

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

**MISCELLANEOUS COMMERCIAL CAUSE NO. 6 OF 2015**

**INTERCHEM PHARMA LIMITED**

**(IN RECEIVERSHIP) ..... APPLICANT**

**VERSUS**

**KAREN BENJAMIN MENGI (Administratrix  
of the Late MILLIE BENJAMIN MENGI)**

**CRDB BANK PLC**

**DAR ES SALAAM STOCK EXCHANGE**

**..... RESPONDENTS**

10<sup>th</sup> & 12<sup>th</sup> November, 2015

**RULING**

**MWAMBEGELE, J.:**

The applicant has made this application seeking for the following orders:

- (a) That the Honourable Court be pleased to issue an order restraining the 3<sup>rd</sup> Respondent from allowing the CDS Account No. 190040 in the name of the Applicant in respect of the CRDB Bank Plc shares to be used to settle any transaction at the Dar es Salaam Stock Exchange pending the final determination of the main suit;

- (b) That the Honourable Court be pleased to issue an order restraining the 2<sup>nd</sup> Respondent from registering any purported transfer of the shares at issue pending the final determination of the main suit;
- (c) That costs of this application be provided for; and
- (d) Any other relief as the Honourable Court may be pleased to grant.

The application has been made under the provisions of Order XXXVII rule 1 (a), sections 68 (e) and 95 of the Civil Procedure Code, Cap. 33 of the Revised Edition, 2002 together with any other enabling provision of the law. It is supported by an affidavit of Martha K. Renju; the Administrative Receiver of the applicant.

After the parties had exchanged pleadings; the three respondents filing their respective counter-affidavits, a hearing date of the application was set. When the application was called on for hearing on 10.11.2015, the applicant had the services of Mr. Martin Matunda, learned counsel and Mr. Michael Ngalo, Ms. Anna Marealle and Ms. Ida Rugakingira; learned advocates appeared, respectively, for the first, second and third respondents.

At the hearing, Mr. Matunda, learned counsel for the applicant submitted that in view of the concession of the application by the second and third respondents, in whose respect the relevant prayers were meant, prayed that the application be allowed and the prayers sought granted as prayed. The learned counsel prayed that costs should be in the cause.

Ms. Marealle and Ms. Rugakingira, learned counsel for the second and third respondents confirmed that they did not object to the prayer by the applicant and were at one that the prayers sought may be granted as prayed by Mr. Matunda, learned counsel. Mr. Ngalo for the first defendant did not have any qualm with the prayers being granted given that the second and third respondents did object but he prayed for his costs. He added that the prayer in (a) cannot be perpetual as it is the law that the injunction can only be alive for six months. The basis upon which the prayers are sought was on the facts that he had been instructed, filed a counter affidavit and skeleton written arguments as well as entering appearance and being ready for hearing before the concession by the second and third respondents. On that score, he argued, costs have been incurred which must be shouldered by the applicant.

Mr. Matunda, learned counsel, was surprised by Mr. Ngalo's adamancy for costs after having conceded to the prayers. It was Mr. Matunda's view that Mr. Ngalo having conceded to the application, this was one of the cases in which costs should be in the cause.

This matter will not detain me. As Mr. Matunda, learned counsel has rightly submitted, Mr. Ngalo having conceded to the application, he cannot be entitled to costs at this juncture. This is logically so because, the applicant cannot win the matter and at the same time be condemned to pay costs. I think the circumstances of this matter are such that costs in this application should be costs in the cause.

As for the lifespan of the restraint orders being until “the final determination of the main suit”, the position of the law is as stated by Mr. Ngalo, learned counsel; the same must be live for six months and twelve more months in aggregate, if extended. This is the tenor and import of Order XXXVII rule 3 of the CPC. The rule reads:

“In addition to such terms as the keeping of an account and giving security, the court may be order grant injunction under rule 1 or rule 2 and **such order shall be in force for a period specified by the court, but not exceeding six months:**

Provided that **the court granting the injunction may, from time to time extend such period for a further period which in the aggregate shall not exceed one year,** upon being satisfied, on the application of the holder of such court injunction that the applicant has diligently been taking steps to settle the matter complained of and such extension sought is in the interest of justice, necessary or desirable ...”

This court has been alert on this position and more often than not, been ordering temporary injunctive orders to be in line with the foregoing provision – see ***Scandinavia Tours Limited Vs CRDB Bank Limited***, Commercial Case No. 115 Of 2005 and ***Mazaher Limited Vs Murray K. Chume & Another***, Commercial Case No. 89 of 2002 (both unreported).

The foregoing said and done, this application which is not objected by the respondents, is granted. The prayers sought by the applicant are granted as follows:

- (a) The third respondent is restrained from allowing the CDS Account No. 190040 in the name of the applicant in respect of the CRDB Bank Plc shares to be used to settle any transaction at the Dar es Salaam Stock Exchange;
- (b) The second respondent is restrained from registering any purported transfer of the shares at issue;
- (c) The lifespan of the orders in (a) and (b) is, unless extended, six months reckoned from the date hereof; and
- (d) Costs of this application shall be costs in the cause.

Order accordingly.

DATED at DAR ES SALAAM this 12<sup>th</sup> day of November, 2015.

  
**J. C. M. MWAMBEGELE**

**JUDGE**

