

TANZANIA / JUDGMENT

19970807 TZHC Dar es Salaam 1

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IN THE HIGH COURT OF TANZANIA AT DAR ES SAtAAM 5 .., MISC. APPLICATION NO.- 73 OF 1997. ULUGURU PHARMACEUTICALS & ASSOCIATES CO. LTD - APPLICANT VERSUS

1. PARASTATAL SECTOR REFORM COMMISSION
2. MOROGORO CANVASS MILL LTD. RESPONDENT. R U L I N G KALEGEYA, J. The Appicqnt, Uluguru Pharmaceuticals & Associates Co. Ltd, advocated by Mr. Nyange, learned Counsel, applies for leave of this Court to file a suit against the Parastatal~Sector Reform Commission, which would be joined with Morogoro canvas Mill Ltd and styled, 1st and 2nd Respondent respectively. In the supporting affidavit it is stated that the applicant intends to sue the Respondents for a sum of shs. 44,030,537/= being an amount due to them for services rendered to the 2nd Respondent. The application was heard exparte. Why make this application, para. 4 of Mr. Nyange's affidavit puts it in a nutshell,- "The 1st Respondent is a party to the application and will be party td the suit on account of its position as statutory receiver for enf?rcement purposes. For purposes of the Bankruptcy Ordinance leave of the Court is mandatory before a suit can be properly brought before the Court". Cementing his appiication Mr. Nyfnge, Advocate, cited the case of OTTU vs PSRC (PARASTATAL 2 SECTOR REFORM COMMISSION), Civil Case No. 282 of 1995, HC, Dsm, Regis'try (unre~orted). Indeed, as submitted by Mr. Nyange, learned Counsel, and as exemplified in the cited case, the Presidential Parastatal Sector Reform Comission (this is the proper title of this "Commission" and not merely 'Parastatal Sector Reform Commission' as presented in this application) can't be sued without the leave of this Court. This requirement is provided under s. 43 of the PUBLIC CORPORATION ACT, 1992, as amended by Act 16 of 1993 (Public Corporations (Amendment) Act). This section, among others provides, "Notwithstanding any, other law to the.Contrary, with effect from the date of publication of an order declaring a. public corporation to be a specified public Corporation the commision shall -
 - (a) without further assurance on appointment have the power to act as the official receiver of the specified public corporation, and
 - (b) have the powers and all the rights of a receiver appointed in accordance with or pursuant to the Bankruptcy ordinance". The 2nd Respondent, Morogoro Canvas Mill Ltd, Vide GN 400 of 28\7\96 was declared a specified public corporation automatically placing it under the Commission, as prescribed under s. 43. In accordance with this s. 43 the Commission

became an official receiver and under s. 43 (b) the commission is conferred with all 3 powers and rights of an official receiver under the Bankruptcy Ord. Cap. 25. As one of the rights of a receiver appointed in accordance with or pursuant to the Bankruptcy Ordinance is that, - as per provisions of s. 9 (1) of Ordinance, such receiver can't be sued without leave of the Court clearly the Applicant in this application must get leave of the Court before suing the 1st Respondent. Now turning to the question of whether or not the prayer for leave should be granted my mind was considerably exercised by the question: What guidelines should a court take into consideration when making its decision? The Bankruptcy Ordinance is silent on this and my research did not reveal any relevant precedent. I have asked myself as to what could have been the intention of the legislature in enacting this s. 9(1) of Cap. 25. An official receiver's duties include assuming control over the estate of a debtor against whom a receiving order has been made, to investigate debtor's conduct, to act as a trustee when the trustee has not been appointed and to report to the Court on all these activities. Clearly all the activities of the official receiver are a product of order or directions of a Bankrupt court which appointed him. In those circumstances, -the Court which made those orders\directions would require to know actions intended to be taken against that said official charged with the dealing with debtor's estate. In my views. 9(1) of Cap. 25 was enacted to allow the Bankrupt Court decide on whether creditor or related should commence another or separate action or proceed under the 4 provisions of the Bankrupt Ordinance where his rights are

- provided for. This is somekind of limited protection of the official receiver in his activities. Of course this is not a Bankrupt court in accordance with Cap. 25, having made no receiving order. It is because of the Provision of s. 43 of the Public Corp. Act 1992 as amended by Act 16 of 1993 that we are dealing with this matter. In effect therefore this. Court is placed in a different situation from the one which would exist for a Bankrupt Court. The official receiver is not required in any way to report to this Court. In the present case, the annexures accompanying the affidavit to the Chamber application show that the 2nd Respondent received various services from applicant valued at a total of Shs. 44,031,637. In a normal Bankruptcy matter the applicant would have an option of proceeding as a creditor under the Bankruptcy provisions or seek leave to file a separate suit. In the present circumstances he has just the last option. If in such normal Bankruptcy matters such creditor could be given leave to file a separate action as-provided under s. 9 (1) of Cap. 25, in the present situation leave can only be refused in very exceptional cases. And the present one is not one of those. On the grounds explained above the prayer for leave to file a suit against the 1st Respondent is hereby granted. (L. B. Kalegeya) JUDGE 4\8\97 5 } Delivered today the 4th in the presence of Mr. Nyange, Advocate. At Dar es Salaam (L. B. Kalegeya) 4TH AUGUST, 1997 JUDGE

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