

**IN THE HIGH COURT OF TANZANIA**  
**AT DAR ES SALAAM**  
**MISC. CIVIL APPLICATION NO. 285/2020**  
**(Originating from HC Civil Case No. 87 of 2018)**

**PROPERTY INVESTMENT LIMITED.....APPLICANT**

***VERSUS***

**FIRST NATIONAL BANK (T) LIMITED.....1<sup>ST</sup> RESPONDENT**

**MASETO AUCTIONEER AND**

**DEBT COLLECTOR LTD.....2<sup>ND</sup> RESPONDENT**

**RULING**

The applicants above mentioned are seeking for an order for maintenance of status quo ante and injunction restraining the respondents, their agents, servants and/or workmen from disposing the landed property being plot 1219 located at Msasani Peninsula area with CT No. 23263 in Kinondoni District within Dar es Salaam pending determination of the main case. The ground upon which the application is taken (as per the affidavit of Muslim Shivji Karim) is that it was agreed that the loan payment schedule will commence three moth (sic, months) after the initial disbursement a sum of USD 850,000 which was effected on 12<sup>th</sup> May, 2017. That contrary to the repayment schedule set under the loan agreement, on 30<sup>th</sup> May 2017 the first respondent deducted the initial instalment for the repayment of the loan contrary to the three moths term agreed under the loan agreement. That the applicant protested to the first respondent to address the breach,

where the later admitted to had acted contrary to the terms under the loan agreement because of system glitch and promised to rectify the breach via email dated June, 2017 (annexure MA-04 to the affidavit). That if the breach had not occurred, then the applicant could be in a position to salvage the loan as per loan agreement. In rebuttal, the first respondent via a counter affidavit deposed by David Sarakikya, stated that there has never been any breach by the first respondent apart from the system error which deducted the first instalment before the due date and as the result of the error, it was discussed and agreed the said deduction to be taken to have settled the applicant's loan in advance, but the rest installments shall be after every three months which the applicant has never paid to date and she is hiding under that system error. However, the first respondent did not attach any correspondence or communication whatsoever for the alleged discussion and consensus. In annexure MA-04 to the affidavit, the officer of the first respondent had promised to reverse the transaction. The first respondent did not rebut or counter that email communication annexure MA-04 to the affidavit. To my view there is a triable issue, as to who actually orchestrated the breach, in the circumstances where the first respondent seems to have blatantly disregarded terms and condition regarding a grace period of three months envisaged in the loan agreement. This is fortified by the fact that, the applicant alleged to had been disturbed

and disoriented by the alleged premature deduction, in her plan to salvage and service the loan in a way it was projected. That said, wisdom tilt for the prayer made to be granted, to pave way for the main cause to be adjudicated as per the above observation.

I appreciate for the submission in chief and rejoinder marshalled by Mr. Shalom Samwel Msakyi, learned Advocate and reply Mr. Innocent Felix Mushi learned Counsel.

Therefore, an order for maintenance of status quo ante and injunction is granted restraining the respondents, their agents, servants and/or workmen from disposing the landed property being plot 1219 located at Msasni Peninsula area with CT No. 23263 in Kinondoni District within Dar es Salaam pending determination of the main case.

The application is granted. Costs shall follow the event.

