

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 86 OF 2015
(From Land Case No.76 of 2015)**

EBONY COMPANY LIMITED APPLICANT

Versus

WATUMISHI HOUSING COMPANY LIMITED RESPONDENT

Date of Last Order: 4th September, 2015
Date of Judgment: 13th November, 2015

RULING

FELESHI, J.:

This Ruling emanates from an application made under section 68 (c) and Order XXXVII Rule 1(1) of the Civil Procedure Code, [CAP. 33 R.E, 2002] for grant of Temporary Injunction to prevent the respondent, its agents, workmen, contractors or else whatsoever from tempering with Plots No. 197 and 198 Block 25 Gezaulole, Kigamboni Area, Temeke District, Dar es salaam, pending final determination of land Cause No. 76/2015.

The application was supported by the affidavit of FAUZIA JAMAL MOHAMED who stated that, the referred plots have been set for sale at a low price of Tshs. 15,000/= per square meter instead of the agreed Tshs. 17,000/= per square meter thus sold at Tshs. 432,000,000/= instead of Tshs. 687,990,000/=. He added that, such sale will cause irreparable loss on the part of the applicant. This is what instigated the filing of this application.

The hearing of the application was heard by way of written submissions whereas parties complied with the Court schedule hence this Ruling. The applicant engaged the services of Joel Maeda advocate while the respondent had services of Marando, Mnyele and Company Advocates.

Arguing for the application, Mr. Maeda learned counsel submitted that, there is a serious triable case in which the applicant stands to suffer irreparably if Temporary Injunction is not granted in favour of the applicant in the purview of what was held in the cases of **Attilio vs. Mbowe** [1969] No. 284, **Giella vs. Cassman Brown And Co. Ltd** [1973] E.A. 358, **Kibo Match Group Limited vs. H.S. Impex Ltd** [2001] T.L.R 152, **Sodha vs. Vora and Others** [2004] 1E.A. 313 and **American Cynamid Co. vs. Ethicon Ltd** [1975] A.C 396. He argued that, if the injunction is not granted, the applicant will suffer irreparably because the respondent will have both the land and money which is not paid, disavouring her interest.

In response, the respondent submitted that, the respondent whose shareholders are the PSPF, NSSF, NHIF, GEPF, PPF, LAPF & NHC are developers of Real Estates where they purchase land from individuals (both living and non living entities) and corporate bodies as well. He argued that, the claimed loss is not irreparable as can be compensated in monetary terms upon proof of the case on merits. Besides, from the investments the respondent has already made and other incurred costs, the respondent stands to suffer than the applicant if the Temporary Injunction is granted.

Having considered the respective submissions by advocates for the parties, this Court has the following in disposal of the application for

Temporary Injunction. As clearly pointed out by the applicants' counsel, the principles governing a Court of law in the grant of a Temporary Injunctions are well elucidated in the famous **Attilio vs. Mbowe** (supra):

- **"That, there must be a serious question to be tried on the facts alleged and a probability that the plaintiff will be entitled to the relief prayed.**
- **That, the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established, and**
- **That, on balance there will be hardship and mischief suffered by the plaintiff from withholding of the injunction than will be suffered by the defendant from the granting of it."**

From the above brief, it is not contentious that, there is a serious triable issue which at this stage, unless attention to its merits is not called for will prejudice the interests of the parties and thus preempting their right to be heard. What hinges is whether the applicants stand to suffer irreparably and that they cannot be compensated in any other terms including monetary in case the applicants emerge winners.

The issue calling for determination is whether this application meets the tests warranting the grant of a Temporary Injunction against the respondents. Besides, to justify grant of Temporary Injunction, the case of **Attilio vs. Mbowe** (supra) was further amplified by requiring the applicant to show that, as such, the circumstances are so overwhelming for a Court to grant such Temporary Injunction unlike mere assertions. This was so dealt in **Tanzania Cotton Marketing Board vs. COGECOT Cotton CO SA** [1997] T.L.R 63 where the Court held that:-

- **The applicant had not gone beyond mere assertion that it would suffer great loss and that its business would be brought to a standstill. Unless details and particulars of loss were specified there was no basis upon which the court could satisfy itself that such loss would incur.**
- **The applicant furthermore failed to indicate, beyond the vague and generalized substantial loss, that the loss would be irreparable. Any loss which the applicant was likely to suffer could be adequately compensated for by any award of damages”.**

To the matter under scrutiny, this Court has given considerable attention to the pleadings and submissions of the respective learned counsels where I totally agree with both counsels that, the grant of a Temporary Injunction can be exercised after the Court is satisfied that tests are met as stated in the cited case laws. Therefore, in terms of what is deposed by the applicants and echoed by their counsels, what basically the applicant is claiming for is that the applicant will suffer irreparable loss if Temporary Injunction is not granted unlike if it is granted.

Notably, the applicants’ affidavit has failed to establish beyond mere assertions that, as such, the applicant stands to suffer more by failure to grant such Temporary Injunction than granting the same. The applicant ought to have reasonably established that they are entitled to be granted the sought Temporary Injunction. In my considered view, the applicant did not manage to establish such position to that entitlement because the assertions made have not been established to worth the claims.

For instance, the applicant just claims for underpayment of Tshs. 255,990,000/= in a sale contract. The applicant has failed to establish that the alleged loss cannot be compensated in monetary terms. After all, it is

plain on the face of it that, if at all what the applicant claim to be assured of is the dividends falling on their part, surely, I find no reason for such claims if awardable not to be recovered by way of compensation.

Thus, at any rate, it does not need meticulous thinking that such amount upon proof can be compensated in monetary terms as correctly argued by the respondent's counsel and as held in **Attilio vs. Mbowe** (supra) and **Tanzania Cotton Marketing Board** (supra). In the book **Principles of Injunctions** by **Richard Kuloba**, Nairobi Oxford University Press, 1987, the author at page 54 defined "inadequacy" when dealing with the remedy of damages in terms of monetary compensation that must be shown to be inadequate to the threatened injury. The learned author stated at page 54 that:-

"The applicant may be able to persuade the Court of the inadequacy of damages in a number of ways. He may show for instance:

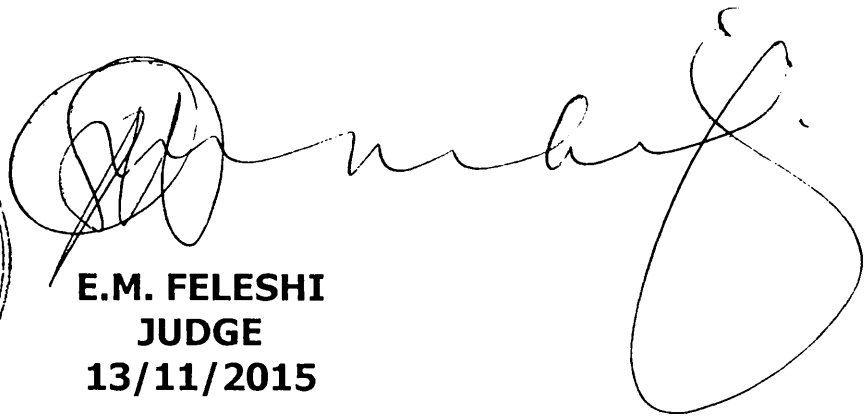
- a) That he may never be in a position to know of the losses he will suffer, or their extent or type, as, for example, when the defendant is engaged in mining and selling mineral, or**
- b) That although he may know the type of the possible loss, the damage will be impossible to quantify, as, for example, when goodwill is been threatened by the defendant.**
- c) That although damages are assessable, or might be adequate, the chances of getting them from the defendant are remote".**

Definitely, the cited conditions cannot be said at any stretch of imagination to have been met in the application under scrutiny. Furthermore, to warrant grant of such Temporary Injunction, the applicant ought to have established that they stand to suffer greater hardship than

the respondent if Temporary Injunction is not granted unlike the respondents if grant of the sought Temporary Injunction is withheld.

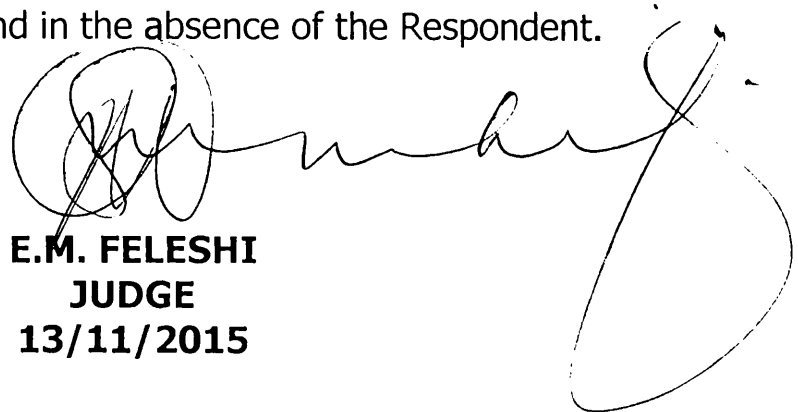
In a nutshell, this Court finds no reason to grant the sought Temporary Injunction. Certainly, this application lacks merits and is worth to be dismissed for the conditions for grant of Temporary Injunction have not been met. In the premises, the application is dismissed with costs.

Order accordingly.



E.M. FELESHI
JUDGE
13/11/2015

Ruling delivered in chambers this 13th day of November, 2015 in presence of Mr.Jebra Kambole, Advocate holding brief of Mr.Mnyele Advocate, for the Applicant and in the absence of the Respondent.



E.M. FELESHI
JUDGE
13/11/2015