

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

MISC. CIVIL APPLICATION NO. 72 OF 2016
(Originating from High Court Civil Case No.24 of 2016)

MOONA'S PHARMACY LIMITED APPLICANT

VERSUS

- 1. HIGHNOON LABORATORIES LIMITED 1ST RESPONDENT**
2. SYNAPSE CHEMICALS (PRIVATE) LIMITED ... 2ND RESPONDENT
3. TANZANIA FOOD AND DRUGS AUTHORITY 3RD RESPONDENT
4. HARLEY'S (T) LIMITED 4TH RESPONDENT

Date of Last Order: 10/06/2016

Date of Ruling: 19/07/2016

RULING

FELESHI, J.:

The applicant has moved this Court by way of Chamber Summons under Order XXXVII Rule 1(a), sections 68(e), 93 and 95 of the Civil Procedure Code [CAP. 33 R.E, 2002] for prayers amongst others, of Temporary Injunction restraining the respondents from doing any sort of importation, marketing, distributorship and selling of pharmaceutical products whose registration in the country had been sought by the applicant respectively pending the hearing of the main suit.

The said Chamber Summons was supported by an affidavit of one Nizarali Sadrudin Kassam, a Principal Officer of the applicant stating that, sometimes in 2010, the applicant was appointed as sole distributor of the 2nd defendant's pharmaceutical products working for and on behalf of the 1st defendant whereas from the date of appointment, the applicant put all

her efforts applying for registration for different pharmaceutical products for the 1st and 2nd respondents which at last succeeded.

The applicant on one hand, worked with the 1st and 2nd respondents for about five years whereas in 2015, she was informed through a letter dated 20th day of October, 2015 from the 3rd respondent that, the 1st and 2nd respondents had appointed the 4th defendant as their new agent in Tanzania as their sole distributor of their pharmaceutical products.

On 26th day of February, 2016, the counsel for the 4th respondent raised a Preliminary Objection on two (2) points of law to wit that:-

- 1. The applicant has moved the Court with wrong provisions of the law.**
- 2. In so far as this Court has no pecuniary Jurisdiction to entertain the main suit, this Court has no Jurisdiction to determine this application for interim Orders.**

The hearing of the Preliminary Objections was conducted by way of written submissions whereas parties complied with hence, this Ruling. To argue for the preliminary objections, the 4th respondent engaged the M/S Locus Attorneys whereas the applicant was represented by the M/S Future Mark Attorneys. Notably, the other respondents did not prefer their respective submissions and no rejoinder was filed by counsel for the 4th respondent.

Addressing the 1st Point of Preliminary Objection, counsel for the 4th respondent submitted that, the provisions of Order XXXVII Rule 1(a) of the Civil Procedure Code (supra) are applicable where the properties in dispute are at danger of being wasted, damaged or alienated by any party to the

suit. He added, unlikely, the applicant is seeking Temporary Injunction to prevent the respondents from importing, marketing, distributing and selling of pharmaceutical products which their registration in the country thus inapplicable. Counsel for the 4th respondent argued that, the applicant has failed to cite the proper provisions thus rendering the matter incompetent as held by the Court of Appeal of Tanzania in the case of **Joseph John vs. Chandrakant Shamji Shah**, Civil Application No. 7/2001, (Unreported).

Counsel for the 4th respondent submitted that, section 68(e) of the Civil Procedure Code (supra) is inapplicable because the law has provided for specific provisions regarding Temporary Injunctions under Order XXXVII of the Civil Procedure Code (supra). Besides, section 93 covers extension of time which is not the case here. Furthermore, section 95 of the Civil Procedure Code (supra) covers situations where the law is silent which is not the case in this matter. Reference was made to a High Court decision in the case of **Jerry W. Silaa vs. the Hon. Attorney General & 2 Others**, Miscellaneous Civil Cause No. 10 of 2015 to that effect.

Regarding the 2nd Preliminary Point of Objection, the respondent's counsel submitted that, this Court lacks jurisdiction to determine both the main suit and application for Temporary Injunction because a person cannot claim for general damages while he has not stated specific damages for the purposes of jurisdiction of the Court. Reference was made to **Manjit Singh Sandhu and Others vs. Robiri Robiri**, Civil Appeal No. 121 of 2014 and **Tanzania-China Friendship Textile Co. Ltd vs. Our Lady of the Mount Usambara Sisters** [2006] T.L.R 70 to that effect.

In reply, the applicant's counsel submitted as to the 1st limb that, what matters is that there is a property in dispute thus within the scope of the application and sought remedies. Regarding applicability of section 68 of the Civil Procedure Code (supra), the applicant's counsel referred this Court to **Sea Saigon Shipping Limited vs. Mohamed Enterprises Limited**, Civil Appeal No. 37 of 2005 where the Court underscored:-

"It is so observed that section 68 is supplemental proceedings. It summarizes the general powers of the Court in regard to interlocutory proceedings. This section is similar to section 94 of the Indian Code of Civil Procedure where it is also specified as a supplemental proceeding".

The applicant's counsel thus submitted that the cited section 68(e) of the Civil Procedure Code (supra) supplements Order XXXVII Rule 1(a) of the Civil Procedure Code (supra) thus arguing that the application is competent before this Court. Besides, section 95 of the Civil Procedure Code (supra) was referred in this matter for necessary orders in the ends of justice and for the purposes of not abusing the Court process.

As to the 2nd limb, the applicant's counsel submitted that, that point of Preliminary Objection has been improperly raised for the application at hand is for Temporary Injunction and not as to the main suit. He urged for the second limb of Preliminary Objection to be addressed in the main suit.

Having gone through the Court records and respective submissions by counsels for the parties on one hand, the following are the deliberations of this Court in disposal of the Preliminary Objections.

The provisions of Order XXXVII Rule 1(a) of the Civil Procedure Code (supra) provides:-

“Where in any suit it is proved by affidavit or otherwise—

- (a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit of or suffering loss of value by reason of its continued use by any party to the suit, or wrongly sold in execution of a decree, or”.**

Besides, the provisions of section 68(e) provide that:-

“In order to prevent the ends of justice from being defeated the court may, subject to any rules in that behalf—

(a) N/A (b) N/A (c) N/A (d) N/A

(e) Make such other interlocutory orders as may appear to the court to be just and convenient”.

To this Court, the sought prayers for Temporary Injunction are covered under the phrases **“or alienated by any party to the suit of”** and **“or wrongly sold in execution of a decree”** under Order XXXVII Rule 1(a) of the Civil Procedure Code (supra). Besides, in supplement, the sought prayers are covered under the cited section 68(e) of the same Act where Courts are mandated to make other interlocutory orders as appears convenient.

In principle, though true that parties to a suit/application are not at their volition free to cite a litany of provisions for the Court to pond fish as to which provisions fits a matter under scrutiny for some sought prayers, with due respect, the words catering for the sought prayers are covered under the cited Order XXXVII Rule 1(a) of the Civil Procedure Code (supra).

On the other hand, this Court agrees that the other cited sections 93 and 95 were inordinately cited for the sought prayers of Temporary

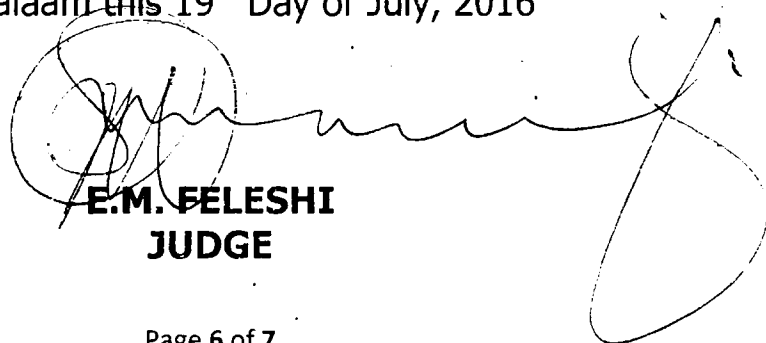
Injunction, but it will be unjust for a Court of law vested with the core duty of adjudicating individual rights to struck out a matter simply because though the applicant has cited the proper provision, the same has further cited other provisions irrelevant to the matter or has rather improperly cited irrelevant provisions. Such option will trap up the ends of justice.

The contrary could have been the stand in case the applicant had cited wrong provisions or rather, had improperly cited the requisite enabling provisions, that is, in circumstances where the enabling provisions are nonexistent at all.

As rightly submitted by the plaintiff's counsel, the 2nd limb of Preliminary Point of Objection has been misconceived for it ought to have been raised and argued in the main suit and not through this interlocutory application, consequently, it is hereby out rightly overruled.

It is from the above in unison this Court finds the raised Preliminary Points of Objection to have been misconceived, consequently, they are hereby overruled. Considering that the 1st, 2nd and 3rd respondents did not prefer their respective submissions, the 4th Respondent will pay the Plaintiff's costs. Order accordingly.

DATED at Dar es Salaam this 19th Day of July, 2016



E.M. FELESHI
JUDGE

Ruling is delivered this 19th day of July, 2016 in the presence of Mr. Steven Bwana, Advocate for the Plaintiff,, Ms, Mariamu Semlangwa, Advocate for the 1st and 4th Defendant, 2nd and 3rd Defendant being absent.


J.S.K. HASSAN
AG. DEPUTY REGISTRAR