

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS COMMERCIAL APPLICATION NO.19 OF 2018

BETWEEN

MTI INVESTMENT LIMITED..... DECREE HOLDER

Versus

CHOBO INVESTMENT LIMITED..... JUDGMENT DEBTOR

Date of last order:5th November, 2021

Date of Ruling: 18th November, 2021

RULING

MKEHA, J.

The present execution proceedings proceeded before this court until when the application for execution was granted on 24th August 2021. A court broker was appointed by the relevant authority for attaching and selling the judgment debtor's properties. On 13/10/2021 a court broker trading as Nyadhi Investment Co. Limited Auction Mart (Mr.NeemiaSamwelNyadhi) filed a report notifying the court that he had managed to attach four motor vehicles belonging to the judgment debtor. The attached motor vehicles happened to be No. T741 DJJ,

T568 DJH, T119 AJQ and T 452 ARV. The court broker pressed for issuance of an order of proclamation of sale.

After attachment of the judgment debtor's motor vehicles, the judgment debtor wrote to his Worship the Deputy Registrar notifying him that she (the judgment debtor) had filed an application for stay of execution before the Court of Appeal which upon admission was registered as Civil Application No. 475/16 of 2021. And that, the application before the court was yet to be determined. The judgment debtor pleaded with the executing court to halt further orders in the present execution proceedings.

When I learnt of the existence of an application for stay of execution before the Court of Appeal, I summoned the parties to appear before me for directives. Ms. Maria Patrick learned advocate appeared for the decree holder. The learned advocate insisted that, despite pendency of the application for stay of execution before the Court of Appeal, the executing court ought to move forward and thereby issue an order for proclamation of sale.

In view of the learned advocate, the application had not been filed in line with what the law instructs under Rule 11(4) of the Court of Appeal Rules regarding time for filing an application for stay of execution. The

learned advocate considered the application as a scheme for delaying the execution process.

Mr. Mguri learned advocate for the judgment debtor asked the court not to issue an order for proclamation of sale as the application before the Court of Appeal would be rendered nugatory.

I asked myself the following question: **should an order for proclamation of sale be issued in the circumstances of this case?**

In the case of **CRDB BANK PLC vs FINN W PETERSEN & THREE (3) OTHERS, CIVIL APPLICATION NO.367/17 OF 2017** the Court of Appeal held that, unless stay of execution is sought and granted by the Court, execution at the High Court should proceed. It is not disputed that via Civil Application No. 475/16 of 2021 which is currently pending before the Court of Appeal the judgment debtor is seeking an order of stay for execution. Since the application is yet to be determined, no one can tell with precision that the same will ultimately be disallowed as suggested by the learned advocate for the decree holder. It is my holding that, this one of the fewest cases in which issuance of further orders in execution proceedings can be postponed to await decision of

the higher court before which the application for stay of execution is pending.

For the foregoing reasons, I postpone issuance of an order for proclamation of sale to await the decision of the Court of Appeal in Civil Application No. 475/16 of 2021. The attached properties shall continue being kept by the appointed court broker. The judgment debtors shall bear storage charges. The said charges/costs shall be taxed in accordance with the provisions of the Court Brokers and Process Servers (Appointment, Remuneration and Disciplinary) Rules. It is so ordered.

Dated at DAR ES SALAAM this 18th day of November, 2021.




C.P MKEHA

JUDGE

18/11/2021

Court: Ruling is delivered in the presence of the parties' advocates.


C.P MKEHA

JUDGE

18/11/2021