distinction it is improper to apply one provision to point out the applicability of the provisions is not a fatal mistake warranting the dismissal of the application. Regarding the citing of Orders XXI Rule 24 (2) and Rule 57 I must say they were quoted out of context. In fact these provisions refer to evidence. They have no relationship at all with these proceedings. I appreciate the submission made by Mr. Duncan on this aspect my feelings are that they are totally irrelevant to these revisional proceedings. They add nothing further to the application which is before this court apart from reflecting some doubts on the evidence on which provisions of the law are applicable under the circumstances which led to the filing of the application. All the same, stating them does not make the application fatal. Particularly where the enabling provisions for filing a revision have been cited. The respondent has also raised his argument to the effect that under Section 112 (1) of the Merchant Shipping Act 1967 the seaman's lien over cargo, all vessel does not change with the change of ownership of the vessel. In answer to the argument is simple. It all depends how the ownership passes. In any event this is not a matter which can be argued by preliminary objection because evidence will be required to show who is the owner and how the ownership was acquired. Having analyzed the arguments given in respect of the preliminary objection, must conclude by saying that the preliminary objection has no merit. It is dismissed. The next step is to look at the application for revision. Dunotlun submitted that by tire-tire employment Cause No. 264 of 1997 we have mined, the vessel BANU8SO II ~ longshore the property of the judgment debtor DEN L. RUOW (tfl3). The reason given is that DEN TAN RESOURCES was involved in Ugh Court Civil Case No. 106 of 1996 which led to the ownership of the vessel to pass to Industrious Fund for Developing Country. Hereafter, the vessel was put under the Receiver/Manager. (Mr. Nod Micono). The vessel was sold to Tongol Fishing Company and ownership was transferred to it on 24th February 1997. At a later stage, on 20th December 2000 the applicant bought the vessel from Fishing

Company Limited. Mr. T. E. Eubank, Jr. is the owner of the vessel JM. NUSO II. The sequence of events show that the time that the case was filed in the trial court on 19th December, 1997, DENNIS REBO TITLIB LIMITED was no longer the owner of the vessel JM. NUSO II. There is no justification for the trial court to dismiss the objection proceedings. The sequence of the events clearly show that the vessel was sold even before the filing of the application by the decree holder. The dismissal occasioned injustice to the applicant, and because her property was being attached while she was not a party to the proceedings and she had not even been given the opportunity to be heard.

- 4

- In addition, Mr. Duncan said that since the vessel was initially sold by order of the courts then the trial court had no jurisdiction to entertain the case. He cited Section 121 (b) of the Merchant Act 1961, arguing that exclusive jurisdiction is conferred to the High Court where a seaman or apprentice claims for recovery of wages where the ship is sold under the authority of the court. This court took judicial notice of the consent order made in the High Court Civil Case No. 106 of 1996, between *Lim Joo Lian v. Tan R. Elser & Tan D. YS - INDUSTRIALIZATION & Fisheries Development*. The respondent's application for settlement by the Judgment Debtor. Under Paragraph 5, the IFU was given an immediate right of possession of the vessel (BANUSSO II) without recourse to court or any other legal aid if the Defendant TAN RESOURCES defaulted to honour the repayment schedule. It appears that the Defendant TAN RESOURCES defaulted and so the IFU took possession of the vessel. Subsequently the Defendant TAN RESOURCES was put under receivership and the vessel (BANUSSO II) was sold to Tongol Fishing Company. Given the circumstances under which the ownership of the vessel was transferred from the Defendant TAN RESOURCES LTD to Tongol Fishing Company and then to the applicant, there was no justification for the trial judge's holding that the sole was intended to prevent execution. Paragraph 6 of the judgment shows that at the time the decree holder filed the case in the court, the vessel was no longer the property of the judgment debtor. The other irregularity pointed out by Mr. Duncan is that the trial court lacked jurisdiction to entertain the case which was filed by the decree holder in the trial court because the judgment debtor was under the protection of the Council of Legal Practitioners. Mr. Duncan submitted correctly that the Receiver and Mr. Ngunjiri was not joined into the proceedings and the suit was filed without first obtaining the leave of the High Court. Paragraph 8 of the Order of the Court dated 25.11.2011 defects given above is: on the issue of the justice of the case, as by the trial court. The trial court had no jurisdiction to entertain the case which was filed by the decree holder as it is a matter which falls squarely under the provisions of Section

- t) (1) Qf the CiYil Procedure Code 1966. Since it iP o:r.ly the objection proceedings which we1·r_. ch:tlonged, thie court will suo mote revise the whole proceedings in the tri:il court under Section 44 (1) of the Ifogisirate Courts Act, 1984 hec~use thoy oro ~ nullity. I qu,osh and ~et aside the entire proceedings in :Employment Cm>Sa No 1 264 of 1997. !lo orcler of costs, ~ , NoP.Kimriro

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Prepared on 14 October 2026 · Esheria