

IN OPEN COURT

**TERRITORY OF THE VIRGIN ISLANDS
(held in Saint Lucia)
Tuesday, 24th May 2016**

APPLICATIONS AND APPEALS

Case Name:

**Yusuf Manji
v
Millicom (Tanzania) N.V.**

[BVIHCMAP2016/0017]

Coram:

**The Hon. Mr. Davidson K. Baptiste, Justice of Appeal
The Hon. Mde. Gertel Thom, Justice of Appeal
The Hon. Mr. Paul Webster, QC, Justice of Appeal**

Appearances:

**Appellant: Mr. Robert Levy, QC, with him, Mr. Sahleem Charles
Respondent: Ms. Sue Prevezer, QC**

Issues:

Interlocutory appeal – Stay of disclosure order – Freezing order – Whether court has discretion to stay disclosure order pending application for discharge of freezing order pursuant to which disclosure order was made – Whether learned judge erred in refusing to stay disclosure order – Challenge to learned judge’s exercise of discretion – Balance of prejudice – Inadmissible evidence – Rule 30.3 of Civil Procedure Rules 2000 – Whether affidavit evidence relied on by respondent to support allegation of fraud against appellant inadmissible – Whether BVI is proper forum for proceedings

**Type of Oral
Result/Order
Delivered:**

N/A

Result / Order:

The decision is reserved and court is adjourned until

4:00 p.m. for the delivery of the decision in this matter.

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**Type of Oral
Result/Order
Delivered:**

Oral Judgment or Decision

Result / Order:

- 1. The appeal is allowed.**
- 2. The appellant’s documents lodged in the court in a sealed envelope shall remain in court until further order.**
- 3. Costs of the appeal to the appellant to be**

assessed if not agreed within 21 days.

4. The costs of proceedings in the court below will be determined by the judge hearing the discharge application.

Reason:

The Court noted that when the matter was dealt with by the learned judge on 25th April 2016, he had before him the respondent's application for an "unless order" (which stated that the appellant shall be 'in contempt of court' if he fails to comply, within 7 days, with the disclosure obligations contained in the worldwide freezing order dated 25th January 2016 made against him), an application by the appellant for an extension of time to comply with the disclosure obligations, and also, the appellant's application to discharge the worldwide freezing injunction itself.

The Court stated that the sole connection that these proceedings have with the BVI is the fact that the first defendant in the court below, Golden Globe International Services Limited (not a party to the appeal proceedings) is a company incorporated in the BVI. On the other hand, all other connecting factors point to Tanzania being the proper forum for the proceedings. Accordingly, the Court opined that the BVI was not the proper forum for determining the respondent's claim against the appellant and Golden Globe International Services Limited.

The Court noted that the affidavit evidence provided by the respondent to justify its making the application for the worldwide freezing order in the BVI (as opposed to in Tanzania), which spoke to serious allegations of corruption in the Tanzanian judiciary, was inadmissible hearsay evidence which breached the provisions of CPR 30.3. Thus, the draconian step of the disclosure of one's assets has been ordered on the appellant on the basis of inadmissible evidence. The Court did not think that the quality of the evidence provided by the respondent was sufficient for it to be granted any injunctive relief and the learned judge should have dealt with this aspect of the case specifically when the matter came before him in April 2016.

In the circumstances, the Court held that the appellant's application to discharge the worldwide freezing order, scheduled to be heard in July 2016, has more than a reasonable prospect of success.

The Court clarified that it does have a discretion to stay a disclosure order pending the determination of an application to set aside the freezing order pursuant to which it was made (see *Raja v Hoogstraten and Another* [2004] EWCA Civ 968). The cases state that the judge has to carry out a balancing exercise and that all the circumstances of the case ought to be considered (see *Dalemont Limited v Senatorov and Others* (2012) 1 JLR 168). The Court stated that the circumstances of the present case suggest that the learned judge did not carry out the balancing exercise that he ought to have carried out in reaching a decision on the matter in April 2016.

The Court was satisfied that this case involved a challenge to a discretion exercised by the trial judge and that it should not interfere with his decision unless it is satisfied that 'the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion which has been entrusted to the court.' (see paragraph 16 of *Nilon Limited and Another v Royal Westminster Investments S.A. and Others* [2015] UKPC 2).

The Court stated that it was satisfied that the learned judge had failed to take into account the inadmissible hearsay evidence (which the previous judge who granted the worldwide freezing injunction appeared not to have considered), the fact that the case has no real connection with the BVI, and also, the fact that the appellant has a real prospect of succeeding on his application to discharge the worldwide freezing order in July 2016. Accordingly, the learned judge made errors of principle which allow the Court to interfere with the exercise of his discretion.