IN THE HIGH COURT OF TANZANIA
(COMERCIAL DIVISION)
AT MWANZA

MISC. COMMERCIAL APPLICATION NO. 2 OF 2015
(Arising from Mwanza Commercial Case No. 8 of 2015)

BETWEEN

I & M BANK LIMITED ----------APPLICANT

VERSUS

NATIONAL BANK TANZANI LIMITED----------1ST RESPONDENT
RHINO AUCTION MART AND COURT BROKER----------2ND RESPONDENT
BANYANGA AUTO GLASS LTD----------3RD RESPONDENT
YUSUPH BANYANGA----------4TH RESPONDENT
HUSNA DAUDI YUSUPH----------5TH RESPONDENT
TRACE ASSOCIATES LTD----------6TH RESPONDENT

RULING ON EX-PARTE APPLICATION

Hearing of the application 12/2/2015
Ruling delivered on the 12/2/2015

SONGORO, J

On the 6/2/2015 I & M Bank Limited, the Applicant filed the ex-parte application for temporary order, to stay the sale of the property situated at Plot No. 201, Block C, Nyegezi Area- Mwanza registered under the Certificate of Title No. 39143. The sale by public auction, is scheduled to take place on the 13/2/2015.

The applicant ex- parte application is made under Section 2(1) and (3) of the Judicature and Application of Laws Act Cap 358 [R.E. 2002], Order 1 Rule 10(2), and Order XXXV11, Rule 4, and Section 68(c) and (e) of the Civil Procedure Code, Cap 33 [R.E 2002] and is supported with an affidavit

sworn by Clement Kagoye, the Principal Officer of the Applicant' s Company.

Respondents are National Bank Tanzania Limited, the 1st Respondent, Rhino Auction Mart and Court Broker, the 2nd Respondent, Banyanga Auto Glass Ltd the 3rd Respondent Yusuph Banyanga, the 4th Respondent, Husna Daudi Yusuph, the 5th Respondent, and Trace Associates Ltd, the 6th Respondent.

At the hearing of the ex-parte application, Ms Queen the Learned Advocate appeared, and argued application for the Applicant. Thus, relying on an affidavit sworn by Clement Kagoye the Principal Officer of the applicant bank, Ms. Queen informed the Court that, the Applicant bank has an interest in the property situated at Plot No. 201, Block C, and Nyegezi Area, Mwanza.

The Learned Advocate then added that, the Applicant in pursuing his interest on the above-mentioned premises has instituted Commercial Case No. 8 of 2015, and Misc. Commercial Application No. 2 of 2015 for Temporary Injunction, and are both pending for hearing before this court.

She then informed the court that, the 2nd Respondent acting on the 1st Respondent has issued a Notice to sale the said property, The Learned Advocate then clarified that going with the notice of public auction posted on the Daily News of 29/1/2015 Annexed I & M-3 of the application, Rhino Auction Mart and Court Brokers, acting on behalf of the 1st Respondent intends to sale by auction the said property in the name of Yusufu Swalehe Banyanga on the 13/2/2015 at 10am.

Further, the Learned Advocate pointed out that, in the event the sale of the said property takes place on the 13/2/2015 as per 2nd Respondent notice of auction, it is obvious the Misc Commercial Application No. 2 of 2015 and even the Commercial Case No. 8 of 2015 which are pending for hearing before this court will be rendered nugatory. It is in this regard, the Applicant prays that, it is just and fair if the court may grant an interim temporary injunction to restrain all Respondents from disposing or sell the said property pending determination of inter parties application for temporary injunction which is due for hearing.

The Court having carefully considered the Applicant's application and submission of Ms Queen, the court found,

it is true that, the Applicant has instituted Misc Commercial Application No. 2 of 2015 and Commercial Case No. 8 of 2015 which are both pending for hearing before this court.

Further , the Court noted from the proceedings which are before this Court that, in the inter- parties application the subject matter of litigation is property situated at Plot No. 201, Block C, Nyegezi Area Mwanza which is due for sale by 2nd Respondent on the 13/2/2015 by the 2nd Respondent.

In view of the 2nd Respondent notice of sale of the said property, the court highly convinced that, in the event the sale of the said premises takes place as stated in the Annexture I & M -3, the Applicant inter parties application for an order of temporary injunction will be rendered nugatory.

For reasons stated above, and pursuant to Order XXXVII Rule 1 and 2 of the Civil Procedure Code, and Section 68(c) of the Civil Procedure Code Cap 33, I hereby grant the applicant ex-parte application for order of temporary injunction, and restrain the above-mentioned 6 Respondents, their agents, or servants to sale, alienate, lease or

disposal off in any manner, the premises situated at Plot No. 201, Block C Nyegezi Area Mwanza, Registered under the Certificate of Occupancy No. 39143, LO No. 424140, pending determination of inter-parties application, I make no order as to costs.

Dated at Mwanza this 12 day of February, 2015.

H. T. SONGORO
JUDGE

Delivered at Mwanza on the 12th day of February, 2015.



H. T. SONGORO
JUDGE

The Ruling was delivered in the presence of Ms Queen Advocate for the Applicant and Mr. Kiteja Advocate for 3rd, 4th and 5th Respondent and in the absence of the 1st, 2nd and 6th Respondents.