IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 17 OF 2003

THE KARATU DISTRICT COUNCIL .....APPLICANT

V E R S U S

1. THE MINISTER: REGIONAL ADMINISTRATION .... RESPONDENT
2. THE ATTORNEY GENERAL ..... RESPONDENT

RULING

SHANGWA, J.

This is an application brought by KARATU DISTRICT COUNCIL for a temporary injunction to restrain the 1st Respondent from dissolving it pending the determination of the application for the orders of Certiorari, Mandamus and prohibition. The 1st respondent is the Minister for Regional Administration and Local Government. He shall herein after be referred to as the Minister. The 2nd Respondent is the Attorney General.

The application was brought Under S.2 (2) of the Judicature & Application of Laws Ordinanoe Cap. 453 & Ss 68 & 95 of the Civil Procedure Code, 1966. It was simultaneously presented for filing on 19th May, 2003 under a Certificate of Urgency with the application for leave to file an application for the order of Certiorari, Mandamus and prohibition.

Learned counsel for the applicant Council, Mr. Peter Kasikila told the court that this council is aggrieved with the Order of the Minister issued in Government Notice No. 18 of 31st January, 2003 whereby the Minister is threatening among other things, to dissolve it by 31st March, 2003.

He submitted that, if this application for a temporary injunction is not granted, the applicant council will suffer irreparable injury in the event of being dissolved by the Minister. He contended that transfering the functions of the applicant council to another person or body of persons is tantamount to killing it.

In reply to this application, Learned State Attorney for the respondents Miss Temi generally stated that this application is prematurely before this court and it is unnecessary. She contended that the Minister's Order in Government Notice No. 18 of 31st January, 2003 does not constitute a threat to dissolving the applicant Council, but it compels it to perform its statutory duties. Also, she contended that the applicant council will not suffer any irreparable injury because at the moment it is the residents of Karatu District who are suffering as it is not performing its duties.

She commented that if by 31st March, 2003, the applicant council was unable to complete what they were ordered to do, they should have asked for extension of time from the Minister rather than bringing their grievances to court at this stage.

In his counter reply to this comment, Mr. Peter Kasikila stated that the question of applying for extension of time from the Minister does not exist as the applicant council asserts that the orders contained in Government Notice No. 18 of 31st January, 2003 are ultra vires, unlawful, discriminatory and against the principles of natural justice.

The message one gets from this statement is that so far, the applicant council composed of the large majority of councillors from CHAMA CHA DEMOKRASIA NA MAENDELEO 'CHADEMA',

is not ready to comply with the Order of the Minister published in Government Notice No. 18 of 31st January, 2003 in which it was given a period of three months with effect from 1st January, 2003 to perform its functions such as to maintain peace, order, good government and to revive all social and economic projects in its area of jurisdiction.

The legal consequences of a failure to comply with the Minister's order made under S.171(1)(a) of the Local Government (District Authorities) Act No. 7 of 1982, is that the Minister may by order dissolve or suspend the defaulting council for such time as he may think fit from the performance of its functions and transfer them to such person or body of persons as he may deem fit.

For the time being, it is not known whether in his discretion, the Minister is going to dissolve or suspend the applicant council for the stand it has chosen to take. It is now under apprehension of the dangers of being dissolved something which may, according to its counsel, result into irreparable injury on its part. Hence this application to restrain the Minister from doing so.

There is no doubt that under S.2 (2) of the Judicature and Application of Laws Ordinance Cap 453, this court has jurisdiction to hear and determine such civil matters.

One of the instances which a court may grant a temporary injunction is provided for under S.68 (c) of the Civil Procedure Code, 1966. This is where the ends of justice are in danger of being defeated by the defendant in a suit.

But in similar cases, instead of granting a temporary injunction, the court may use its inherent powers under S. 95 of the same code to make such orders as may be necessary for the ends of justice.

The main question one might ask himself or herself here is whether by his Order dated 28th January, 2003 published in Government Notice No. 18 of 31st January, 2003 in which the applicant council is legally required to perform its statutory functions or else to be dissolved or suspended, the Minister is trying to defeat the ends of justice which this court has to prevent by granting a temporary injunction or invoking its inherent powers.

The answer to this question seems to be obvious, but because there are other applicable provisions of the Civil Procedure Code, 1966 and its subsequent amendments governing the cases in which a temporary injunction may be granted and against whom it may not be granted, I propose to refer to them for the final determination of this application.

Temporary injunctions may be granted under Order XXXVII, Rule 1 & 2 of the Civil Procedure Code, 1966 in the following cases:-

1. Where it is proved among other things that any property in dispute in a suit is in danger of being wasted by any party to the suit.
2. Where the defendant threatens to remove his property with the view to defraud his creditors.
3. Where the defendant is committing a breach of contract or other injury of any kind.

By virtue of the Government Prooeedings (Procedure) Rules, GN NO. 376 of 1968, Order XXXVII Rules 1 & 2 of the Civil Procedure Code, 1966 was amended to the offect that "an order granting a temporary injunction shall not be made against the Government, but the court may in lieu thereof make an order declaratory of the rights of the parties; and that no application shall be made for a temporary injunction where the defendant is the Attorney General, but in such case, the plaintiff may apply to the court for an order declaratory of the rights of the parties".

Under S.17A (3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance (Amendment Act) as amended by Act No. 27 of 1991, the term "Government" includes a public Officer.

It appears to me that under Order XXXVII, Rules 1 & 2 of the Civil Procedure Code, a temporary injunction may be applied for where there is a pending suit in court relating to property, breach of contract or injury of any kind. In this case, however, there is no such suit which is pending between the parties. What is pending between them is an application for leave to file an application for the orders of Certiorari, Mandamus and prohibition which has not yet been heard and granted.

But even if there were to be such aforementioned suit, by virtue of the aforesaid amendment of Order XXXVII, Rules 1 & 2 of the Civil Procedure Code, 1966, no order granting a temporary injunction could be made against the "Government" and as the Attorney General is a party, no application for a temporary injunction could be made against him.

I wish to add that even if there were to be a pending application for the prerogative orders already filed in court with leave of the court, this application for a temporary injunction could not stand agaist the "Government" and the Attorney General.

I would therefore dismiss this application. However, each party should bear his own costs.

Delivered at Dar es salaam this 3rd day of April, 2003.

A. SHANGWA

JUDGE

3/4/2003

Order; Hearing of the application for leave to file an application for the prerogative orders of certiorari, Mandamus and prohibition. is fixed on 9th April, 2003 at 2.00 p.m

A. SHANGWA

JUDGE

3/4/2003