

TANZANIA / JUDGMENT

vigu trading company limited vs bank of africa tanzania limited 2 others

2022 tzhc 15474 23 december 2022

COURT
TZHCDECIDED
23 December 2022

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 560 OF 2022 (Arising from Civil Case No. 147 of 2020) VIGU
TRADING COMPANY LIMITED..... APPLICANT VERSUS BANK OF AFRICA
TANZANIA LIMITED..... 1ST RESPONDENT NAMPULA AUCTION MART AND
COMPANY LIMITED.....2ND RESPONDENT BILO STAR DEBT COLLECTOR
CO.LTD.....3RD RESPONDENT

RULING

20th & 23rd December, 2022 MWANGA, J. This is a ruling concerning prayer by the applicant VIGU TRADING COMPANY LIMITED seeking an interim order for maintenance of status quo in respect of trucks and trailers impounded by the 1st respondent and which are about to be impounded or seized and or sold by the 2nd and 3rd respondents. It was deposed under paragraph 5 of the affidavit that between 2013 and 2016 the 1st respondent advanced the applicant credit facilities totalling an approximate amount of USD 2, 800,000.00 by way of banking facility letters. The facilities were and are secured by the applicant's trucks, horses and trailers totalling 100. According to paragraph 17 of the applicant's affidavit, the applicant's indebtedness of about USD 600,000.00 has been substantially reduced by an agreed payment of USD 299,793.59. Additionally, together with the remaining debts the 1st respondent also insists the payment in full charges, costs and expenses incurred by the 2nd respondent in respect of 27 trucks seized and detained since October, 2020 which by now exceed TZS 140,000,000/=. Despite of several meetings of negotiations and the fact there is a Civil Suit No.147 of 2020, which is now in the court's supervised mediation, between the applicant and the 1st and 2nd respondents pending before the high court, the applicant complained that the actions of the respondents have caused hardship, inconvenience, embarrassment and reputation damage to the applicant, its board, management, staff and customers. The actions complained of through depositions are that;

- i. The 1st respondent appointed 2nd respondent since 3rd October, 2020 to impound and sell the 27 applicant's motor vehicles; ii. The 1st respondent appointed the 3rd respondent since 26th November, 2022 to impound and sell another 18 applicant's motor vehicles;
- a) The recovery exercise by the respondents is shadowed by lack of transparency to the applicant in respect of outstanding balance i.e the principal and interest and on the facilities owing from the applicant to the bank and prescribed period of payments; iii. Lack of transparency on whereabouts the 27 trucks, trailers, horses taken and detained since October, 2020; iv. Lack of immediate action by the 1st and 2nd respondents to mitigate the diminishing value of the trucks, horses and trailers attached and detained;
- v. Lack of prior notice issued to the applicant before the 3rd respondent action of 26th November, 2022 of impounding 18 trucks and trailers; vi. Lack of concern by the 1st respondent in the manner the recovery exercise is being conducted;
- b) Lack of attention by the 1st, 2nd and 3rd respondents, Mr. Manya and Mr. Lewanga on the complaints of the applicant in respect of the matter at hand;
- c) The 1st, 2nd and 3rd respondents, Mr. Manya and Mr. Lewanga completely ignored, disrespected and disregarded the court process as the trucks, trailers, and horses they had impounded and sold or intend to sell are the subject matter of the pending suit which is under court supervised mediation. The applicant was represented by Mr. Michael Ngalo and the respondents were represented by Mr. Kepha Mayenje, learned counsels. During the hearing, Mr. Michael Ngalo the learned counsel argued that since the respondents knew that there was a case pending in court between the 1st and 2nd respondents, they ought to stop their actions which has been detriment to the applicant. It was his submission that the interim order of maintaining status quo shall be granted pending the hearing of the main application based on the realities that such grant cannot occasion injustice to the respondents; Per contra, Mr. Kepha Mayenje the learned counsel for the respondents resisted the application on three grounds, namely; First, that the current application No. 560 of 2022 contained three respondents while the Civil Suit No. 147 of 2020 which this court is told that is pending before this court concerned the 1st and 2nd respondents only. According to him, under the circumstances, there is no main suit pending in this court concerned the three respondents on which the applicant prayer relies. Second, the application precipitated an abuse of court process. It was his contention that prior to this application the applicant had filed similar application in Miscellaneous Civil Application No. 547 of 2020 and the same was dismissed for want of prosecution before Hon, Nkwabi, J. So, bringing the same in court is an abuse of court process. Third, the current application has no any urgency taking into account that the same is filed three years after the previous dismissal. He summed up on his part by stating that, granting order of maintenance of status quo is as good as granting temporary injunction, therefore, the same shall not be granted. In rejoinder, the fact that the suit and the current application contained different total number of the respondents was not denied by the learned counsel Mr. Michael Ngalo. However, it was his submission that the application contained the registered number of that suit and it does not change anything

due to the fact that after all the 1st respondent is the principle, hence main focus in the application. As to the claims of abuse of court process, the learned counsel contended that the application cited was in respect of the action of the 1st and 2nd respondents on impounding the 27 trucks, which is different altogether, so each case should be treated basing on its own facts. After close examination of the relevant facts and submission of the learned counsels, the issue is whether granting the sought order is suitable pendency the hearing of application. In the submission and deposed facts this court finds out that timing of an application is one of the crucial factors. The third respondent found himself in the application and not in the main suit because he was only engaged by the 1st respondent on 3rd October, 2022. That is almost three years on the pendency of the main suit. The fact that there is a suit pending before this court and the subject matter is the same, I do not find any harm to hold that Mr. Ngalo Advocate was right to say that it does not rule out the fact that there is a pending suit relating to the application in this court. Again, the facts deposed are related to the pending suit. The chamber summons and affidavit depicts that the pending suit is Miscellaneous Civil Case No.47 of 2020 and the deposed facts is related to credit felicities advanced by the 1st respondent to the applicant. And that neither the respondents nor the applicant told this court that there is other claims by the 1st respondent against the applicant. In that respect, I take cognizant of the fact that the application before this court is correlated with the suit in pendency to the court. I hasten to state that, an order of status quo is a specie of interim orders. Considering the facts pertaining to the application, it is the only appropriate remedy at this moment to let the parties cool, maintain peace and harmonious in their businesses and importantly safeguarding integrity of the main suit pending in court. As rightly stated by Mr. Ngalo learned counsel, since no proof of occasioned injustice to the respondents in case the order is granted, it is worth stating that whatever position is existing on spot is to be maintained. For the foregoing, the application of interim order for maintenance of status quo as per chamber summons in (i) is granted. The 1st, 2nd and 3rd respondents, their directors, managers, employees, agents, or assignees shall immediately cease or stop impounding or seizing or selling the applicants trucks and trailers described in a schedule attached thereto as TAB-1(the suit trucks and trailers) that the respondents have seized and intend to sell in pendency of the hearing and determination of the application on merits. It is so ordered. H. R. MWANGA JUDGE 23/12/2022 COURT: Ruling delivered this 23rd December, 2022 in the presence of both learned counsels for the applicant and respondents. H.R MWANGA JUDGE 23/12/2022

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