

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
MISC. LAND APPLICATION NO. 376 OF 2019
(Arising from Civil Case No. 122 of 2019)

DR. FRANSIS DIDA t/a CLAUD 9

WELLNESS SERVICES..... APPLICANT

VERSUS

DANG MAI DUONG.....1st RESPONDENT

JILINDE FITNESS AND SPORTS

SOLUTION AND CO. LTD.....2nd RESPONDENT

BARNABAS MWALUVANDA.....3rd RESPONDENT

RULING

Date of last order: 09/06/2020

Date of Ruling: 30/07/2020

S.M. KULITA, J.

The Applicant filed this application for a temporary injunction under O. XXXVII, R. 2(1) and Sections 68(e) and 95 of the Civil Procedure Code [Cap 33 RE 2002], praying for the court to make an order restraining the Respondent from committing breach of partnership deed dated 20th July, 2016 and/or taking over the management

and operations post from the Plaintiff pending determination of the Civil Case No. 122 of 2019.

The Applicant is represented by the Learned Counsel Stephen Mosha, Advocate from Neptune Law Attorneys while the Respondents are represented by the Learned Counsel Dickson Sanga, Advocate from A & D Law Attorney. The Application was heard through written submissions.

In his submissions Mr. Stephen Mosha prayed for the application to be granted as the applicant will suffer irreparable loss if the application is not granted. On the other hand the Respondents' Counsel Mr. Dickson Sanga prayed for the application to be dismissed for lack of merits.

I have carefully considered the rival submissions by the parties in this application and I have this to say; For the application of temporary injunction to be granted by the court there must three conditions to be fulfilled as it has been enunciated in the case of **ATILIO V. MBOWE (1969) HDC NO. 284** in which the court pointed out the conditions for the court to consider when granting an order of injunction in complimentary with provisions of **Order XXXVII Rule 1 (a) of the Civil Procedure Code [Cap 33 RE 2002]**, that is;

- 1. There must be a serious a serious issue to be tried on the facts alleged and a probability that the plaintiff will be entitled to the relief prayed in the main suit.*
- 2. 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.*
- 3. On the balance there will be greater hardship and mischief that will be suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendants from granting of it.*

The Applicants in this matter are seeking for an order of temporary injunction restraining the Respondent from committing breach of partnership deed and/or taking over the management and operations for the 2nd respondent pending the determination of the main suit. I had an opportunity of looking into the applicants' prayers in the main suit, Civil Case No. 122 of 2019 and found that the orders which the applicants are seeking for are almost the same. The issues of restraining the Respondent from committing breach of partnership deed and/or taking over the management and operations for the 2nd respondent cannot be determined in this application for injunction while it is the core issue in the main suit. Be it noted that among the issues in the main suit is whether there

is a breach of partnership by the 1st defendant and whether the removal of the applicant/appellant from power (Management and operations) is lawful. Therefore, issuing an order of restraining the 1st Defendant from removing the Plaintiff from power is nothing but pre-empting the decision of the main suit.

Actually, in the sense of injunction the Applicant's prayers cannot be granted. As it has been submitted by both parties that the Applicant have already been removed from powers as per the annexures in the plaint for the main suit which includes the letter to the Plaintiff dated 12th February, 2019 authored by the Marketing Manager, Barnabas Mwaluvanda (3rd Respondent). The said act cannot be remedied through injunction while it is the core issue in the main case.

It is my view that the issue of **validity of termination of the Plaintiff from his post by the Defendants** is prematurely submitted by the applicant at this juncture. In this application for temporary injunction the Applicant was just supposed to establish that he will suffer irreparable loss if the application is not granted or the sufferings on his side will be greater as compared to the Respondents, which is an important ground for the grant of temporary injunction.

All in all the grounds submitted by the applicant's counsel are not sufficient enough for this court to grant a temporary injunction as the said grounds are prematurely raised, they are supposed to be argued in the main suit. Not only that but also the fact that the Applicants have already been fired from the post the application for injunction cannot stand.

In upshot the application has no merit and the same is hereby dismissed with costs.


S.M. KULITA
JUDGE
30/07/2020

