

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

MISC. LAND APPLICATION NO. 44 OF 2019

QUALITY CENTRE LIMITED.....1ST APPLICANT

QUALITY GROUP LIMITED.....2ND APPLICANT

VERSUS

PRICEWATERHOUSE COOPERS (PWC).....1ST RESPONDENT

EASTERN AND SOUTHERN AFRICA TRADE AND DEVELOPMENT

BANK t/a TRADE AND DEVELOPMENT BANK

(TDB).....2ND RESPONDENT

DAVID T. TARIMO.....3RD RESPONDENT

NELSON E. MSUYA.....4TH RESPONDENT

RULING

S.M. Kulita,J

This is the application for an interim injunctive order by the Applicants Quality Centre Limited (1st Applicant) and Quality Group Limited (2nd Applicant). The application has been lodged by the applicants' Advocates namely Yassin Mwaitenda and Abbriaty S. Kivea from Stallion Attorneys. The Respondents are Price Water House Coopers (PWC) who is the 1st Respondent and Eastern and Southern Africa Bank t/a Trade and Development Bank (TDB) – the 2nd Respondent, David T. Tarimo – 3rd Respondent and Nelson E. Msuya – 4th Respondent. All Respondents are represented by Mr Pladius Mwombeki, Advocate.

When the parties were before me for hearing the application the applicants counsels raised a concern that they have emergencies including

one of them being required to travel to Mbeya in few a coming hours for High Court Session and the travel was through a flight. They therefore prayed the matter be disposed of by way of written submissions, at the same time they prayed for the court to grant an order of *status quo* in respect of the suit property the argument which the Respondent's counsel Mr Pladius Mwombeki vehemently disputed. Actually what was prayed to be adjourned was the hearing of the Preliminary Objection that had been raised by the Respondent.

As the parties were looked so conscious with the said issue of "Status quo". I had to deal with it "*suo mottu*" and come up with the solution.

Upon inviting them to address the court on that issue, Advocate for the Respondents stated that the matter at hand is *res judicata*, that this matter had already been handled by the High Court Commercial Division in a Commercial Case No 174/2018 and the same is at the execution stage, hence it will be wrong for this court to make another finding for the case which has already been determined by another court with a concurrent jurisdiction.

On the other hand Advocates for the Applicants submitted that the order for status quo can be granted because this is a different case. They said that parties are different. They mentioned one Quality Centre Limited (1st Applicant) as a party who was not there at the Commercial Case. They added that even the reliefs sought are different. They said that the applicants in this application are seeking for Rental Dues and possession of the mall while in the said Commercial Case the claim was mortgage.

Upon going through the Chamber Summons for this application No. 44/2019, I have noticed that the claim is Interim Injunction order. It is for restraining the Respondents and or their agents, servants, etc from interfering with the suit property, a shopping mall Commonly known as Quality Centre Shopping Mall located on Plot No. 25 Pugu Road, Dar es Salaam by way of receivership, attachment, sale, etc pending determination of the main suit. Alternatively Temporary Injunctive Order maintaining status quo between the parties pending determination of the main suit.

In the Commercial Case No 174/2018, the order of the Court was that the Defendant (Quality Group Limited) herein the 2nd Respondent should hand over the Mortgaged property, located on plot No 25 L.O. No. 23376, Pugu Road industrial area to the Receivers/Managers appointed by the Plaintiff named David Tarimo and Nelson Msuya (3rd and 4th Respondent in this application).

Now the question is, what are the mortgaged properties stated in the said two cases? According to the Commercial Case No. 174/2018, it is that located on Plot No 25 L.O No. 23376 Pugu Road Industrial area, Dar es Salaam City. As for this application the same property is mentioned. Therefore in all these cases the suit premise is the same.

Advocates for the Applicants tried to differentiate the two matters on the reliefs claimed, that is Mortgage issues for the Commercial Case No 174/2018 and for this Misc. Land Application No. 44/2019, that the reliefs sought are the rental dues and possession of the mall. However, it is difficult to differentiate the two in that aspect as the term mortgage has a very wide meaning.

If this court issues another order in respect of that property obvious it will lead to a confusion. Be it noted that this court i.e High Court of Tanzania, Dar es Salaam District Registry and the High Court of Tanzania, Commercial Division have concurrent jurisdiction.

The way I can see a nature of this application, this court cannot grant the order of maintaining status quo in respect of the suit property while the High Court Commercial Division has already made a decision for the same property. If the applicants are aggrieved with the decision of Commercial Court in respect of the suit premise, they have to seek for other remedies like knocking the door of the Court of Appeal, applying for review before the same court (Commercial Court) or the 1st applicant (Quality Centre Limited) who was not a party at Commercial Court filing on objection proceedings thereat.

Otherwise the applicants' prayer for this court to grant an order of "maintaining status quo" is hereby rejected. The applicants to bear the costs.



S.M. Kulita

JUDGE

23/9/2019