

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

MISC. CIVIL APPLICATION No. 50 OF 2021

(Arising from Civil Case No. 11 of 2021 High Court of Tanzania – Mwanza)

MSK REFINERY LIMITED.....APPLICANT

VERSUS:

TB INVESTMENT BANK LIMITED.....1ST RESPONDENT

YONO AUCTION MART AND COMPANY LIMITED.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....NECESSARY PARTY

RULING

01st September, 2021

TIGANGA, J.

In this application, the court has been moved under section 68 (d) (e) and Order XXXVII Rule 1 (a) and 2 (1) and 4 of the Civil Procedure Code [Cap 33 R.E 2019]. The applicant is seeking for this court to grant an interim order to prevent the respondents, their agents, assignees, workmen and employees from selling the property on plot No. 82 Block "A" Nyashishi, at Usagara Trading Centre, in Misungwi District, pending determination of Civil Case No. 11 of 2021 between the parties.

The application was filed through Chamber Summons and supported by the affidavit affirmed by one Yohana Mswahili, a Director of the applicant (a Principal Officer) in which he deposed the reasons for the application, which for the reasons soon to be revealed, I will not reproduce in this ruling but it suffices to say that the reasons are strongly supporting the application.

Initially, the application was opposed by the 1st respondent by filing the counter affidavit which was sworn by one Emmanuel Bushiri, a Principal Officer of the first respondent. The same contained the grounds of objection, which also for reasons to be revealed soon hereinafter, I will not reproduce in this ruling.

Hearing of this application was conducted orally, where parties were represented by learned counsel. The applicant was represented by Mr. Kishosha, learned counsel, the 1st and 2nd respondents were represented by Mr. Manono, learned Principal State Attorney, while the 3rd respondent did not appear, therefore the application was heard ex parte against him.

The applicant's submissions which were not disputed is to the effect that, the applicant and the 1st respondent entered in a loan agreement

repayable under the terms and condition stipulated under the said agreement. In that loan agreement, the respondent was to disburse the said loan funds in time. However, according to the applicant, the 1st respondent did not disburse the loan fund in time, which facts caused the applicant's failure to repay the loan as agreed. Failure to repay by the applicant resulted into the 1st respondent's commencement of recovery measures by processing to attach the mortgaged properties and sell them. Following that move, the applicant filed Civil Case No. 11 of 2021 in which he indicated that there is triable issues which need to be determined by this Court.

Further to that, it was submitted by the counsel for the applicant that, since the properties to be sold in such recovery measures which is the subject matter in the main case i.e Civil Case No. 11/2021, therefore he asked for the order for temporary injunction. Furthermore he submitted that the properties about to be attached and sold are over Five Billions Tanzania Shillings while the loan is about Two Billions Tanzania Shillings.

He submitted further that, the interest of the respondent is secured, and even if the injunction will be granted, the respondent will not be

prejudiced as they still possess in their custody the Title Deed of the property in question.

He referred this court to the authority in the case of **Jonathan Omary Mbwapbo (The Administrator of the Estate of the late Omary Mbwapbo) vs. Said Shabani Msonga, Kessy Kasilati and Zena Ally**, Misc. Land Case Application No. 774 of 2016 HC. Land Division, Hon. Mzuna, J. in which, the court relied on three grounds in unseated in the case of **Atilio vs. Mbowe** [1969] HCD 284.

Basing on these grounds he asked the application to be granted with costs as prayed in the chamber summons.

When Mr. Manono, PSA was called upon to submit in reply to the submission in chief he simply said,

"upon reflection we find the application by the applicant to have merit. We pray to withdraw our counter affidavit and concede to the prayers. However, we pray the application to be granted without costs"

It is because of that concession; I found reproducing the reasons for the application in the affidavit and the grounds for opposition in the

respondent's counter affidavit to be of no use as the matter is not contentious.

All these taken into account, in law, withdraw of the counter affidavit filed in opposition of the application, rendered the application uncontested. While a clear concession of the application made by Mr. Manono, PSA, meant that, he had no objection to the prayer in the application save for costs.

Following that state of affairs, the court granted the application, and reserved the detailed ruling over the matter, which was prepared some hour later.

As the application has not been contested, and it was openly conceded by the respondent, I thus grant the application, the 1st respondent, its agents, its assignees (including the 3rd respondent), workmen and, employees are injuncted from selling the property on plot No. 82 Block "A" situated at Nyashishi Usagara Trading Centre in Misungwi District pending hearing and determination of Civil Case No. 11 of 2021. The said order is issued in terms of Order XXXVII Rules 1 (a), Rule 2 (1) and Rule 4 of the CPC [Cap 33 R.E 2019]. No order as to costs is made.

It is so ordered.

DATED at **MWANZA**, this 01st day of September 2021.



J. C. TIGANGA

JUDGE

01/09/2021

ORIGINAL