

**IN THE HIGH COURT OF THE UNITED
REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM**

MISC.COMMERCIAL APPL. NO.94 OF 2021
(Arising from Commercial Case No.76 of 2021)

VIVO ENERGY TANZANIA LIMITED-----APPLICANT

VERSUS

ALCHEMIST ENERGY TRADING DMCC---1ST RESPONDENT

NATIONAL BANK OF COMMERCE LTD---2ND RESPONDENT

ODDO BHF AKTIENGESELLCHAFT.....3RD RESPONDENT

Date of Last Order: 16/11/2021

Date of Ruling: 01/12/2021

RULING

NANGELA, J.:

This ruling is in respect of an application filed by the Applicant under a certificate of urgency. The application was brought under Order XXXVII Rule 2 (1) and Section 68(e) of the Civil Procedure Act, Cap.33 RE 2019.

It was filed on this 9th day of July 2021 and, noting that it was filed as an urgent matter, I called it on for its hearing ex-parte and thereby issued an ex-parte interdict order as deemed appropriate. I proceeded to schedule the application for *inter partes* necessary orders.

On 13th July 2021, Mr Josiah Noah Samwel, learned advocate, appeared for the Applicant. On the other hand, Mr Joseph Nuwamanya, learned Advocate, appeared from the 2nd Respondent while the 1st and 3rd Respondents were absent.

Given the absence of the 1st and 3rd Respondent in Court, the learned counsel for the Applicant prayed that summons to appear be issued to the 1st and 3rd Respondents. For his part Mr Nuwamanya prayed to file a counter affidavit and, all those prayers were granted and the matter was scheduled for orders on 19th July 2021. Unfortunately on the 19th July, 2021, it was only the learned counsel for the Applicant who showed up in Court. Consequently, the matter was again set for order on the 14th day of August 2021.

On the respective date, the learned counsels for the Applicant and the 2nd Respondent appeared in Court but the 1st and 3rd Respondents never showed up. Mr Josiah for the Applicant informed the Court that there were some ongoing discussions between the Applicant and some of the Respondents which could signal an amicable settlement.

As such, a prayer was made to have the matter adjourned to give the parties an opportunity to have meaningful engagements. Prayers of the like nature were sought thrice until when this Court informed the parties,

that, any further adjournment would attract costs as per the rules of this Court. Indeed, on 3rd of November 2021, this Court had to adjourn the matter with costs and set it for hearing on the 16th November 2021.

On the material date, Mr Dismas Mallya, learned advocate appeared for the Applicant while Mr Nuwamanya appeared for the 2nd Respondent. As usual, the 1st and 3rd Respondents did not show up and, hence, the matter proceeded *ex-parte* against them. Since there was an earlier order of the Court regarding costs, for which the Court was to receive feedback regarding whether it was complied with or not, it was Mr Nuwamanya who started to address the Court.

In his submission, Mr Nuwamanya informed the Court that the order was fully complied. He further told the Court, as regards the matter at hand, that, the 2nd Respondent is not contesting this application. However, he told the Court that, pursuant to paragraph 15 of the affidavit of Mr Mallya, it is shown that the 3rd Respondent has already deducted from the 2nd Respondent NOSTRO Account a total of **EURO (€) 170,676** (which is equivalent of **USD (\$) 201,398.44**, the amount referred to under the **Letter of Credit No. 002LCNB210540001**). He referred to this Court **Exh.NBC -5** attached to the 2nd Respondent's counter affidavit.

The **Exh.NBC -5** shows that the deductions were effected on 16th July 2021. I take note that these deductions were **"made even after the orders of this Court dated 9th July 2021"**. Mr Nuwamanya told this Court that the 2nd Respondent complied with the orders of this Court and has not debited the Applicant's account, but, as it has been shown herein, the 2nd Respondent's NOSTRO Account was debited by the 3rd Respondent on the 16th July 2021 .

For his part, Mr Mallya told this Court that, it is indeed true that the 2nd Respondent filed a counter affidavit and, based on paragraph 15 of it and Annex. NBC -5, it shows that the 3rd Respondent has already debited an amount in **EURO (€)** which is equivalent to the amount under the **Letter of Credit No. 002LCNB210540001 ("LC")**. He charged that, the 3rd Respondent's conduct was contrary and was in flagrant breach of the orders of this Court dated 9th July 2021.

Mr Mallya submitted that, under the said order of this Court, the 2nd and 3rd Respondents were restrained from taking any action aimed at encashing the **LC No. 002LCNB210540001** or giving the 1st Respondent any amount under the **LC**. He contended that, both the 2nd and 3rd Respondents were fully aware of the said restraint order dated 09th July 2021. In view of that, Mr, Mallya prayed that:

1. The 3rd Respondent be summoned to appear before this Court.
2. The 3rd Respondent be made to show cause regarding why this Court should not make a finding that the 3rd Respondent is guilty of having committed a contemptuous act for having defied the lawful orders of this Court.

Mr Nuwamanya rejoined by restating what he earlier stated, regarding the non-contentious position taken by the 2nd Respondent in respect of this application. However, he prayed that, this Court be pleased to deliver its ruling regarding the matter after it has addressed the new prayers brought to the light by the Applicant.

Indeed, I can see that there is logic in determining the prayers made by the Applicant regarding the payments already made by the 3rd Respondent under the "LC" No. **002LCNB210540001**, despite the fact that on the 09th July 2021, this Court restrained all Respondents from taking steps which would make it possible for the 1st Respondent to realize monies under the LC. In view of that, this Court orders as follows:

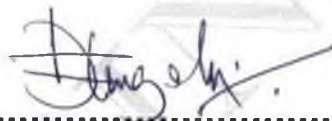
1. THAT, the 3rd Respondent (**ODDO BHF AKTIENGESELLCHAFT**) be made to appear in Court on 10th of December 2021, at 9.00 am, and show cause why this Court should

not make a finding that the 3rd Respondent is in contravention of the clear and lawful orders of this Court dated 09th July 2021.

2. THAT, further orders to follow after the 10th of December 2021 in respect of this application.

It is so Ordered

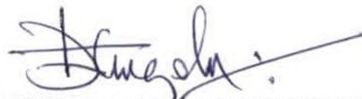
**DATED at DAR-ES-SALAAM, this 01st DAY OF
DECEMBER 2021**



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**HON. DEO JOHN NANGELA
JUDGE,**

**High Court of the United Republic of Tanzania,
Commercial Division.**

Ruling delivered in the presence of Mr Josiah Noah Samwel and Mr Dismas Mallya, Learned Advocates for the Applicant, and Mr Joseph Nuwamanya, Advocates for the 2nd Respondent, in the absence of the 1st and 3rd Respondents.



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**HON. DEO JOHN NANGELA
JUDGE,**

**High Court of the United Republic of Tanzania,
Commercial Division.**

