**Cogecot Cotton Co Ltd v Tanzania Marketing Board**

**Division:** High Court of Tanzania at Dar-Es-Salaam

**Date of Ruling:** 26 January 2000

**Case Number:** 34/96

**Before:** Mapigano J

**Sourced by:** A Bade

**Summarised by:** H K Mutai

*[1] Bankruptcy – Attachment of property – Application by decreee – Holder to sell attached assets*

*belonging to public corporation – Corporation placed under receivership of Parastatal Sector Reform*

*Commission – Whether attached property should be released to receiver – Section 43 – Public*

*Corporations (Amendment) Act 1993 – Sections 9(1), 38 and 45 – Bankruptcy Ordinance (Chapter 25).*

**RULING**

**MAPIGANO J:** Cogecot Company SA holds a decree of this Court against the Tanzania Cotton Lint and Seed Board, a public corporation. Writs of execution of the decree have issued against the judgment debtor, that is, an order for attachment of immovable assets and a prohibitory order in respect of moneys in various bank accounts, and those orders have been carried out. Cogecot has brought an application for an order for sale of the immovable assets, but an objection has been taken by the Presidential Parastatal Sector Reform Commission (hereinafter “the Commission”). The Commission seeks an order dismissing Cogecot’s application; setting aside the order for attachment of the immovable assets; and directing the court broker to release those assets to the judgment debtor. The Commission is a statutory body established under the provisions of section 21 of the Corporations Act, 1992, as amended by the Public Corporations (Amendment) Act, 1993. It is conferred with powers of restructuring or liquidating parastatal bodies which have been specified in accordance with that Act. It is admitted by Cogecot and it is clear that the judgment debtor has been declared such a specified public corporation by the Minister of Finance *vide* GN 330A published on 12 July 1998. With effect from the date of operation of the GN the judgment – debtor has been placed under the Commission for restructuring or liquidating purposes. It also admitted by Cogecot that the Commission was, by virtue of section 43(1) of the Public Corporations (Amendment) Act, 1993, constituted the official receiver of the judgment debtor from the date of the publication of the GN, and that it has power and all rights of a receiver appointed in accordance with or pursuant to the Bankruptcy Ordinance, Chapter 25. Accordingly, by virtue of section 9(1) of Chapter 25, the Commission became receiver of the judgment debtor’s property and entitled to take possession; all remedies enjoyed by creditors except secured creditors, whose debts are provable in bankruptcy, are barred, and such creditors are left with a right to prove in bankruptcy; all actions and proceedings against the property and the estate of the debtor are stayed unless their continuance is sanctioned by the court. Citing that provision, Mr *Mselem* who advocates for the Commission makes the following contentions. First, that to entertain Cogecot’s application for an order for sale would be illegal. Second, that since the assets of the judgment debtor have been placed under the Commission they cannot he attached or sold by Cogecot. Third, that since the same assets have been attached in miscellaneous civil case number 58 of 1996 of this Court, which is not in dispute, it would be absurd to grant Cogecot’s application. Learned counsel for Cogecot, Captain *Kameja*, thinks otherwise. He contends that section 9(1) should be read subject to section 45 of the Ordinance. Insofar as it is relevant to the matter at hand, sub-section (1) of the latter section provides that where a creditor has issued execution against the lands of a debtor, he shall not be entitled to retain the benefits of the execution against the trustee in bankruptcy of the debtor, unless be has completed the execution before the date of the receiving order, which in this case is to be equated with the date of the publication of GN 330A of 1998. By subsection (2) of that section, execution against land is completed by seizure. Captain *Kameja* accordingly submits that since Cogecot had completed execution upon the lands of the judgment debtor before the date of the publication of the GN, the execution is protected against the operation of section 9(1) of the Ordinance. With regard to the execution which has issued in miscellaneous civil case number 58 of 1996, Captain *Kameja* says, and he is right, that the law does not prohibit multiple attachments. The question arises as to whether Cogecot had completed execution upon the assets before the date of the application of the GN 20 is not in dispute that the warrant for the attachment of those assets was executed by the court broker before the GN was published, and the court broker took possession thereof. To my mind, seizure, in the context of section 45 of the Ordinance, may be reasonably construed to mean taking possession of the land in question. It seems to me, therefore, that under that section Cogecot would be entitled to retain the benefits of the execution against the Commission. The crucial question, however, is whether it would be proper to let Cogecot retain such benefits and proceed with the sale of the assets, given the provisions of section 43(2) of the Public Corporations (Amendment) Act, 1993. I respectfully think not. As already stated, the Commission has the power and all the rights of a receiver appointed in accordance with or pursuant to the Bankruptcy Ordinance. But Mr *Mselem* has made a valid point that in actual fact the Commission enjoys wider powers than those vested in a receiver by the Ordinance. Under section 43(2)(*b*) of the Act, the Commission is empowered, *inter alia*, to write off any debt of a private creditor; and to reschedule the payment of such debt. The inference must be that unlike an ordinary receiver, the Commission is not obliged to give priority to the preferential debts enumerated under section 38 of the Ordinance. I am of the opinion, therefore, that to let Cogecot’s title prevail over the Commission’s would be the negation of section 43(2)(*b*) of the Act. For this reason, the objection is upheld. Accordingly, the attachment is raised and the assets under that attachment are to be released to the

Commission.

For the Applicant:

*Information not available*

For the Respondent:

*Information not available*