

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

MISC. LAND APPLICATION NO. 56 OF 2019

SIGORI INVESTMENT (T) LTD1ST APPLICANT

MOSES STEPHANO SIGORI..... 2ND APPLICANT

Versus

EQUITY BANK TANZANIA LIMITED.....1ST RESPONDENT

**BILO STAR DEBT COLLECTORS
COMPANY LTD.....2ND RESPONDENT**

R U L I N G

Date of last Order: 18/10/2019

Date of Ruling: 22/10/2019

MGONYA, J.

This is an Application for temporary injunction filed under **Section 68 (e), section 95, and Order XXXVII Rules 1 (a) of the Civil Procedure Code Cap. 33 [R. E. 2002]**. The same has been brought under certificate of urgency praying for the following orders:

(1) Prayers for Orders of temporary injunctions against the 1st and 2nd Respondents, their agents, servants or whomsoever the 1st and 2nd Respondents may act through, to be restrained from attaching and disposing Applicants' properties described as:

1. Plot No. 224 Block 'EE' held under CT. No. 7228 Nyakato Area Mwanza City.
2. CT. No. 25149 Block 'A' Nyamhongolo Area in Mwanza City.
3. Plot No. 68 Block 'A' Tarime Township, Mara with CT. No. 17691.
4. Plot No. 603 Block '5' Nyamhongolo Area, Mwanza City held under CT. No. 31070.
5. Plot No. 226 Block 'EE' CT. No. 55383 Nyakato Area Mwanza City.
6. Trucks with the following registered Numbers T407 CLF, T143 CYU, T120 CYB, T645 CZC, T139 CYU with Trailers Numbers T711 CUW, T430 CWL, T127 CRH, T66 CRG, T470 CEP.
7. Trucks and 3 Unites Trailer with Numbers T421 BSC, T983BUR, T812BBP, T408CCK, T473CEP and T182 CEK.

8. Four (4) Units Trucks and 4 unit trailers with Numbers T799 BUQ, T680 CLA, T116 CLB, T929 CBG and T422 BUR, T153 CLB, T149 CLB, T472 CAX.
9. Trucks with number T531DBA and Trailer Number T110 CLB, T538 DDH, T889 DCP, and Trailer with Number T426 DDA, T425 DDA.
10. Six Trucks with Numbers T690 DEZ, T694 DEZ, T692 DEZ, T693 DEZ, T644 DFK, T645 DFK, T646 DFK and T647 DFK, pending conclusive determination of the main suit on its merits.

Secondly, Applicants are also praying for an order for the release of Truck No. T696 DEZ and its Trailer No. T645 DFK back to the Applicants to proceed with business transportation of goods; and

Finally and **third**, for an order of the costs of this Application.

The Application is supported by an Affidavit sworn by **Mr. MOSES STEPHANO SIGORI**, the 2nd Applicant herein.

Due to time constrain, I ordered the Application be disposed by way of written submissions. The schedule to the same have been duly adhered to, hence this ruling.

In determining this Application and taking into consideration that the matter before me is under certificate of urgency, I have to make it clear from the outset that, I have carefully read the Parties' submissions for and against the Application. However, in the cause of writing this Ruling, I don't intend in anyway reproducing the parties' respective submissions and instead, I prefer to straight focus on determining the merits of the Application to reach the decision.

Before I venture into the crucial issues that revolves around on the arguments for and against in respect of the present matter before the court, I would like to state the position of law in respect of this kind of Application, the one on **Temporary Injunction**. Of course, the powers for ordering a temporary injunction are prescribed for under **Section 68 (c) of the Civil Procedure Code Cap. 33 [R. E. 2002]** herein to be referred as **CPC**. However, the procedure for obtaining a temporary injunction is set under **Order XXXVII**, and the powers of making such other interlocutory orders as may appear to the Court to be just and convenient are provided for under **Section 68 (e)**. The procedure for making any such other interlocutory order is prescribed under **Order XXXVII** too. It is to be observed that **Section 68 of CPC** is supplemental proceeding since it

summarizes the general powers of the Court in regard to interlocutory proceedings.

Now, the capital issue is whether the Applicants have made out their case deserving issuance of the orders sought pending the final determination of the suit.

The principles governing in determining whether or not an Applicants are entitled to an order for temporary injunction have aptly been laid down by courts. Since then, they have been repeatedly reinstated in numerous decisions.

These principles/conditions are:

- 1. That, on the facts alleged, there must be a serious question to be tried by the Court and a probability that the Plaintiff / Applicant will be entitled to the relief prayed for (in the main suit);***
- 2. That, the temporary injunction sought is necessary in order to prevent some irreparable injury befalling the Plaintiff / Applicant while the main case is still pending; and***
- 3. That, on the balance greater hardship and mischief is likely to be suffered by the Plaintiff / Applicant if temporary injunction is withheld than may be***

suffered by the Defendant / Respondent if the order is granted.

All the three above principles must be met before a temporary injunction can be granted.

I am aware that there is a basketful of other authorities restating the principles above. Among them are:

- i. ATILIO VS. MBOWE [1969] HCD 284;***
- ii. SURYAKANT D. RAMJI VS. SAVINGS AND FINANCE LTD & 3 OTHERS; HIGH COURT COMMERCIAL DIVISION, DAR ES SALAAM, CIVIL CASE NO. 30 OF 2000 (UNREPORTED);***
- iii. E. AS INDUSTRIES LTD VS. TRUFOOD LIMITED [1972] E.A. 420;***
- iv. GIELLA VS. CASSMAN BROWN [1973] E.A 358;***
- v. COLGATE PALMOLIVE COMPANY VS. ZAKARIA PROVISIONAL STORES & 3 OTHERS, HIGH COURT, DAR ES SALAAM, CIVIL CASE NO. 1 OF 1997;***
- vi. CPC INTERNATIONAL INC. VS. ZAINABU GRAIN MILLERS LTD CIVIL APPEAL NO. 49 OF 1999 [CA],***

just to mention a few of relevant cases.

Let me start with the first principle/condition, which is establishment of a *prima facie* case/serious question with a

probability of success. In this principle, the Applicant cannot escape from showing two things:-

- i. The relief sought in the main suit is one which court is capable of awarding; and***
- ii. The Applicant should at the very minimum show in the pleading that in the absence of any rebuttal evidence he is entitled to said relief.***

In the case of ***AMERICAN CYANAMID VS. ETHICON [1975] I ALL E. R. 504***, it was stated that:

"In order to grant a temporary injunction the court no doubt must be satisfied that the claim is not frivolous or vexatious."

In the same series, my learned Brother Nsekela, J. as he then was in the case of ***AGENCY CARGO INTERNATIONAL VS. EURAFRICAN BANK (T) LTD, HIGH COURT, DAR ES SALAAM, Civil Case No. 44 of 1998*** (Unreported) when explaining what the Applicant is required to show, he said:

"It is not sufficient for the Applicant to file a suit with claims, the Applicant must go further and show that he has a fair question as to the existence of a legal right which he claims in the suit."

The task then before me is to exhaust and measure out from the submission elaborated by the Applicants' Counsel Mr. Mwambene Adam whether the court has been referred to the reliefs sought in the main suit in order to look whether the claims made have raised a serious question for determination by the court. Of course, in the instant principle my task is to look at the reliefs sought in the main suit and the claims made and see if they raised a serious question for determination by the court and then assess whether there is a justification for granting a temporary injunction.

I am aware of the extent of proving whether there is a serious question for determination, hence it is not conclusive evidence which is required but rather **the facts as disclosed by the Plaintiff and the Affidavit** and so the standard of proof required would be somehow below the expected standard in full trials. On this you may wish to refer to the case of ***SURYA-KANT D. RAMJI VS. SAVINGS AND FINANCE LTD & 3 OTHERS, HIGH COURT, Commercial Division Dar es Salaam, Civil Case No. 30 of 2002 (Unreported)***.

Now having carefully gone through the facts disclosed in the Plaintiff and the supporting Affidavit in respect of this Application, this honorable court is satisfied through the reliefs sought in the

Plaint in page 6 items **(a) (b) and (d)** to have exhaustively demonstrate the reliefs sought in the main suit that are the ones this court is capable of awarding in the controversy between the parties if the matter is heard on merits.

In addition, I find the learned Counsel have managed to show at the very minimum in the pleading that in the absence of any rebuttal evidence, the Applicant/Plaintiff is entitled to the said reliefs.

Further in establishing if there is a *Prima facie* case to be determined by the court, I am persuaded to refer to paragraphs **6 to 10** of the Applicant's Affidavit where this honorable court is of the view that the Applicant have managed through the same to establish that there is a *prima facie case* to be determined at the trial to end the controversy between the parties. To be precise, this court is satisfied that at least the Applicant had a problem relating to his business as a result of the new Government Policy of which the same was duly reported to the 1st Defendant respectively and requested for restructuring of the loan facilities, that they be allowed to deposit equal instalments of **Tshs. 30,000,000/=** instead of **Tshs. 42,500,000/=** to the bank per month respectively. To appreciate what I mean, let me quote the Applicant's paragraphs from the Affidavit as herein below:

"6. That the Applicants' business was well productive and they were effecting instalments to the 1st Respondent as agreed in a loan facility agreement without any delay. However, due to the change of Government policy with regard to tonnage of load, the 1st Applicant encountered business hardship whereof the trucks can carry from usual 34 tonnes equal to 680 bags of cement to 30 tonnes equal to 600 bags.

*7. That sequel to the contents of paragraph 6 above, the 1st Applicant failed to honour the payment due to the running costs of skyrocketing prices of fuel which led to drop in profit. The difficulties was immediately communicated to the 1st Respondent via her letter with Ref No. SIG/MZ/VOL.01/2019/01 dated April 16, 2019 titled "Plea to Reschedule Loan Repayment for Loan Acc. No. 30052111768884. **Copy of the said letter is attached herewith and marked annexure SITL3 forming part of this affidavit.***

8. That sequel to the contents of paragraph 7 above, the Applicants requested for restructuring of the loan facilities and be allowed to deposit equal instalments of Tzs.

30,000,000.00 instead of Tzs. 42,500,000.00. And for an extension of time to settle Bank Guarantee of Tzs. 200,000,000.00 with the expected fund of Tzs. 360,000,000.00 to be paid to the to the Applicants by Ssunsu Merchants Limited who was supplied coal by the Applicant.

*9. That upon receipts of the said letter mentioned in paragraph 7 above, the 1st Respondent on the 17th May, 2019 responded to the Applicants' letter, however, imposed a very stiff terms and conditions, which were very difficult for the Applicants to abide with them. **Copy of the said letter with Ref. No. EBL/MZA/3005211176884/2019 from the 1st Respondent is appended herewith and marked annexure SITL4 forming part of this affidavit.***

*10. That sequel to the contents of paragraph 9 above, the Applicants after receipt of the 1st Respondent's letter on the 24th May, 2019 made reply explaining the difficulties the 1st Applicant was facing, and willingness of disbursing Tzs. 30,000,000.00 which she all along form may to date has been depositing. **Copy of the rejoinder letter and bank slip receipts are attached herewith collectively and marked annexure SITL5 forming part of this affidavit.***

On the other side, the Applicant's application has encountered a serious objection from the Respondents herein. I have carefully read the Respondent's respective submission on this principle where they categorically said that the Court has no jurisdiction to interfere with the express contractual terms of the parties by forcing the parties to negotiate when clearly there is a default entitling the Respondent to enforce his security. In support of the said assertion, the Respondent's Counsel cited a number of Authorities of which are well appreciated. However, in the presence of the establishment of the *prima facie* case as above stated, I hold that there is a case to be determined on merits in the Main case.

From the above, I hold **that the 1st principle of temporary injunction on the *prima facie* case has been met by the Applicant respectively.**

On the second principle in respect of the **irreparable loss**, the Counsel for the Applicant have exhaustively demonstrated the loss that are going to face in case the order for temporary injunction is withheld. One of which is the **loss of business** since the trucks that are expected to work in order to service the loan facility will not be in a position to work if they are grounded.

Further, is the effect of **loss of confidence to their customers** whom have always trusted them in business. Further

is the multiplicity of the labour matters from the Applicants' employees as the company will not be in a position to pay the workers' salaries respectively, the facts that have been vehemently objected by the 1st Respondent herein.

In reply thereto, the learned counsel for the Respondent contended that, the Applicants are not going to suffer irreparable loss as alleged. Alternatively, if the Applicants are to suffer loss, the same is quantifiable and it will atoned by monetary compensation as the 1st Respondent is in a good financial position to pay any damages that may be awarded to the Applicants, if they succeed in the main suit.

I am mindful that the purpose of granting temporary injunction is to prevent irreparable injury befalling on the Applicant while the case is still pending.

The tangible issue in this principle is the phrase "***irreparable injury***". What is the irreparable injury? In the case of ***KAARE VS. GENERAL MANAGER MARA COOPERATION UNION [1924] LTD [1987] TLR 17 Mapigano, J.*** (as he then was) clearly stated that:

"The Court should consider whether there is an occasion to protect either of the parties from the species of injury known as "irreparable injury" before his right can be established....."

By irreparable injury it is not meant that there must be no physical possibility but merely that the injury would be material, for example one that could not be adequately remedied by damages."

It follows therefore that, the irreparable injury is an injury which could not be adequately remedied by damages. On this, I have revisited the Applicants' submission in page 4-5 where the Applicants have narrated in lengthy the irreparable loss if the temporary injunction is withheld and also that effects of it. One of the loss is on **loose of business** and **trust to the Applicants' customers**.

It is from the above, unless the sale is stopped by way of an injunction, the Applicants will suffer irreparable injury which cannot be **"adequately compensated by an award of damages"**. Once Lord Wilberforce in the House of Lords case of ***Hoffman La Roche & Co. Industry V Secretary of State for Trade and Industry* [1975] AC 295 at 355 (H.L)** described irreparable damage to be:

"The object of [an interim injunction] is to prevent a litigant who must necessarily suffer the law's delay, from losing from that delay the fruit of his litigation; this is called 'irreparable damage',..."

From the facts which have been described in the Applicants' joint Affidavit, it is my firm view that in the event where the injunction order is withheld, the Applicants herein as business institution whose properties in issue are the tools for their business of which is expected to service their loan facility, will suffer irreparable loss. **Thus the second condition of temporary injunction has been similarly met.**

As regards to the third condition, **on the balance of inconvenience**, the Applicant's Counsel is of the view that on the comparison, and in the event where the prayer sought is denied, the Applicants will suffer more than the Respondents herein.

In the premises, the learned Counsel for the Applicants prayed for the court to grant an order of temporary injunction pending determination of the main suit. The Defendant opposed application.

In all the foregoing matters, the balance of convenience lies in favour of granting the injunction. In the case of ***ALICE AWINO OKELLO V TRUST BANK LTD & ANOR LLR NO. 625 (CCK)*** which was quoted in the case of ***KISIMANI HOLDINGS LTD & ANOR V FIDELITY BANK HCCC NUMBER 744 OF 2012[2013] EKLR***, Court of Appeal of Kenya stated that:

"...the balance of convenience is in favour of the Applicant as the sale of one's property is a serious matter that deprives one of a right recognized in law and as such should not be allowed to proceed on doubtful circumstances."

For those reasons, the Applicant prayed the court to grant him the injunction sought.

From the above and from all that have been said, on a comparative basis, it is my firm view that the Applicant is the one who is going to face more hardship if the temporary injunction is denied; unlikely to the Respondent.

In the event therefore, I proceed to find the **third condition has likewise been met.**

At this juncture therefore, having weighed the facts in totality, I will hold that this is a fit case for temporary injunction because all the conditions for granting temporary injunction have been met.

Consequently, **I hereby grant the first prayer on the temporary injunction as prayed.**

On the second prayer for an order for the release of Truck No. T696DEZ and its Trailer No. T645DFK back to the Applicants to proceed with business of transportation of goods; I wish to

quote the wording of provision of **Order XXXVII of the Civil Procedure Code** as herein below:

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 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

(b) that the defendant threatens, or intends to remove or dispose of his property with a view to defraud his creditors,

the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, loss in value, removal or disposition of the property as the court thinks fit, until the disposal of the suit or until further orders:

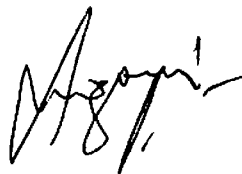
Provided that an order granting a temporary injunction shall not be made against the Government, but the court may in lieu thereof make an order declaratory of the rights of the parties."

From the above wording, the main concern in the said provision is **“Restraining”** or rather **“Preventing”** the Respondent from doing something on controversy. Now, since the said truck and its trailer have already been taken by the Respondent herein, by this Application of temporary injunction, the matter has been overtaken by events, hence this prayer is **untenable**. On this I have to advise the Applicants herein that the relief of this matter can be sought in another forum, rather in the present Application, **hence the order sought under this prayer is denied.**

In the final analysis, **the Application for temporary injunction is accordingly granted** to the above extent and particularly to the above properties as seen **under item (1) 1 – 10 on pages 1 - 2** of the Applicants’ joint written submission; pending determination of the main case before this honorable court.

Costs in due cause.

It is so ordered.



L. E. MGONYA
JUDGE
22/10/2019