

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

**MISC. CIVIL APPLICATION NO. 170 OF 2020**

(Arising from Civil Case no.47 of 2019)

**DR. HAMISI S. KIBOLA.....1<sup>ST</sup> APPLICANT**  
**HSK SAFARIS CO LTD .....2<sup>ND</sup> APPLICANT**  
**GILDER F.KIBOLA .....3<sup>RD</sup> APPLICANT**  
**VERSUS**  
**SALEH SALIM AL AMRY.....RESPONDENT**

**RULING**

Date of Last Order:29/4/2021

Date of Ruling: 20/5/2021

**MASABO, J.:-**

The applicants who are all defendants in Civil Suit No. 47 of 2019 they have moved this court to grant an injunctive order against the respondent who is the plaintiff in the main suit. In their chamber summons filed under Order XXXVII of the Civil Procedure Code, Cap 33 RE 2019, they pray that this court be pleased to issue a temporary injunction restraining the respondent and his agents from interfering in the hunting activities operated by the second applicant.

The application is supported by two affidavits deponed by the 1<sup>st</sup> and 3<sup>rd</sup> applicants, respectively, from which the following facts are discernible: The parties contend over ownership of the 2<sup>nd</sup> applicant company which was originally owned by the 1<sup>st</sup> and 3<sup>rd</sup> applicant. The respondent who claims to have bought 50% of the shares of the 2<sup>nd</sup> Applicant company is suing the defendants in Civil Suit No. 47 of 2019, currently pending before this court for specific performance of an agreements for transfer of shares. It is deponed that, owing to the conflict over ownership of the 2<sup>nd</sup> applicant, the respondent has removed all his properties from the hunting camp at Simanjiro Game Controlled area. Sequel to the removal, the area has now been reconstructed by the 1<sup>st</sup> Applicant but the respondent has kept on meddling with the 2<sup>nd</sup> applicants hunting activities at Simanjiro and Ngarambe/ Tapika hunting blocks. To the detriment of the 2<sup>nd</sup> applicant company, he has been communicating with some of the 2<sup>nd</sup> respondents' clients threatening that he will interfere with the hunting operations. These acts, arguably threatens the operation of the 2<sup>nd</sup> applicant hence, the need for a restraint order.

In a counter affidavit filed by the respondent he has disputed all the allegations against him and has deponed that he owns 50% shares of the 2<sup>nd</sup> applicant company having bought the same from the 1<sup>st</sup> applicant at a price of Tshs 50,000,000/= which was duly paid. Further, he had paid a total of Tshs 600,000,000/= for purchase, design and construction of two hunting blocks at Mungata Village in Rufiji and Simanjiro in Arusha. He deponed further that the applicants have nothing worth protection as after the expiry

of the hunting season in December 2019, they have not renewed their certificate thus literally, they have no hunting block.

Regarding communication with the 2<sup>nd</sup> Applicant's clients, the respondent conceded but averred that the communication done with Mr. Francesco and other clients was not meant to interfere with the 2<sup>nd</sup> applicant's operation. Rather, it was in relation to development of the hunting camps. He further stated that, being a shareholder of the 2<sup>nd</sup> applicant company, he had no restriction as regards communication with clients. It was further deponed that, the respondent being a holder of 50% shares of the 1<sup>st</sup> Applicant, he has invested substantial fund in the development and prosperity of the hunting blocks. The applicant sternly disputed the averment that the 1<sup>st</sup> applicant has made any development to the 2<sup>nd</sup> applicant's hunting blocks.

In reply, the applicant refuted all the respondent's averments and proceeded to depone that, there has never been a sale or transfer of shares to the respondent. Also, the respondent has never invested any amount in the development of the 2<sup>nd</sup> Applicant company. Thus, the allegations that the Respondent has invested Tshs 600,000,000/= in the development of the 2<sup>nd</sup> respondent is nothing but a flat lie. It was contended further that the 1<sup>st</sup> applicant still maintains ownership of the 2<sup>nd</sup> applicant company and its hunting blocks.

During the viva voce hearing, the applicant represented by Ms. Lema learned counsel submitted that there are three main issues to be considered by the

court. The first issue is whether there is a triable issue between the parties to be determined in the main case. According to Ms. Lema, this has been ably demonstrated through paragraph 6 and 7 of the 1<sup>st</sup> Applicant's affidavit and through paragraph 6 and 7 of the 2<sup>nd</sup> and 3<sup>rd</sup> Applicant. The second issue is whether on the balance of probabilities, who between the applicant and the respondent stands to suffer greater loss and she submitted that as demonstrated in paragraph 2, 5, 8, 9, 10 and 11 of the 1<sup>st</sup> applicant's affidavit and paragraph 2,5,8 and 10 of the 2<sup>nd</sup> and 3<sup>rd</sup> applicant's affidavit, it is the applicants who will suffer greater loss as their business will be at risk if the respondent is not restrained from meddling with the 2<sup>nd</sup> Applicant's operation. Further, she contended that, the third factor for consideration is whether the will an be irreparable loss on the part of the applicant is the application is not granted and she proceeded to argue that, this point had been demonstrated through paragraph 5,8,9,10, 11 and 12 of the 2<sup>st</sup> Applicant Affidavit and paragraphs 5,8,9,10, and 11 of the 2<sup>nd</sup> and 3<sup>rd</sup> applicants affidavit which shows that the business of the applicant will be at risk and the applicant stands to suffer an irreparable loss if the respondent is not restrained as the second applicant will lose clients and reputation owing to the wrong information communicated by the respondent to the clients and the interferences.

On his part, Mr. Henry Mwangwala learned counsel for the respondent adopted the content of the respondent's counter affidavit and proceeded to submit that, the law applicable in injunctive orders is as demonstrated in **Atilio v Mbowe** (supra). He joined the Ms. Lema that, there are three

factors for consideration. First, is whether the suit between the applicants and the applicant has a *prima facie* case. He refuted the existence of an arguable case between the parties because the applicants are no longer in possession of the hunting license as the license expired in December 2019 and since then, they have not renewed the license which means that the areas has remained vacant.

The second issue, he argued, is whether the applicant stands to suffer more than the respondent. On this he submitted that the Respondent stands to suffer more than the applicant as he has already invested a total Tshs 600,000,000/= for designing and construction of the two hunting camps. Having argued on these two points he implored upon the court not to issue the injunctive order as that could entail prematurely determining the dispute over share transfer and ownership of the second applicant company. In conclusion he prayed that the application be dismissed for want of merit.

Having carefully considered the application, the supporting affidavit, the counter affidavit and the submission by the parties, there is only one issue for determination, namely: whether the circumstances of the application merit the injunctive order restraining the respondent from interfering with the 2<sup>nd</sup> applicant's operation.

In answering this question, I will be guided by the decision of this court in the land mark case of case of **Atilio v Mbowe** [1969] HCD 284 which expounded the criteria for granting of injunction. According to this authority,

a court seized to grant an injunction must satisfy itself that: there is a pending suit with a serious question to be tried on the facts alleged and the probability that the applicant will be entitled to the relief prayed; the applicant stands to suffer irreparable loss requiring the courts intervention before his legal right is established; and that, on the balance, there will be greater hardship and mischief suffered by the applicant from withholding of the injunction than will be suffered by the respondentt from granting of it.

In the instant application the pendency of a suit is uncontested. The parties herein contend in Civil Suit No.47 of 2019 over ownership of the second applicant company. In this suit which is currently pending before me, the respondent is suing the applicants for specific performance of the sale agreement through which he purchased 50% of the shares of the 2<sup>nd</sup> applicant company. Since the existence of a dispute over ownership of the 2<sup>nd</sup> applicant is a common ground between the parties, the only issue for determination is whether in the said suit the applicant has a *prima facies* case/whether there is a serious question to be tried and whether there is a probability that the applicant will be entitled to any relief.

Upon examination of the affidavits filed by the applicants and the counter affidavit in rebuttal, I have found that they have established that there is triable issue between them, namely whether there was a contract for sale of shares and whether by virtue of the said contract, the respondent has acquired ownership of 50% of the shares of the 2<sup>nd</sup> Applicant company. On the respondent's side it was argued that, there is no triable issue as the

applicants has lost ownership of the hunting camps owing to nonpayment of fees since the expiry of hunting season in December 2019. I find this fact misconceived because, much as it may be true that the applicants have lost the ownership of the hunting camps as claimed, this is not the epicenter of the dispute between the parties. The main dispute as depicted in the main suit and in the affidavits and counter affidavit rests in the ownership of the 2<sup>nd</sup> applicant company. The renewal of the hunting licence and loss of control of the two hunting camps, if any, does not any how resolve the main dispute of ownership which the parties herein sternly contend.

Regarding the next question as on whether on the balance of convenience the applicants stand to suffer more than the Respondent if the order is not granted, the applicants have argued that if the restraint order is not granted, the applicant will disproportionately be affected as the conduct of the respondent, to wit interference with the hunting activities and operation of 2<sup>nd</sup> applicant company will cause an irreparable strain to their business both in terms of loss of clients and reputation especially due to the communications from the respondent to the clients of the company. On his part, the respondent while not denying the allegations as to communications between him and the clients of the 2<sup>nd</sup> applicant, has invited me to reject the applicants submission on the ground that, the applicant stands to suffer no loss as they are no longer in the occupation of the hunting block. He has in addition argued that, in fact he is the one likely to suffer an irreparable loss as he has already invested a substantial amount of money amounting to Tshs 600,000,000/= in construction of the hunting camps.

The term "Irreparable damage" has been defined by Black's Law Dictionary, 9th Edition Page 447 to mean "damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement." It has also been defined as "loss that cannot be compensated for with money". In other words, the loss should be of the nature which cannot be atoned by way of damages regardless of whether they are compensated or not (**Haruna Mpangaos And Others v Tanzania Portland Cement Co Ltd**, Civil Reference No.3 of 2007 Court of Appeal of Tanzania (unreported)).

Thus, guided, I will respectfully decline the respondent's invitation because, much as it may be true that the 1<sup>st</sup> and 3<sup>rd</sup> applicants are not likely to suffer any substantial loss, in my considered view, the applicants has established that the 2<sup>nd</sup> applicant is destined to suffer an irreparable loss if it not protected from the interferences by the parties. I say so mindful of the fact that, the 2<sup>nd</sup> applicant is a legal body and by virtual of law, is separate from its shareholders and directors. As long as it has not been dissolved, the continued interference will certainly occasion an irreparable loss in its present and future operations owing to loss of clients and reputation. This, in my view outweighs the loss anticipated by respondent who claims to have invested Tshs 600,000,000/= in the company as this can be attained by money. Besides, as argued by the applicants, the respondents has rendered no tabulation/proof of the said investment to substantiate his allegations.

In view of this I allow the application. The respondent is temporarily restrained from interfering with the operations of the 2<sup>nd</sup> Applicant for six (6)



months pending the determination of the main suit. The costs shall be equally shared by the parties.

DATED at DAR ES SALAAM this 20<sup>th</sup> day of May 2021.



**J.L. MASABO**  
**JUDGE**