

**IN THE HGI COURT OF TANZANIA**

**AT BUKOBA**

**MISC. CIVIL APPLICATION NO. 33 OF 2017**

*(Arising from Civil Case No. 5 of 2017 at High court Bukoba)*

**SYLVERY SYLVESTER MUSHEMA-----APPLICANT**

**VERSUS**

**1. COMMERCIAL BANK OF AFRICA TANZANIA**

**2. BAHATI JUMANNE MASANJA**

**3. MEM AUCTIONAREERS AND**

**GENERAL BROKERS LTD**

**4. HUSSEN SADATH BASHEBA**

**-RESPONDENTS**

**RULING**

**25/9/2018 & 26/9/2018**

**MLACHA, J.**

The applicant, Silvery Sylivester Mushema has lodged an application for temporary injunction against the Respondents, Commercial Bank of Africa Tanzania Ltd, Bahati Jumanne Masanja, MEM Auctioneers and General Brokers Ltd and Hussein Sadath Basheba. The application is lodged under **Order XXXVIII Rule 1(a) and 2 (1) of the Civil Procedure Code Act, Cap 33 R.E. 2002** (the CPC) and is

supported by the affidavit of the applicant. Before the hearing of the application, Mr. Wangubo who represents the first and third respondents has come with a Preliminary Objection that the application is incompetent for being made under the wrong provision of the Law.

In the short proceedings which were conducted before the court in respect of the preliminary objection, court was told by Mr. Wangubo that **Order XXXVIII rule 1(a) and 2(a) of the CPC** has nothing to do with injunctions. They deal with appointment of Receivers, he said. Counsel submitted that injunctions are governed by **Order XXXVII of the CPC** and not the cited provisions. He referred the court to **Chama cha Walimu Tanzania V. The Attorney General**, Civil Application No. 151 of 2008 and **Alliance Insurance Corporation Ltd and 9 Others V. Commissioner of Insurance and 2 Others**, Civil Reference No. 5 of 2005 and requested it to strick out the application with costs.

When the applicant was invited to respond to the submission of Mr. Wangubo, he opted to concede to the objection but put the defence of ignorance of law. He requested the court to allow him to withdraw the application with leave to refile without costs because he is layman. Mr. Wangubo made a reply and hastened to say that the prayer to withdraw the application should not be entertained because it has come at a moment where there is a preliminary objection on record.

I have considered the objection. Indeed, **Order XXXVIII** of the CPC has nothing to do with temporary injunctions. It deals with Appointment of Receivers. Temporary injunctions are Governed by **Order XXXVII**. It follows that the application was brought under wrong provisions of the Law. The consequences are obvious; the case has to be struck out for being improperly before the court. The authorities are many. Some of them are those which have been pointed out by Mr. Wangubo.

That said, the application is found to be improperly before the court and struck out with costs. Order accordingly.



L.M. Mlacha

Judge

26/9/2018

**Court:** Ruling delivered in the presence of the Applicant and Absent of Respondents.



L.M. Mlacha

Judge

26/9/2018