

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

**AT DAR ES SALAAM**

**MISC. CIVIL APPLICATION NO. 305 OF 2021**

(Arising from Civil Case No. 98 of 2021)

**ALLY ABDULLAH ALLY SALEH..... APPELLANT**

**VERSUS**

**REGISTERED TRUSTEES OF**

**TANZANIA FOOTBAL FEDERATION.....1<sup>ST</sup> RESPONDENT**

**TANZANIA FOOTBAL FEDERATION .....2<sup>nd</sup> RESPONDENT**

**CHAIRMAN OF THE TANZANIA FOOTBALL**

**FEDERATION ELECTION COMMITTEE.....3<sup>rd</sup> RESPONDENT**

**RULING**

09<sup>th</sup> July, 2021 & 16<sup>th</sup> July, 2021.

**E. E. KAKOLAKI J**

The prospective Tanzania Football Federation General Election to be holden at Tanga City, on the 7<sup>th</sup> of August, 2021 is the epicentre of controversy in this matter which this ruling is seeking to resolve. Under certificate of

urgency and by way of chamber summons preferred under Order XXXVII, Rule 1(a) and 2(1), sections 68(e) and 96 of the Civil Procedure Code, [Cap. 33 R.E 2019], Section 2(1) of the Judicature and Application of Laws Act, [Cap. 358 R.E 2002] and any other enabling provision of the law, supported by affidavit of one **Ally Abdullah Ally Saleh**, this court is moved by applicant to issue injunctive orders among other orders. The applicant who was vying for presidency of the Tanzania Football Federation hereinto referred as TFF, which is due to take place on 7<sup>th</sup> August, 2021 and duly eliminated from General Election process by the 3<sup>rd</sup> Respondent is seeking the following orders:

1. That, this Honourable Court be pleased to grant a temporary injunction restraining the Respondent or their agents from undertaking the Tanzania Football Federation General Election on the 7<sup>th</sup> day of August, 2021 as announced on the 8<sup>th</sup> June, 2021 pending hearing and final determination of this application.
2. That, this Honourable Court be pleased to restrain the Respondent, its assignees, employees, agents and associates from undertaking anything in the preparation of the prospective Tanzania Football Federation General Election as per the intended calendar date pending hearing and determination of the main suit pending before this Honourable Court.
3. Costs of this Application, and
4. Any other relief and further reliefs that his Honourable court may deem fit to grant.

The application has been strenuously resisted by the respondents who filed a joint counter affidavit duly sworn by one **Kidao Wilfred** the principal officer to the 2<sup>nd</sup> respondent and overall in-charge of the affairs of the 1<sup>st</sup> and 3<sup>rd</sup> respondents.

On the hearing date both parties appeared represented and were heard viva voce. Mr. Jeremiah Mtobesya, Mr. Frank Chacha, Mr. Stephen Mosha and Mr. Emmanuel Ukashu learned advocates appeared representing the applicant while the respondents hired the services of Mr. Alex Mushumbusi, Mr. Kennedy Alex and Mr. Kalaghe Rashid learned advocates. I extend my sincere appreciation to both legal minds for their helpful submissions that assisted this court to come up with this ruling.

During their submissions it was evident to this court that, parties are all at one that, this Court in determining whether the orders sought by the applicant should be issued or not, must be guided with the three well settled down principles as enumerated in the celebrated case of **Atilio Vs. Mbowe** (1969) HCD 284. The principles are reflected in many other cases prior to and after **Atilio Vs. Mbowe's case**, such as **E.A Industries Ltd. Vs. Trufford Ltd** [1972] EA 20, **Gielia Vs. Casman Brown & Co. Ltd** [1973] EA 358, **American Cynamid Vs. Ethicon Ltd** [1975] 1 AII.ER 504, **CPC International Inc. Vs. Zainabu Grain Millers Ltd**, Civil Appeal No. 12 of 1999 (CAT-unreported), **Vodacom Tanzania Public Limited Company Vs. Planetel Communications Limited**, Civil Appeal No. 43 of 2018 (CAT-unreported) and **Urafiki Trading Agencies Ltd and Another Vs. Abbasali Aunali Kassam and 2 Others**, Misc. Civil Application No. 53 of 2019 (HC-unreported). The principles 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 will be entitled to the reliefs prayed for (in the main suit);
2. That, the temporary injunction sought is necessary in order to prevent some irreparable injury befalling the Plaintiff while the main case is still pending; and
3. That, on the balance of convenience greater hardship and mischief is likely to be suffered by the Plaintiff if temporary injunction is withheld than may be suffered by the Defendant if the order is granted.

It is also uncontroverted fact that, in an application of this nature, all the principles above cited must be established by the applicant before the sought temporary injunction is granted. See also the cases of **Urafiki Trading Agencies** (supra), **Christopher P. Chale Vs. Commercial Bank of Africa**, Misc. Civil Application No. 635 of 2017 (HC-unreported). It is further undisputable fact that the onus of proving all the three ingredients lies on the applicant. This stance finds support from the views aired by the prominent author one **Justice P.S. Narayana** in his book **Law of Injunctions**, 9<sup>th</sup> Edition (2005) at page 87 when stated:

*"The burden of establishing the three ingredients for granting of temporary injunction is on plaintiff."*

Justice P.S Narayama's view finds support in our jurisdiction under section 110(1) and (2) of Evidence Act, [Cap. 6 R.E 2019], the provision that requires any party desiring any court to give him/her judgment basing on certain

existing facts to prove to the court that the same do exist. The said provision of section 110(1) and (2) of Cap. 6 provides thus:

*110.-(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

*(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.*

It is also the law that, temporary injunction being an interlocutory order is in the discretion of the Court hearing the application to either grant or refuse to do as once said by **Lord Diplock** in the case of **Hardmore Productions Limited & Others Vs. Hamilton & Another** (1983) 1 A.C at page 220, that:

*"An interlocutory injunction is discretionary relief and the discretion whether or not to grant it is vested in the High Court Judge by whom the Application for it is heard."*

In view of the above authorities and cited provisions of the law, I am satisfied that, it is in the discretion of this court to grant the injunctive orders sought, upon the applicant establishing existence of the three principles or conditions in his case. Now the central issue for determination in this matter is whether the applicant has established his case satisfactorily to warrant this court grant the orders sought pending determination of the main suit. To start with the first principle as to whether there is *prima facie* case or *triable issues* are existing in the main case, the Court is duty bound to examine though

not exhaustively the merits of the case as to whether the applicant's rights exist and that there are chances of success in the main suit. This position of the law is reinforced by the words of **Justice P.S. Narayana** in his book **Law of Injunctions** (supra) at page 85 when commented that:

*"When the Court is called upon to examine whether the plaintiff has a prima facie case for the purpose of granting temporary injunction, **the Court must perforce examine the merits of the case and consider whether there is a likelihood of the suit being decreed and the depth of investigation which the Court must pursue may vary with each case.**" (emphasis is supplied).*

In order to satisfy itself whether prima facie case has been established, this Court is therefore duty bound to examine the merits of the case more particularly on the existence of triable issues in the main suit filed by the applicant and the possibility of succeeding. Submitting in support of the first principle Mr. Mtobesya informed the court that, there are two triable issues in this matter. He said the **first** one, is on procedural irregularities in the TFF election process that kicked off on the 08/06/2021 as deposed in paragraphs 7 of the applicant's affidavit and paragraphs 9 and 11 of the reply to counter affidavit as well as paragraph 11 of the plaint, the irregularities that injured the applicant's right to participate in the affairs of the 2<sup>nd</sup> respondent. Expounding on the said complaint he referred the Court to Articles 10(1),(3) and (4) and 11(1),(2),(3) and (4) of the TFF Electoral Code annexed to the affidavit as annexure AAAS2, the instrument governing the TFF election procedure. Attacking article 10(3) and (4) of the Code he contended, the

same denies the applicant of his right to endorsement by the 3<sup>rd</sup> respondent committee members in the electoral process as each member is bound to endorse one aspirant only, thus a risk of all members endorsing one aspirant only in exclusion of other competent aspirants. Further to that he assailed the 3<sup>rd</sup> respondent's act of failure to examine the applicant's forms and post the results on the notice board for objection from the public before the decision to remove him from the candidacy could be made, thus denying him of his right to be heard. The second triable issue Mr. Mtobesya mentioned, is the discrimination created by the instrument establishing the 2<sup>nd</sup> respondent which is the TFF Constitution. Without attaching the said Constitution or citing the specific provisions therefrom he argued the instrument brings about two issues. He explained the first issue as discrimination against the applicant himself and the people with experience who lack academic qualification to participate in the affairs of the 2<sup>nd</sup> respondent as deposed in paragraphs 8, 11 and 12 of the affidavit and 4,5,6,7,8 and 9 of the reply to counter affidavit. Further to that he argued, the instrument (TFF Constitution) as averred in paragraph 10 of the affidavit is prone to be abused for bestowing the TFF President with powers to elect or appoint any member of his choice as his Vice President and manager of finances, thus risking the public funds for want of accountability. He said the court's intervention is needed to address all those issues in the main suit. In view of the above it was his submission therefore that, the applicant has managed to prove to the court that, there are triable issues worth determination of this Court.

In riposte Mr. Mushumbusi for the respondents on the onset faulted the applicant's reply to counter affidavit particularly paragraphs 3,4,5,6,7,8,9 and 12 for raising new facts which the respondents could not be availed with opportunity to comment on, thus prayed the court to disregard them. Submitting against the applicant's contention of establishing *prima facie* case worth of determination by this court in the main suit, Mr. Mushumbusi argued, *prima facie* is determined basing on triable issues in the main suit pending in Court. The court is therefore to examine whether the reliefs sought are capable of being awarded or not. He said as the application is proved by the facts deposed in the affidavit, in this application the copy of the said main suit is missing in the applicant's affidavit. Thus there is no materials before this court for the Court to make reference to so as to establish whether *prima facie* case exists or not, Mr. Mushumbusi stressed. To fortify his point he referred the Court to the cases of **Urafiki Trading Agencies** and **Vodacom** (supra). That aside he attacked the complained of irregularities of the TFF electoral process particularly the none positing of applicant's name on the notice board submitting that, the same is not stated anywhere in the affidavit. On the assertion of the requirement of minimum endorsement of 5 committee members for one aspirant without limitation of a number of endorsers per person during endorsement process he countered, the same is based on mere allegation and fear of unknown without proof. On the allegation of the applicant's denial of his right to be heard for want of examination of his forms he argued, the applicant ought to have appealed to the Appeals committee as per Article 12(4) of the Election Code against that violation if at all existed. To him therefore the



assertion is unfounded for failure of the applicant to exhaust the appeal process as the first remedy. On the assertion of the Constitution conferring powers to TFF president to elect the Vice President of his choice he countered, the same is a fallacy as stated in paragraph 9 of the respondents' counter affidavit. He added the assailed Constitution is even not annexed to the applicant's affidavit, thus invited this court to disregard totally any reference made by either party to that instrument. It was his submission therefore on this principle that the applicant has failed to establish that prima facie case exists in the main suit to warrant this court grant him the prayers sought.

In his rejoinder submission on the point as to whether none attachment of the main suit to the affidavit denies this court with an opportunity to examine and determine the principle on whether the prima facie case exists or not, Mr. Mtobesya replied, this court is seized with the case file of said main suit Civil Case No. 98 of 2021, thus there was no need of annexing it to the affidavit. Further to that he contended, the case number of the main suit is referred in the Certificate of Urgency, thus this court should take note of it and proceed to make reference therein when determining the merits of the application as it was the case in **Urafiki Trading Agencies** case (supra). It is the law and I need not cite any authority that, proof of facts in any application is by way of facts deposed in the affidavit including its annexures attached thereto. It is also settled law that parties are bound by their pleadings as they should always adhere to their pleadings so as to avoid taking the other party by surprise. Any party seeking to make reference to any document not pleaded and/ or annexed to the pleadings must seek

court's leave to amend the pleadings so as to enable him make reference thereto. This position of the law and its object was stated in the case of **Charles Richard Kombe t/a Building Vs. Evarani Mtungi and 2 Others**, Civil Appeal No. 38 of 2012 (CAT-unreported) where the Court had this to say:

***"It is cardinal principle of pleadings that the parties to the suit should always adhere to what is contained in their pleadings unless an amendment is permitted by the Court. The rationale behind this proposition is to bring the parties to an issue and not to take the other party by surprise. Since no amendment of pleadings was sought and granted the defence ought not to have been accorded any weight."*** (Emphasis supplied).

Basing on the above authority it is evident to me and I am convinced that, any party seeking to rely on certain fact or document not pleaded must seek leave of the court to amend the pleadings so as to allow him rely on it. As rightly submitted by Mr. Mushumbusi for the respondents and confirmed by the court after a glance of an eye to the record, the applicant in this matter neither annexed the plaint in his affidavit nor referred its case number in the Certificate of Urgency as claimed by Mr. Mtobesya so as to enable this court not only make reference to but also take cognisance of its existence and base its decision therefrom when establishing whether there are triable issues or not in the main suit. In absence of that plaint, case number cited or prayer for leave to amend the pleadings this court is remained only with facts as deposed in both the affidavit and reply to counter affidavit, which in

my opinion if treated alone without reference to the plaint cannot assist this Court to determine whether prima facie case is established or not as the said affidavits are to be read together with the plaint as it was the case in **Urafiki Trading Agencies** (supra). With that finding I endorse Mr. Mushumbusi submission and therefore hold that, the applicant has failed to establish whether there are triable issues in the main suit as he has failed to demonstrate to this Court the reliefs sought in the plaint if any existing and that they are capable of being decreed. In other words he has failed to establish to the court's satisfaction that there are existing triable issues or the prima facie case in the main suit worth of determination by this court, thus temporary injunction be granted in this application pending determination of the said issues. Assuming reference is made to the plaint which is not the case, to establish whether what is deposed in the affidavit and reply to the Counter affidavit is true or not, and that triable issues are existing, still I would hold the applicant has failed to establish the prima facie exists. I will tell why!

**One,** the assertion of irregularities of the electoral procedure as averred in paragraph 7 of the affidavit is wanting for lack of particulars as to the alleged irregularities. To bring into picture the applicant's evidence on such assertion I find it imperative to quote the said paragraph 7 of the affidavit.

*"7. That, the electoral process consists of a number of irregularities, non-compliance to the Tanzania Football Federation Electoral Code of 2021, the Constitution of the Tanzania Football federation."*

The above paragraph in my considered view does not need legal mind to give a plain interpretation that it contains nothing but a blanket allegation of noncompliance of the *Tanzania Football Federation Electoral Code of 2021* and *the Constitution of the Tanzania Football Federation*. The application being provable by facts deposed in the affidavit, the applicant ought to have gone further to depose the violated procedures in the said TFF Electoral Code as proof of the alleged electoral process irregularities as alleged in the said paragraph, something which he failed to do. The attempt by Mr. Mtobesya to so do during his submission in chief so as to beef up the assertion by enumerating the alleged violated procedures such as none examination of the applicant's form and failure to post the results of examination to the notice board for public objection hence denial of applicant's right to be heard, in my conviction was nothing but evidence from the bar which this court cannot base its decision on. I say so as ***submission is a summary of arguments. It is not evidence and cannot be used to introduce evidence.*** See the case of **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Company Ltd Versus Mbeya Cement Company Ltd and National Insurance Corporation (T) Ltd** [2005] TLR 41.

**Secondly**, on discrimination of the applicant in paragraphs 8,9,10,11 and 12 of the affidavit assailed the Constitution of the TFF for being discriminative by putting the requirement of any aspirant to secure at least 5 endorsements from the 2<sup>nd</sup> respondent committee members without setting the maximum number of endorsements per aspirant and for allowing the President to choose the Vice President of his choice as well as the TFF

Electoral Code for setting the minimum education level to the aspirants the requirement which denies people with experiences in running football activities to hold the posts of presidency and TFF executive committee. To be precise and for avoidance of doubt the applicant in his affidavit is recorded to have averred thus:

*8. That, the constitution of the Tanzania Football Federation is discriminative of the people of Zanzibar and mainland for requiring an aspirant to secure at least five endorsements from the executive committee members knowing that Zanzibar does not have members in the executive committee.*

*9. That, the above cited article has not set limit to the maximum number of endorsements per aspirant. The same provides that an endorser cannot endorse more than one aspirant. By itself this article gives monopoly to one aspirant who can be capable of securing all the endorsements to bar the rest of the aspirants from the contesting for the position of president.*

*10. That, the constitution of the Tanzania Football Federation is no-considerate of the anticipated conflict of interest and risk to the finances of the Federation. This follows the president choice to appoint a friend or an individual of his own personal interest where there will be great risks on the funds of the federation. **Copy of the said Constitution is attached herein and marked AAAS-2, leave of this Honourable court is sought for it to form part of this plaint.***

*11. That, the Tanzania Football Federation Electoral Code is discriminatory of the people with great experience in running football activities that are aspirants of the positions of the executive committee member and president of the federation. This follows the requirement of academic qualifications of the Certificate of Ordinary Level Education, for the position of Executive Committee member and bachelor degree for the position of the president of the federation. **Copy of the said Tanzania Football Federation Electoral Code of 2021 is herein attached and marked AAAS-2, leave of this Honourable court is sought to form part of the this plaint.***

*12. That, football as a game requires no academic qualification but experience in it. The same has never been a requirement as per the statutes of FIFA and CAF. It is therefore discriminatory to require academic qualification to that effect and against the mother laws to which the federation originated.*

It is of interest to note that paragraphs 8,9 and 10 of the affidavit cited above refer to complaints of the discriminative nature of the TFF Constitution. However, the court was neither referred to the any violated article in the said constitution nor was the same annexed to the affidavit as claimed in the averment of paragraph 10 of the affidavit, for the court to peruse and base its decision when determining whether there are triable issues or not in the main suit, leave alone the craving of leave of this court for it to form part of the plaint instead of the affidavit. The same ailment suffers the 11<sup>th</sup> and 12<sup>th</sup> paragraphs of the affidavit where the court is not referred to any violated article of the TFF Electoral Code as well as the prayer

to have the attached copy of the Code to form part of the plaint instead of the affidavit. It is from all those anomalies this court would have held there was no materials advanced by the applicant apart from submissions from the bar already held not to be evidence to enable it find the prima facie case has been established by the applicant on the issue of discrimination in particular and all other contended issues.

Next for determination is the establishment of the second principle on whether the applicant is likely to suffer irreparable injury in the premises the order of injunction is not granted. The object of this principle is for the court to examine whether its interference is necessary for protection of the applicant from suffering irreparable injury should the injunction order be withheld. **"Irreparable injury"** is something which is substantial and which cannot be remedied by damages. On this principle Mr. Mtobesya submitted at length that, the applicant managed to show in his affidavit the irreparable loss he was likely to suffer that could not be atoned by any monetary value. He said the discriminatory articles of the TFF Constitution and Electoral Code, denial of the applicant's right to participate to the 2<sup>nd</sup> respondent's affairs as well the act of leaving the electoral irregularities complained of go unchecked hence illegally elected leaders are priceless and cannot be atoned by any valuable penny should this court fail to interfere by issuing the injunctive order sought. Thus the applicant will irreparably suffer injury. Retorting to the applicant's submission, Mr. Mushumbusi submitted, the applicant failed to establish to the court's satisfaction that, he will suffer irreparable loss as apart from merely stating in the affidavit that he is likely to suffer irreparable loss he did not state how he will so suffer and to what extent. He fortified

his submission with the case of **Urafiki Trading Associates** (supra) on what amounts to irreparable loss and invited the Court to reject the prayer for injunction. It is true and I unconditionally endorse Mr. Mushumbusi's submission that, the applicant has failed to exhibit to the court as to how he will suffer irreparable injury should the sought injunctive orders be withheld by the court. A glance of court's eye to the pleadings has established that the applicant never deposed that fact, neither in his affidavit in support of the chamber summons nor in the reply to counter affidavit as contended by the learned counsel Mr. Mtobesya. In absence of such averment I am of the profound judgment that, the submission by Mr. Mtobesya neither established nor proved the principle that should this court withhold the sought temporary injunction order the appellant will or is likely to suffer irreparable injury as his submission is a mere argument which does not introduce evidence upon which this court can base its decision for coming from the bar. See the cases of **The Registered Trustees of the Archdiocese of Dar es Salaam Vs. The Chairman Bunju Village Government and 11 Others**, Civil Appeal No. 147 of 2006 (Unreported) and **Morandi Rutakyamirwa Vs. Petro Joseph** (1990) TLR 49 (CAT).

Lastly is the third condition that, on the balance of convenience greater hardship and mischief is likely to be suffered by the applicant if temporary injunction is withheld than may be suffered by the respondents if the order is granted. On this principle Mr. Mtobesya supported by the affidavit and reply to counter affidavit argued, on the balance of convenience it is the applicant who contested for TFF presidency and affected by the irregularities of the electoral process sourced from the TFF Electoral Code, who stands



more chances to suffer than the respondents who did not contest. He said the contention by the respondents in their counter affidavit that it is the respondent in particular the 2<sup>nd</sup> respondent who stands chances of suffering more referring to the ban by FIFA of Tanzania teams from participating in some tournaments is a mere apprehension of fear as the grant of order will affect the electoral process only and not the 2<sup>nd</sup> respondent's daily and normal affairs.

In response Mr. Mushumbusi countered the applicant's submission on the third condition stating, the applicant totally failed to establish to the court's satisfaction that, he stands a position to suffer more than what the respondents would do. He convincingly argued, the respondents through paragraph 13 of the counter affidavit managed to exhibit to the court that, the 2<sup>nd</sup> respondent being the overall in-charge of football activities in Tanzania and a member of FIFA stands to suffer more than the appellant by enumerating in paragraph 14 of the counter affidavit the consequences associated with the orders sought by the applicant if granted by the court, the argument which was vehemently resisted by Mr. Chacha for the applicant charging that, it was aiming at interfering with court's jurisdiction to fairly decide the matter. In paragraphs 13 and 14 of the joint counter affidavit the Respondents averred thus:

*13. That the contents of paragraph 14 of the applicant's affidavit are strongly disputed as words without proof whatsoever. The respondents state that there are no grounds either legal or factual that move the court to grant the injunctive orders sought in the chamber summons.*

*14. That the respondents stand to suffer more than the applicant in case the injunctive order is granted. In the event the injunctive order is granted, the 2<sup>nd</sup> respondent stands a risk of being banned by FIFA as it may be considered to be the third party interference of which the ban would be lifted after 2 years upon fulfilling the conditions given by FIFA. The ban will result to disqualification from various competitions as follows:*

*i. Yanga and Simba are scheduled for CAF Champions League to start on September 2021 and Azam Football Club is scheduled for CAF Confederation to start on September, 2021.*

*ii. Taifa Stars is now in the World Cup Qualifiers scheduled to start in September, October and November.*

*iii. CECAFA Senior Challenge Cup scheduled to start on 17<sup>th</sup> July, 2021.*

*iv. Simba queens is scheduled to travel for the African Women Club Championship in Nairobi to kick off on the 17<sup>th</sup> July, 2021.*

***Copy of the Match Fixtures for the Taifa stars qualifiers are hereby exhibited and marked Exhibit T-2 which forms part of this Counter Affidavit.***

Having considered the above conflicting submissions by both legal minds, plus what has been averred in the parties' pleadings and the fact that the applicant has failed to establish the prima facie case and his chances of suffering irreparable injury, it is my conviction that, on the balance of

convenience he has failed too to exhibit to this court that he is likely to suffer greater hardship and mischief if the grant of temporary injunction is withheld, than the respondents would do. My finding is based on the fact that when submitting Mr. Motbesya made bare assertions without citing specific paragraphs from the applicant's affidavit and reply to counter affidavit supporting his submission that the applicant has managed to establish that, on the balance of convenience he will suffer more hardship than the respondents, while Mr. Mushumbusi did so by referring the court to specific paragraphs in the Counter Affidavit as cited above. In totality and on comparative basis I find the appellant has failed to exhaustively exhibit on how is he likely to suffer a great hardship than the respondents if temporary injunction is withheld for failure also to show that he has a right in the main suit which ought to be protected or there is an injury that ought to be protected. My stance finds support in the case of **Charles D. Msumari and 83 Others Vs. Director General of Tanzania Harbours Authority**, Civil Appeal No. 18 of 1997 (CAT-unreported) when the Court was considering the principle of balance of convenience before granting the injunctive order where it had this to say:

*"Courts cannot grant injunctions simply because they think it is convenient to do so. Convenience is not our business. Our business is doing justice to parties. They only exercise this discretion sparingly and only protect rights or prevent injury according to the above stated principles. The courts should not be overwhelmed by sentiments, however lofty or mere high driving allegations of them and their families without*

*substantiating the same. **They have to show that they have a right in the main suit which ought to be protected or there is an injury (real or threatened) which ought to be prevented.***" (emphasis supplied)

As alluded to earlier, before the grant of the application for temporary injunction, the applicant has to establish all the three principles as referred in the case of **Atilio Vs. Mbowe** and other cases hereinto above referred. In view of the above authorities and law and having weighed the exhibited evidence in its totality, I am convinced that this is not a proper case for issue of temporary injunction as prayed. I therefore proceed to dismiss it with costs as I hereby do.

It is so ordered.

DATED at DAR ES SALAAM this 16<sup>th</sup> day of July, 2021.

  
E. E. KAKOLAKI

**JUDGE**

16/07/2021



Delivered at Dar es Salaam in chambers this 16<sup>th</sup> day of July, 2021 in the presence of Mr. Stephen Mosha, Mr. Frank Chacha and Mr. Emmanuel Ukashu, advocates for Applicant, Mr. Alex Mushumbusi and Mr. Kennedy Alex advocates for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and Ms. Monica Msuya, court clerk.

Right of appeal explained.

  
E. E. Kakolaki

**JUDGE**

**16/07/2021**

