

A All the same, fifty years of the human rights declaration as standard achievement of all people, and of all nations, and they being designed to limit power to counterbalance a utilitarian use of power with an ethical requirement setting a limit to power so that any action, even
 B with a semblance of challenge to power, abuse, like that the applicant did, is a welcome course of inspiration on the extent of such rights. And wisely, I think with respect, and more and better persuaded by the Indian authorities, and distinguishing the South African case which
 C is a product of a Constitution and circumstances not too close to our own, I am convinced that the suspension was resultant from disciplinary action by the assembly, for matters committed within the assembly which has exclusive jurisdiction to deal with the same, within the four walls of the same, to maintain the dignity and integrity of the assembly,
 D and the members themselves. The said suspension was part of the proceedings in the assembly, it was part of the course of its own proceedings. I therefore hold that the suspension was within the constitutional powers of Parliament as exercisable for purposes of its business. In obedience
 E to article 100(1) of the Constitution, I shall hereby declare that this court has no jurisdiction to hear the petition, and therefore the application is unmaintainable, and I shall not by illegal force break into that parliamentary castle. The second objection is therefore pre-empted,
 F and its treatment is therefore rendered superfluous.

G But even if it were otherwise, I would be reluctant to issue the stay sought for the conditions thereof, not being satisfied - I - a private member's motion has no time circumscription, the present parliamentary life is five years, and Tanzania is not dying tomorrow, nor are Tanzanians planning an exodus from this country. And as for the Temeke Constituency voters and other voters generally, truancy from the House, even to the extent of denying the Hon. Speaker a working quorum, is so
 H common, and whether as a result of truancy or the Speaker's suspending order the effect is non-representation and a violation of the voters' rights, all the same, for which the electorate will be the judges: either when they know the effect of truancy, or the cause for suspension.
 I The application fails, therefore, with costs.

SAID MNIMBO AND OTHERS v. STATE TRAVEL SERVICES LTD, TOURISM SERVICES TANZANIA AND PARASTATAL SECTOR REFORM COMMISSION AS OBJECTORS

HIGH COURT OF TANZANIA
AT DAR ES SALAAM

(Kalegeya, J.)

CIVIL CASE No. 296 OF 1997

Public Corporations – Privatization of public corporations – Public corporation declared a specified public corporation with a view to privatization – Effect of declaring the corporation a specified corporation.

Civil Practice and Procedure – Garnishee Order – Order imposed on bank accounts of a wrong party to proceedings – Whether order may be lifted.

Banking – Garnishee order – Garnishee order imposed on bank accounts of a wrong party to the proceedings – Whether the order may be lifted.

The plaintiffs filed a suit against the State Travel Services Ltd for terminal benefits following staff retrenchment. After hearing the case *ex parte*, judgment was entered in their favour and a decree was drawn up to the sum of TZS. 185 697 985. The court, pursuant to the decree against State Travel Services Ltd, issued a garnishee order on 4 accounts held at Stanbic Bank, Arusha Branch, and 4 accounts at Stanbic Bank, Dar es Salaam; on 2 accounts held at NBC (1997) Ltd, Samora Avenue Branch, and one account at NBC (1997) Ltd, Foreign Branch, in Dar es Salaam.

Retrenchment of the employees followed declaration of the State Travel Services Ltd as a specified corporation under the Public Corporations (Amendment) Act 1993 [Number 16 of 1993], and the acquisition of 75% of its shares by Tourism Services Tanzania. Following that declaration the Parastatal Sector Reform Commission (PSRC) assumed responsibility over all matters that fell under the State Travel Services Ltd. Aggrieved by the garnishee order issued against the bankers of State Travel Services Ltd, Tourism Services Tanzania and PSRC filed an application praying for the garnishee orders to be lifted on grounds, *inter alia*, that from the date State Travel Services Ltd

A was declared a specified corporation, it came under PRSC as receiver, and the provisions of the Bankruptcy Ordinance became operational, requiring that all debts and claims, including the suit leading to the decree, to proceed against PSRC.

B **Held:** (i) Upon a public corporation being designated a specified public corporation, PSRC becomes an automatic official receiver of such corporation;

C (ii) Section 43 of the Public Corporations (Amendment) Act 1993 [Number 16 of 1993] creates a special official receiver in the form of PSRC under which all properties of specified public corporations are placed in terms of section 9 of the Bankruptcy Ordinance Chapter 25, saving the specified corporation from being proceeded against by creditors, apart from the barrage against action by such creditors that they cannot file an action without leave of the court;

D (iii) Under the Public Corporations (Amendment) Act 1993, all properties of the State Travel Services Ltd, including its bank accounts, were placed under PSRC as official receiver and in terms of section 9 of the Bankruptcy Ordinance, Chapter 25, such properties cannot be attached as the garnishee order purports to do;

E (iv) Once a public corporation is designated a specified public corporation and placed under PSRC, only PSRC can be proceeded against by any deserving creditor;

F (v) The application to lift the garnishee order is granted because (a) there is lack of particularity as to whether the 11 bank accounts attached belong to the judgment debtor, State Travel Services Ltd, and (b) even if they do they are not liable to such order being now under PSRC as official receiver of State Travel Services Ltd, exercising its powers under section 43 of the Public Corporations (Amendment) Act 1993, read together with section 9 of the Bankruptcy Ordinance.

G **Orders accordingly**

Cases referred to:

- H (1) *New Insurance Company Ltd v. Lilian Evelyn Cross and another* [1966] EA 90
- (2) *Bakari Ben and Jumaa Ben v. Zainabu Ama Ben Jumaa*, Civil Application Number 85 of 1997 (unreported)

I Statutory provisions referred to:

- (1) Public Corporations (Amendment) Act 1993, section 43

(2) Bankruptcy Ordinance, section 9

Mr Mujulizi, for the Applicants/Objectors

Mr Lutema, for the Plaintiffs

RULING

(Delivered 30 July 1998)

C **KALEGEYA, J.:** This ruling is in respect of an application by Tourism Services Tanzania and Presidential Parastatal Sector Reform Commission (PSRC) as first and second applicants/objectors respectively praying for the lifting of a garnishee order issued against 4 bank accounts at Stanbic Bank Arusha branch; 4 bank accounts at Stanbic Bank, Dar es Salaam Branch; 2 accounts with NBC (1997) Ltd, Samora Avenue Branch, Dar es Salaam, and one account with NBC 1997 Foreign Branch, Dar es Salaam in response to a decree entered by this court against State Travel Services Ltd, defendant (as judgement-debtor) in favour of Said Mnimbo, John Nyange, Silvano Kagya and 74 others as plaintiffs/decreed holders.

F For clarity let us detailedly go through the facts leading, relating and surrounding this matter which are as follows:

G Said Mnimbo, John Nyange and Silvano Kagya filed a representative suit on behalf of themselves and 74 others against the State Travel Services Ltd for terminal benefits following their retrenchment. Upon the plaintiff's advocate's submission before a brother judge that the defendants had refused service they (plaintiffs) were allowed to prove their case *ex parte* which they did by affidavit and judgement was accordingly entered in their favour. A decree to a tune of TZS. 185 697 985 was drawn up and this led to the garnishee order which is being challenged.

I In order to have full appreciation of this matter I should pause here and touch another set of relevant factors leading to the filing of the suit.

A By the Public Corporations (Amendment) Act, 1993 (Act Number 16 of 1993), the Public Corporations Act, Number 2 of 1992 was amended. Under this amendment, a special creature called the Presidential Parastatal Sector Reform Commission (PSRC) was created [section B 21] and given very wide powers (section 22).

For clarity and in view of what will subsequently be discussed, even at the danger of making this ruling unnecessarily long, I will quote relevant sections of the said Act extension:

- C Section 21 (1) There is hereby established a commission to be known as the Presidential Parastatal Sector Reform Commission which shall be an autonomous organ of the Government.
- D (2) The Commission shall be a body corporate with perpetual succession and common seal and shall be capable in its corporate name of;
- E Section 22 (1) The Principal functions of the Commission shall be:
- F (a) to prepare and maintain an up to date list of all public corporations and make recommendations to the Minister on which public corporation should be declared to be specified public corporations;
- G (b) to formulate and execute detailed plans for the restructuring of all specified public corporations;
- H (c) to supervise, monitor and enforce the restructuring procedures and agreements in relation to specified public corporations;
- I (d) to liaise as necessary with responsible ministries and other organs of the Government with a view to ensuring that the objectives of the commission are achieved;
- (e) to make such other recommendations as it considers necessary to enable the Commission to achieve its objectives under this Act.

- (2) Without prejudice to subsection (1), during the period of its existence as specified under section 21 of this Act, the commission shall:
- (a) be responsible to the President for ensuring the implementation of Government policies on the reform of the public corporations sector;
- (b) implement the policies and programs of the Government with respect to the reform of the public corporation sector;
- (c) develop operating policies, procedures and guidelines for the implementation of the public corporation restructuring reforms decided by the Government;
- (d) review and make recommendations on specific policies and legislation pertaining to the public corporations sector;
- (e) liaise as necessary with responsible ministries in monitoring the performance of public corporations and in participating in the development and supervision of statements of corporate strategy.

Again, under section 4A of Act 16 of 1993 "Every public corporation existing on the coming into operation of this Act shall be deemed to be established pursuant to this Act ..."

Under section 38(1) "The Minister may upon the recommendation of the commission (PSRC) by order published in the Gazette declare a public corporation to be a specified public corporation to which the provisions of this Act shall apply".

The commission's powers are further strengthened by section 39(1) which provides, among other things:

Where a public corporation has been declared a specified public corporation, the commission shall from the effective date be responsible for the restructuring of that specified public corporation.

- A (2) Without limiting the generality of subsection (1) the commission may, in respect of any specified public corporation:
- B (a) cause a detailed financial and operational analysis of the specified public corporation to be carried out;
- C (b) determine the means by which the restructuring of the specified public corporation may be implemented;
- C (c) cause a valuation of assets of the specified public corporation to be carried out;
- D (d) invite expressions of interest from potential purchasers or lessors of the specified public corporation or of the assets of such corporation;
- E (e) publish guidelines for hiding and valuation procedures and criteria for the selection of purchasers or lessors;
- F (f) determine the price at which the shares in or the assets of the specified public corporation may be purchased or leased;
- G (g) hold discussions with the members of the board and officers and employees or their representatives of the specified public corporation with a view to achieving a fair, reasonable and harmonious restructuring of that specified public corporation;
- H (h) determine, in consultation with responsible ministries fair and reasonable severance, pension and other payment arrangements that may be appropriate following a restructuring of the specified public corporation.
- I (i) negotiate and cause to be executed such agreements as may be necessary with any party for the purchase, lease, management or control of shares in or assets of the specified public corporation;
- (j) negotiate and cause to be executed such agreements as may be necessary with any party for the purchase, settlement or discharge of the liabilities or any other indebtedness of the specified public corporation;

- (k) cause proceedings for the recovery of any debt owned to or by a specified public corporation or for the winding up liquidation or dissolution of the specified public corporation to be initiated; and
- (k) do all such other acts as may be required to effect the restructuring of any specified public corporation.

The wide powers of PSRC do not end there. Under section 43 the commission is given a wider perspective as it is provided, again among others, that

- (1) Notwithstanding any other law to the contrary, with effect from the date of publication of an order declaring a public corporation to be a specified public corporation the commission shall:
- (a) without further assurance on appointment have the power to act as the official receiver of the specified public corporation; and
- (b) have the power and all the rights of a receiver appointed in accordance with or pursuant to the Bankruptcy Ordinance.
- (2) Without prejudice to subsection (1) of this section the commission shall:
- (a) in relation to a public corporation which is insolvent-
- (i) have power to determine whether the public corporation should be liquidated.
- (ii) have power to determine an alternative restructuring option.

Provided that in the event of determining an alternative restructuring option the commission shall prior to proceeding with such option, inform all the interested parties in writing of the reasons for preferring that alternative option;

- (b) in relation to the debts of private creditors, but after negotiating with such private creditors and with the consent of the Treasury have the power:

- A Under (c) and (d) the commission (PSRC) can exercise powers under (b) above in relation to government debts where the Corporation is wholly owned by Government, and where the govt. owns just shares, with consent of the Treasury and other shareholders.
- B Treading on the powers granted under this law (section 38(1), the Minister for Finance, vide G.N. 324 of 25 October 1996 declared various public Corporations to be "specified public corporations" and in the list included is "State Travel Services Ltd (present defendant/judgment debtor). PSRC
- C informed the general public of the existence of this G.N. and other G.Ns. on similar subject in a public Notice contained in Daily News Paper dated 27 May 1997 displaying over 30 specified public corporations and, which again for clarity, the relevant part need to be quoted at length,
- D Accordingly, the PSRC is now fully responsible for the devising and implementing divestiture of these companies. No action would be executed on the assets of the companies without the knowledge or/and prior approval of the PSRC. The PSRC will ensure orderly privatization of those companies
- E and secure the interests of all the creditors and all other parties concerned in accordance with the law. Notwithstanding the specification order the management of the companies is still vested in the respective Board of Directors which are obliged to ensure continuation of business operations.
- F The boards are obliged to consult and get approval of PSRC before making any decisions in relation to disposal, acquisitions of the assets and signing of any loan/credit or lease agreement. All creditors are informed to register their debts with PSRC through P.O. Box 9252, Dar es Salaam, within
- G twenty five days from the date of this notice, i.e. 24 May 1997.
- H On 16 September 1997, the Government of the United Republic of Tanzania represented by PSRC and referred to as the Vendor (on first part); Tourism Services International Ltd referred to as Purchaser (on second part) and State Travel Services Ltd. (on third part) and referred to as the Company, entered into a sale agreement by which the purchaser bought 75% of the shares of the Company which had earlier on been owned 100% by the Government, leaving the latter
- I with just 25% shares.

Meanwhile negotiations had been going on between PSRC and the employees of the State Travel Services (and regard being had to the facts available I will take it that they include the plaintiffs/decreed-holders) possibly under section 9(2)(g) of Act 16 of 1993, which negotiations resulted in retrenchment of decree-holders in July, 1997. In accordance with the plaint whose contents have not been disputed by the defendants (as it decided not to appear let alone filing a Written Statement of Defence, coupled with the fact that in the course of arguments in this matter Mr Mujulizi for objectors was open enough to state that PSRC is arranging to pay the claims signifying that the claims are not disputed) it seems, during the retrenchment negotiations it was agreed between the plaintiffs and PSRC, that, among others, the plaintiffs/decreed holders would be paid "a golden handshake of two months' salary for each year of service for the first ten years of service plus one month's salary for each year of service for years eleven to twenty years" which decision was approved by the Government. However not only were the "golden handshake" benefits not paid but also the severance allowance did not comply with the legal requirement of 5% of the annual salary times the number of years of service.

Embittered by the non-payment of the above-enumerated benefits, on 21 October 1997, exactly 36 days after 75% of the shares of the State Travel Services Ltd had been sold to Tourism Services International Ltd, the plaintiffs/decreed-holders/ respondents filed an action against State Travel Services Ltd, claiming among others,

TZS. 103 991 471 being the total golden handshake payments for the 77 plaintiffs as well as for a sum of TZS. 38 243 033 being the unpaid balance of total severance allowance for the 77 plaintiffs.

Interests and costs which after the passing of the judgment have totaled up to a decretal sum of TZS. 185 697 985, the subject of the disputed garnishee order.

Again it would seem the State Travel Services Ltd business is also being traded under the Tourism Services.

A The applicants' attack is geared at unblocking the 11 bank accounts referred to above. In support of the application to lift the garnishee order, Mr Mujulizi's (for the applicants) lengthy arguments (including the accompanying affidavit) can be summarized as follows – that

B from the date the State Travel Services was declared a specified Public Corporation it came under PSRC as a receiver hence the provisions of the Bankruptcy Ordinance Chapter 25, became operational necessitating that all debts and claims including the suit leading to the decree,

C the subject of this controversy, against that corporation, had to proceed against PSRC as a receiver to protect investors from proliferation of suits which would render the objectives of the Act futile; that the garnishee order itself, on its face value is confusing, vague and capable

D of causing grievous and irreparable harm to the first objector (Tourism Services) as it was issued against all accounts operated by first objector, a trade name adopted after the 75% shares had been sold to Tourism Services International Ltd; that the accounts which have been affected are Trust Accounts – that due to operations of Air Services and

E Tours which involve the selling of tickets on behalf of various airlines, some of these accounts contain monies from other parties, and that the garnishee order would paralyse the first objector's operations, adding that if the said garnishee order is to be upheld let it be varied

F to hold only the monies of the State Travel Services Ltd.

Mr Lutema's equally lengthy and forceful submissions in response can conveniently be summarized in the following words; that although under Act (under which it was created) PSRC was given a wide range

G of powers as provided under various sections which include section 22, 37 and 43 it was not made an automatic official receiver to all specified public corporations as section 43 may purport to indicate, urging the court to note that in construing one section of an Act

H regard should be had to the other provisions of the same Act to avoid making the other such provisions superfluous (cited *New Insurance Coy Ltd v. Lilian Evelyn Cross and another* (1), and that in interpreting statutes the court should recapitulate to what was the intention of

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the legislature by understanding the objectives and history of Act; A that the purpose of the Public Corporations Act (Act 2 of 1992) as amended by Act 16 of 1993 was not limited to simply dissolving the various corporations and putting them under receivership but was to make better provisions for their establishment, management B streamlining and related incidental matters thereto which included restructuring, dissolution and selling, that PSRC became an official receiver only to a corporation dissolved for non-performance in C which case all powers of a Receiver would be exercised but it would not be in any other situations of restructuring like in the present case where State Travel Services did not cease to exist but merely had its share holding changed from 100% Government owned to 25% while 75% went to a private investor; that as a result there was D no receivership of the State Travel Services Ltd. thus the said corporation has never ceased to exist and could therefore be properly sued as was the case here and a garnishee order issued.

Mr Lutema's arguments did not end there. He argued in the alternative E that the court should hold that there was no sale agreement as such as section 5 of the Stamp Duty Act 20 of 1972, a mandatory provision requiring payment of Stamp Duty was violated thus leaving the State F travel services as it was before the purported sale agreement; that there should have been other supporting affidavits regarding the sources of the information (citing *Bakari Ben and Jumaa Ben v. Zainabu Ama Beni Jumaa* (2) referred to in the affidavit which accompanied the Chamber G Summons; that in the unlikely event it is found that the wrong party was sued the court should exercise its powers provided under Order 1, rule 10(2) Criminal Procedure Code and add the right party, PSRC, and finally that if the court finds that there is need to lift the garnishee H order the judgement debtor should be called upon to deposit the sums stated to guarantee payment to his clients in the event they win.

In reply, Mr Mujulizi maintained that depositing the decretal sum in court can't be legally ordered as there would be no pending I proceedings before the court; that regarding the trust Accounts the decree-holder was duty bound to investigate and execute on the right

- A accounts of the judgement-debtor; that the stamp duty was supposed to be paid only on the share "transfer certificate"; that as the purpose of the Act was to allow amicable and smooth restructuring of public corporations and place them in hands of private entrepreneurs, a
- B special receiver – PRSC difference from a receiver appointed under Chapter 25; 212 or appointed by court, was appointed under section 43 of Act 16 of 1993, with wide powers going beyond the mere dissolution of the corporation hence PSRC's public announcement
- C in the daily newspaper that all claims against the specified public corporations should be registered with it, and finally that the garnishee order is not the only remedy and more so when PSRC does not disclaim liability.
- D Let us now turn to the core of the controversy – whether PSRC and Tourism Services have established that they have an interest in the accounts against which the garnishee order has been issued as against the judgment debtor – State Travel Services.
- E As rightly pointed out by both the learned Counsel the Amendment (Act 16 of 1993) was geared at restructuring public corporations and this is spelt out in the "objects and reasons" for its enactment prescribed in the Bill to that Act and which reflect the following:
- F This bill is designed to effect amendments to the Public Corporations Act 1992, so that the Act becomes an appropriate vehicle for effecting the restructuring of public corporation.
- G In effect, the Bill intends to narrow the scope of the Act to encompass only public corporations that are solely owned by the Government or majority owned by the Government.
- H This was a time when the Government was moving away from being the 'King' in the commanding heights of the economy and switching over to privatization. This can be discerned from the wide ranging powers given to PSRC as can be seen from the provisions of the Act already quoted above. The move was hastily and ambitiously hatched.
- I It could not, in the circumstances, be water-tight in each respect and some flaws on the legal side is a telling factor.

A I will start with the main argument – whether PSRC automatically becomes a Receiver of the public corporation immediately it is designated a specified public corporation section 43 of Act 16 of 1993 is already quoted. As rightly submitted by both Counsel, section 43 can not be interpreted in isolation as that would lead to superfluity of other provisions. B

C It has already been demonstrated that the objectives and reasons for the enactment of the Act (16 of 1993) was to restructure public corporations in which the government controlled 100% or majority shares. The provisions of the Act already quoted clearly show that in restructuring some specified corporations could be liquidated or restructured otherwise section 43(2) specifically authorizes PSRC, in insolvent corporations, to decide on whether they should be liquidated D or be put on alternative restructuring option which includes selling. It was in the exercise of these powers that PSRC did not liquidate the State Travel Services Ltd. but sold the majority of its shares to a private investor (Tourism International Services). E

F The Bill to the relevant Act, giving "objectives and reasons" for the enactment of section 43 provided:

F It is proposed in section 43 that the commission should act as the official receiver of a specified public corporation. It should be entrusted with the power to make decisions on liquidation or alternative restructuring option.

G Reading the intention of the Legislature in the provisions of section 43 and other provisions of the Act above quoted and as guided pointed out in the quoted objectives and reasons found in the Bill to the relevant Act one is left in no doubt at all that indeed PSRC was appointed an automatic official receiver of any public corporation upon the same being designated 'a specified public corporation'. With respect H to both learned counsels, the heated argument on this seemingly issue seems to have emanated from a misapprehension of what an official receiver is. The way I understood their arguments they seemed to propose that a receiver is only appointed in ventures I which have to be liquidated or under liquidation. With respect this

A is not necessarily the case. A distinction here should be made between a receiver and liquidator although the former may also be appointed the latter and also between receivers appointed by courts and those by individuals or specific statutes.

B As defined in the **Halsbury's Laws of England** (4 ed), Volume 39, paragraph 801:

C A receiver is a person appointed for the collection or protection of property. He is appointed either by the court or out of court by individuals or corporations. If he is appointed by the court, he is an officer of the court deriving his authority from the court's order. If he is appointed out of court, he is an agent and has such powers, duties and liabilities as are defined by the instrument or statute under which he is appointed and derive from the general law of agency.

D A receiver is often appointed in general terms over all the property and assets, and his powers and duties must depend on the terms of his appointment. This would depend on the object of the appointment.

E It could be for the purposes of determining the rights of parties or to ascertain what encumbrance exist on a venture and what their priorities are or to settle dispute as to title.

F A receiver could also at the sometime be appointed a manager of the venture.

G What the above exposition leads to is that a receiver can be appointed even for ventures not under liquidation nor expected to be liquidated, the controlling purpose for such appointments being the collection or preservation of the relevant property for the benefits of persons who have an interest in it. It was under this principle that, by statute, PSRC was formed and appointed an official Receiver of all 'Specified public corporations' so designated under Act 16 of 1993.

H I should reiterate that some distinction should be made between court appointed receivers and other receivers. Generally, it is true that receivers appointed by courts are so appointed for the preservation of a debtor's property pending an action against him or applying the

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A said property to satisfy a creditors claim or right in situations where the possibility of injury, loss or removal of that property is looming but for receivers appointed outside the court, as earlier hinted upon, it could be for the purpose of ascertaining the encumbrance or the exact state of the venture in preparation for another step to be taken.

B Act 16 of 1993 took both curses and appointed PSRC as official receiver for both types of corporations – those which seemed insolvent hence were to be put on death roll by liquidation, and those which need restructuring as the State Travel Services came to be.

C Mr Lutema's argument is caught up in the very web he knotted for the applicants: that we should look at the intention of the Legislature when passing that Act (I have already quoted the objects and reasons contained in the Bill). I must concede that section 43 could have been better framed, but notwithstanding the wanting wording, reading subsection 1(a), reinforced by 1(b), and supplemented by the intention of the Legislature as put in the objects and reasons for the enactment of the relevant law which were glaringly revealed in the very wide range of powers bestowed on PSRC, one is left in no doubt at all that the said PSRC was appointed an automatic official receiver to any specified public corporation upon being so designated. Having so concluded, then what is its effect on the application before us?

D Mr Mujulizi argues that as a Receiver, then all actions must proceed against PSRC in order to protect other investors.

E Section already expressed appointed PSRC, out of court, as an official receiver. It however did not end there. This statute (Act 16 of 1993) did not merely appoint PSRC in a mere capacity of a Receiver appointed by individuals outside the court: it went on to cradle this special creature with very wide powers by pushing it into the domain of court appointed receivers! "It shall have the power and all the rights of a receiver appointed in accordance with or pursuant to the Bankruptcy Ordinance" (section (1)(b)).

F An official receiver under the Bankruptcy Ordinance is so considered for a particular matter after the court has issued a "receiving order"

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A for the protection of the estate – this is after the debtor has committed an act of bankruptcy, or upon presentation of bankruptcy petition by either creditor or debtor. Among others, the “receiving order” would specifically mention who the official receiver is. However this situation is not applicable in our case because this special “Official Receiver”, PSRC, is not the creature of the court and in any case State Travel Services was/is not under bankruptcy apart from the limitations of section 118 of this law – Bankruptcy Ordinance Chapter 25, which categorically provides,

A receiving order shall not be made against any corporation or against any association or company registered under the Companies Ordinance.

D Without attempting to reconcile the effects of this provision (section 118) to the case at hand as against the other relevant laws like the Companies Ordinance, it suffices to say that there was no receiving order.

E The above observations notwithstanding however we have the glaring section 43(1)(b) of Act 16 of 1993 before us. This prescribes that PSRC has all powers and all rights of a receiver appointed in accordance with or pursuant to Bankruptcy Ordinance. It is under this clause that Mr Mujulizi prays to be allowed to take shelter. What powers are those? Are they of the nature and type as referred to by Mr Mujulizi?

F An “official receiver” under the Bankruptcy Ordinance has indeed wide powers all geared at the protection and preservation of both the debtor and creditors’ interest. Under section 75(1) “... the official receiver shall have relation both to the conduct of the debtor and to the administration of the estate”. receiver has duty and power to investigate the conduct of the debtor as a whole (section 76). Under section 77, receiver, among others, has to make sure that the Estate is not wasted, can act as manager or trustee when those vacancies are open and even after their appointment, receiver has to keep a keen eye on the said manager or trustee (section 83). Other sections on incidental powers and privileges are not relevant to the situation

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A at hand except section 9(1) which states that after the estate or property of a debtor has been placed under an official receiver.

B ... there after, except as directed by the ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or, shall commence any action or other legal proceedings unless with the leave of the court and on such terms as the court may impose.

C Of all the powers of an “official receiver” indicated above those under section 9 of Chapter 25 should have been the ones specifically targeted by section 43(1)(b) of Act 16 of 1993. I am saying so because the other powers of the receiver under Chapter 25 are almost covered under a string of wide powers bestowed on PSRC under Act 16 of 1993. But these alone would not have sufficed. We have already observed that the intention of the Legislature was to afford a smooth restructuring of public corporations 100% or majority share owned by the Government in the wake of privatization. Indeed if private investors were to be attracted there were to be some kind of guarantee on their investments and a guarantee cushioning against debts and liabilities by the said corporations as is the case in this matter. I am fortified in my opinion on this by another factor that even the sale agreement (in which Tourism Services International) Ltd bought 75% of the State Travel Services Ltd) does not provide protection for this kind of liability – I believe this was due to the fact that it was thought that section 43 of Act 16 of 1993 had taken care of all this otherwise the private investor could not simply dump in money which would only soon be fished out by creditors as the decree-holders are trying to do. Due to this, section 43 of Act 16 of 1993 created a special official receiver in the form of PSRC under which all properties of specified public corporations were placed in terms of section 9 of Chapter 25 saving them from being proceeded against by way of remedy by creditors apart from the barrage against the said creditors that they cannot file an action thereof without the leave of the court. With respect to Mr Lutema, no distinction was

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A made between corporations that were to be placed under liquidation or restructuring. To attach any other interpretation would go counter to the intention of the Legislature when passing the relevant Act.

B Thus under Act 16 of 1993 the properties including bank accounts of the State Travel Services were placed under PSRC as an official receiver, and in terms of section 9 of the Bankruptcy Ordinance they cannot be attached as the garnishee order purports to do. I have so concluded without going to the other side of the matter of whether C the decree on which the garnishee order is found is legally proper as no court's leave was sought and secured before the action was filed in terms of section 9 Chapter 25 because that is not the issue before me apart from lack of jurisdiction to question it and existence D of other avenue if relevant parties find it necessary to pursue it.

While still on this I should respond to Mr Mujulizi's contention that in the premises only PSRC can be proceeded against by any deserving creditor. While possibly desirable I have failed to see the E basis of his proposition. Section 9 of Chapter 25 is silent on who should be sued. In my opinion, with courts leave, the debtor, in this case, State Travel Services Ltd, can be sued alone or jointly with PSRC as the former is still a corporate entity capable of suing or F being sued. The above disposes the matter before us making it unnecessary to discuss other submissions, contentions and propositions made by both learned Counsel.

G In conclusion, the application to lift the garnishee order is allowed, first for lack of particularity as to whether the 11 bank accounts attached belong to the judgement-debtor, State Travel Services Ltd, and, secondly, even if they were, they are not liable to such order being under PSRC as an official Receiver of State Travel Services H Ltd exercising its powers under section 43 of Act 16 of 1993, read together with section 9 of the Bankruptcy Ordinance. Considering the role played by each party in the matter leading to this situation – in action by PSRC is not honouring what was agreed upon with the I decree-holders hence the filing of the suit, and, the decree-holders

failure to follow the prescribed procedure under section 9 of Chapter 25, I order that each party meets its own costs. A

B ITALAFRICAN TRANSPORTERS LTD v GIAFAR M. BEDER

C
COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(Kisanga, J.A)

D
CIVIL APPLICATION No. 15 OF 1998

(Application for Leave to Appeal from the Ruling of the High Court of Tanzania at Dar es Salaam, Kileo, J., dated 6 March 1998, in Civil Case No. 160 of 1993)

E
Court of Appeal – Applications – Service of Notice of Motion on the respondent – Time within which the respondent is to be served with a copy of the Notice of Motion – Rule 52(1) of the Court of Appeal Rules 1979.

F
Court of Appeal – Leave to Appeal – Application for leave to appeal to the Court of Appeal – Application to be made to the High Court first – Rule 44 of the Court of Appeal Rules 1979.

G
Court of Appeal Rules – Form of Application – Format for bringing applications to the Court of Appeal – Form A of the first schedule to the Court of Appeal Rules 1979.

H
An application for leave to appeal to the Court of Appeal was struck out by the High Court for being incompetent. A Notice of Motion was then filed before the Court of Appeal asking for leave to appeal to the Court of Appeal, the same relief that the applicant had failed to obtain from the High Court. It was contended, by way of a preliminary objection, that the Notice of Motion was not served on the respondent in time; that it was faulty as it did not follow the proper format as required by law; that it was not properly titled as it was amended; and that after the High Court had struck out the application for leave to appeal to the Court of Appeal, the applicant had the I remedy of appealing to the Court of Appeal, not lodging another application.