

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO. 83 OF 2013

(Originating from Misc. Commercial Case No. 26 of 2013)

BETWEEN

WENGERT WINDROSE

SAFARIS (TANZANIA) LIMITED APPLICATION

VERSUS

AWADHI ALLY ABDALLAH RESPONDENT

RULING

MRUMA, J:

As correctly observed by the counsel for the Respondent this matter has its own history. The Applicant Wengert Windrose Safaris (Tanzania) Limited instituted Commercial Case No. 113 of 2013 against the Respondent Awadhi Ally Abdallah. Together with the main suit she also filed Misc. Commercial Application No. 26 of 2013 for several injunctive orders which were duly granted by this court (Nyangarika J) as he then was. That was followed by several other Miscellaneous applications. In one of those Miscellaneous Applications – i.e Miscellaneous Commercial

Application No. 83 of 2013, the present Respondent (Awadhi Ally Abdallah) was ordered to demolish all structures erected on the disputed hunting block within a period of seven days from the delivery of the ruling.

Apparently the Respondent did not comply with the said orders within the prescribed period of seven (7) days and on 21st August 2013, the Applicant filed this application. For reasons which are not on the record this application was not heard and determined till January 2017, when vide its letter No IMMMA - DLA/WWS/1/17 dated 27th January 2017 the Applicant's counsel requested the Registrar of this court to draw attention of the Judge in charge to make the necessary orders. Following that request the Application was cause listed for hearing.

At the hearing of the Application it was contended by the Respondent's counsel and conceded by the Applicant's counsel that Commercial Case No 113 of 2013 I was finally determined in Respondent's favour and that the Respondent was declared the lawful owner of the disputed hunting blocks. It was further not dispute that currently the decision of this court in Commercial Case No. 113 of 2013 is being contested in the Court of Appeal. Thus, the question that this court has to answer is whether it can grant the orders sought despite the fact that at the end of the day the Respondent won the case (i.e Commercial Case No 113 of 2013) from which the orders sought to be enforced originated.

The orders the Applicant is seeking to enforce were intended to punish the Respondent for defying court orders. In civil cases a civil contempt proceeding are intended to punish the contemner (i.e the person

who fails to obey a court order that was issued against him). The usual sanction is to confine the contemner until he or she complies with the court order (see Black's Law Dictionary 7th Edition page 313). The logical question that would follow is whether in the circumstances of this case the Respondent could be confined until he complies with the court order.

As stated hereinbefore this application arises from Commercial Case No 113 of 2013 which was conclusively determined in the Respondent's favour. This court has ordered that the structures which the Respondent was ordered to demolish in Miscellaneous Commercial Application No 26 of 2013 were actually his properties. Both counsels are in agreement that is the position as of now. They are also in agreement that there is an appeal pending in the Court of Appeal in which the Applicant is challenging the decision of this court declaring the Respondent the lawful owner of the hunting blocks over which the impugned structures were constructed.

I could not get hold and peruse the records in Commercial Case No. 113 of 2013 but I have no doubt that what has been submitted by the parties counsel which is to the effect that the matter was decided in the favour of the Respondent and that aggrieved by the decision of this court the appellant has appealed to the Court of Appeal.

Under the provisions of Rule 5 (1) of order XXXIX of the Civil Procedure Code, an appeal does not operate as a stay of proceedings under a decree or order appealed from. This impliedly means that the order passed by the court of first instance is valid until it is invalidated by a superior court.

In the light of what has been stated above, it is plain to see that the application for contempt of court order is misplaced as it has been overtaken by events. The decision of this court which declared the Respondent the lawful owner of the hunting blocks over which the contempt order was made is valid until and unless it is declared otherwise by the Court of Appeal in the said pending appeal. That decision had the effect of the extinguishing or invalidating all interim and interlocutory orders which do not conform to the final and conclusive orders in the matter.

Accordingly I agree with Mr. Ngusa counsel for the Respondent and I dismiss the Applicant's application with costs.

Order accordingly.




A. R. Mruma

Judge

6/2/2018