

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

MISC. CIVIL APPLICATION NO. 354 OF 2021

DIDACE CELESTINE KANYAMBO ----- 1ST APPLICANT

**THE REGISTERED TRUSTEES OF THE EVANGELISTIC
ASSEMBLIES OF GOD TANZANIA -----2ND APPLICANT**

VERSUS

KADAWI LUCAS LIMBU ----- RESPONDENT

R U L I N G

Date of last Order: 23/08/2021

Date of Ruling: 25/08/2021

MGONYA, J.

This is an Application for temporary injunction filed under **Order XXXVII Rules 1 and 2 and Section 68 (e) of the Civil Procedure Code Cap. 33 [R. E. 2019]**. The same was brought under the certificate of urgency.

In principle, the instant Application is for this court, if it pleases to issue an order for injunction to restrain the Respondent, their Servant(s), Workmen, Agent(s) and or whosoever reporting to act on the Respondent's behalf from continuing to hold press conferences and releasing defamatory statements to the Applicants herein pending the hearing and

final determination of the main case before this honourable court.

Further, is for this Honourable Court if it pleases to issue an Order for Injunction to restrain in Respondent, their Servants (s), Workmen, Agents (s) and or whosoever reporting to act on the Respondents behalf from restraining the second Applicant's Employees and Leaders including the Members of Trustees to enter to the second Applicant's Premises located at **Plot No. 1 Pugu Road (Currently Nyerere Road)** pending the hearing and final determination of the main case.

The Application is accompanied with the Applicants' joint Affidavit dully sworn by ***ANDREW OBEDI MALESI***.

Due to the time constraint, and the urgency of the matter, and upon Parties request, I proceeded with the hearing of the instant Application by way of oral submissions. It is after the said submissions, I am now in place to proceed in determining the Application as here under.

I have to make it clear from the outset that, I have carefully heard and took into consideration Parties' respective submissions for and against the Application. It is at this juncture I am starting determining the merits of the Application to the decision as hereunder.

As I don't intend to reproduce parties' submissions, it suffices to say that the Applicant's Counsel herein submission in support of the Application for injunctive orders sought;

referring to the three principles articulated in the famous case of **ATILIO VS. MBOWE [1969] HCD 284**, prayed the Application sought be granted. On the 1st principle on **establishing a *prima facie*** case, briefly, the Applicant stated that, it is through the facts adduced in the Applicant's Affidavit, the *prima facie* case has been established and that there are triable issues to be determined by this honourable court in the main case. The reason behind being the Respondent's untrustworthy acts and statements which has offended and affected both Applicants so far.

Submitting on the 2nd Principle on ***irreparable loss***, the 1st Applicant was of the view that, if the application is not granted, he is the one who will suffer an irreparable loss compared to the Respondent who has nothing to lose on this. Demonstrating on the irreparable loss on his side, the 1st Applicant informed the court that the Respondent's acts have caused him to suffer. Illustrating this point, he said, the Respondent's act of advertising him on Media on 19/06/2021 through press conference at 2nd Applicant's place via Dar Mpya TV saying that he is a conman (*Tapeli*); have affected him severely as those declarations made him looked down by the Public whereby his reputation has been lowered and have so far affected him particularly under the professional competence as an Advocate. It is from the same, Mr. Kayombo informed he court that, if the Respondent is not prohibited from continuing

uttering defamatory statements against him, he will obvious continue to suffer and obtain irreparable loss or rather damage which cannot be remedied in monetary terms.

On the last principle on ***balance of inconvenience***; and in comparison, the 1st Applicant is of the view that he stands a lot of inconveniences compared to the Respondent as of now where the Respondent has managed to utter some defamatory statements against him. Explaining further, Mr. Kayombo informed the court that out of the false and defamatory statements by the Respondent towards him, he has been disturbed as he has been receiving a lot of phone calls from different people being his family members, his work colleagues and friends enquiring him as to what has happened, out of the said defamatory sentiments. Something that has really disturbed him and his family hence suffered and experience physiological torcher.

Concluding his submission, Mr. Kayombo informed the court that, as Advocate for the 2nd Applicant, the act of being prohibited to enter into the 2nd Applicant's premises to perform his duties has also inconvene him to the great extent, and that the Respondent has violated Constitutional principle under ***Article 22 of the Constitution of the United Republic of Tanzania, (1977).***

It is from the above submission it is the 1st Applicant's prayer that this honourable court grant the Application as

prayed by restraining the Respondent's unjustifiable actions towards him so as he can perform his duties without any hindrance and physiological consequences.

Submitting for the 2nd Applicant, it was the learned Counsel Mr. Malesi's submission that are praying for orders restraining the Respondent from conducting conferences from releasing defamatory statements against the Applicants and further to restrain the Respondent from impeding the Applicants from entering the 2nd Respondent's premises located at **Plot No. 1 Pugu Road (Currently Nyerere Road)** to perform their daily activities.

In submitting his Application, the 2nd Respondent's Counsel adopted the principles in the case of ***ITILIO VS MBOWE (Supra)***. From the said line, submitting for the 1st principle, the Counsel averred that, it is not disputed that there is a main case pending determination in this honourable court where by the *prima facie* case in favour of the Applicants and against the Respondent has been established. This is due to the fact that the Respondent herein has a tendency to conduct press conference without any justification whereby defamatory statements have been tabled against the Applicants herein.

Demonstrating on the above assertion, the Counsel referred his court to 19th June, 2021 where the Respondent conducted a press conference via Dar Mpya TV stating "***Kanisa la EAGT ni Kanisa la waongo na wazushi***". Further that

the Arch. Bishop - Mch. Brown Mwakipesile is a liar working with PCCB and on the serious note that the Church through its leadership have been exploiting people. Moreover, that on 05th July 2021 the Respondent herein convened another press conference with Journalists and gave malicious statements against the Applicants which have lowered the 2nd Applicant's reputation who is well recognised and respected by the Public.

Submitting on the 2nd principle on ***irreparable loss***, it is the Counsel's assertion that the Respondent's acts went to the extent that brought claws to his client and further has affected the Church so much as they are depending on pledges and offerings from believers for their own welfare and church's performances. Further that it is the 2nd Applicant is the one who is to suffer the irreparable loss which cannot be remedied by money comparing to the Respondent who has nothing to lose under the given circumstances.

Further, it the 2nd Applicant's Advocate that the Respondent's tendency to withhold and restraining the 2nd Applicant and its followers and employees from entering into the 2nd Applicant's business premises located at Plot No. 1 Pugu Road/Nyerere Road by camping outside the gate to prevent the Applicants and the 2nd Applicant's employees from entering the said premises, has occasioned them hardship and loss. Explaining this point, the Counsel informed the court that it is now more than one month, the 2nd Applicant's employees are

not at work and they are paid due to the Respondent's acts to restrain them to enter into the above mentioned premises contrary to **Article 22 (1) of the Constitution of the United Republic of Tanzania (1977)**.

From the above submission, it is the 2nd Applicant's Counsel assertion that if this order is granted, the Respondent will not suffer any loss in that respect; on the contrary, the loss to the 2nd Applicant extends to the fact that, if the Application is denied, he has to find an alternative premises to work, that being another loss. It is further Mr. Malesi's concern that, if the Respondent has genuine concerns and claims against the Applicants herein, then he ought to have instituted the legal claim to deal with and not through the manner that he is conducting.

Concluding on the 3rd principle it is the Counsel's assertion that under the circumstances, it is the Applicants who will be inconvenienced more than the Respondent if the Application is withheld. In the premises, the 2nd Applicant's learned Counsel prayed the court to grant an order of temporary injunction prayed pending determination of the main suit.

The Respondent who introduced himself to be a Project Manager and permanent employee to the 2nd Respondent, responding to the Applicants' submissions, informed the court that he is performing his duties as per the directives from the

Board of Trustees declaration, and that he is not supposed to be mismanaged by any other Authority.

Referring to the three principles in respect of this kind of application; for the first principle, the Respondent submitted that the Applicants do not have any triable case since the press conference that he made, it involved many issues to the Public and to the EAGT generally. Further the issues conversed thereto were all definite and factual. It is from the same, it is the Respondent's view that there is no any *prima facie* case that has been established before the Court in that respect.

On the 2nd principle on ***irreparable loss***, it is the Respondent's assertion that, to date there are some employees who have been suspended unlawfully for more than 15 years by the 2nd Applicant including himself. It is for that reason, the loss on his side is irreparable and especially if the instant Application is granted, then the loss will be massive as they have already suffered the consequences out of the Applicants' unlawful acts. It is for that reason the Respondent is of the view that the 2nd test lies on their side and not to the Applicants herein.

On the balance of inconvenience, the Respondent submitted that, as he is a Church Servant, as of now he has already suffered and encountered a lot of inconveniences, from the Applicants' acts. As for such, it is the Respondent's concern

that he is the one who have been encountered a lot of inconveniences more than the Applicants in comparison.

Concluding his submission, the Respondent prayed the court to dismiss the entire Application for being meritless.

At this juncture, let me start determining this Application by expressing the Principles governing an order for temporary injunction which are generally founded under three main grounds.

Firstly, that the Applicant should show a *prima facie* case with a probability of success against the Respondent. **Secondly**, the Applicant should prove that if the application is refuted the injury that would be suffered would be irreparable by way of damages. The **third** principle is on the balance of convenience; that the Applicant would stand to suffer greater hardship if the order is rejected than what the Respondent would suffer if granted.

It is the fact that, these principles were well established in a number of cases including case of ***ATILIO VERSUS MBOWE 1969 HCD 284***. Others are ***GIELA VS CASSMAN BROWN & CO LTD (1973) E.A 358, AND GAZELLE TRUCKER LTD VERSUS TANZANIA PETROLEUM DEVELOPMENT CORPORATION, Civil Application No. 15 of 2006*** to mention a few.

The above principles were also expounded in the book of ***SOHONI'S LAW OF INJUNCTIONS; Second Edition: 2003*** at page 93 where the learned Author expounded:

"The principles on which the exercise of discretion rests are well settled. The said principles have been outlined as hereunder. They are-

- (i) In the facts and circumstances of each individual case there must exist a strong probability that the petitioner has an ultimate chance of success in the suit. This concept has been otherwise expressed by saying that there must be a prima facie case.*
- (ii) As the injunction is granted during the pendency of the suit the court will interfere to protect the plaintiff from injuries which are irreparable. The expression irreparable injury means that it must be material one which cannot be adequately compensated for in damages. The injury need not be actual but may be apprehended.*
- (iii) The court is to balance and weigh the mischief or inconvenience to either side before issuing or withholding the injunction. This principle is otherwise expressed by saying that the court is to look to the balance of convenience."*

It has to be noted that, **all the three above principles must be met** before a temporary injunction can be granted.

Now in applying these principles to the case at hand, I will strictly confine myself with the above mentioned principles in its pure meaning as above illustrated in determining the matter at hand. To start with, the first issue to deal with is as to whether the Applicant has established a *prima facie* case.

Since at this stage of proceedings the Affidavit is the only evidence upon which the Application is pegged, of course the controversy can only be appreciated by traversing the **23** paragraphs in the Applicants' joint Affidavit therein. In the event therefore, I have decided to locate and quote **paragraphs 4, 5, 16 and 17** of the said joint Affidavit in this respect, where the same reads:

"4. That, on 19th day of June, 2021 the Respondent herein mentioned above unlawfully conducted a press conference at the second Applicant's Premise herein and released some defamatory and scandal statements against both Plaintiffs herein with intention to damage their reputation before the Public.

*5. That, everything that the Defendant stated before the press conference that was aired by the "**Darmpya TV You Tube Chanel**" on 19th day of June, 2021 up to the date of filling this application the said video has*

been viewed by One Thousand, Five Hundred and Seventy-Seven peoples worldwide (1,577).

16. *That, on 5th July, 2021 the Respondent herein again convened another press conference at the second Applicant's Premises without unjustifiable cause and spread to the Public the unpleased statements about the Applicants herein and the same is uploaded to the so called "Icon Online TV", whereas, up to the date of filing this application Five Hundred and Twenty-Three viewers had viewed the content.*

17. *That, in connection to that, from 17th July, 2021 to date, the Respondent herein without any justifiable cause or any colourful right has restrained the Employees and Leaders of the second Applicant including the members of the Body of Trustees by using force from not entering in the second Applicant's Premises located at Plot No. 1 Pugu Road (Currently Nyerere Road)."*

As said earlier, the Respondent has seriously opposed the Application through his Counter Affidavit. It suffices to say that the Respondent too through his submission in court strongly objected the Application claiming that the Application has no merits and that the same is unfounded.

Now, from the above the most important issue is whether the Applicant has managed to establish a ***prima facie*** case to

command the issuance of an order sought pending the final determination of the main case before this honorable court.

In determining this principle of establishment of a *prima facie* case or rather a serious question with a probability of success, the Applicant cannot escape from showing two things:

- i. The relief sought in the main suit is one which court is capable of awarding; and***
- ii. The Applicant should at the very minimum show in the pleading that in the absence of any rebuttal evidence he/she is entitled to said relief.***

In the case of ***AMERICAN CYANAMID VS. ETHICON [1975] I ALL E. R. 504***, it was stated that:-

"In order to grant a temporary injunction the court no doubt must be satisfied that the claim is not frivolous or vexatious."

In the same series, my learned brother Nsekela, J. as he then was in the case of ***AGENCY CARGO INTERNATIONAL VS. EURAFRICAN BANK (T) LTD, HIGH COURT, DAR ES SALAAM, Civil Case No. 44 of 1998 (unreported)*** when explaining what the Applicant is required to show said:

"It is not sufficient for the Applicant to file a suit with claims. The Applicant must go further and

show that he has a fair question as to the existence of a legal right which he claims in the suit.”

The task then before me is to exhaust and measure out from the submission elaborated by the Applicants whether the court has been referred to the reliefs sought in the main suit in order to look whether the claims made have elevated a serious question/(s) for determination by the court. Of course in the instant principle my task is to look at the reliefs sought in the main suit and the claims made and see if they raise a serious question for determination by the court and then assess whether there is a justification for granting a temporary injunction. From the above, I am aware of the extent of proving whether there is a serious question for determination in this kind of Application that, **it is not conclusive evidence which is required but rather the facts as disclosed by the Plaint and the Affidavit** and so the standard of proof required would be somehow below the expected standard in full trials. See the case of ***SURYA-KANT D. RAMJI VS. SAVINGS AND FINANCE LTD & 3 OTHERS, HIGH COURT, Commercial Division Dar es Salaam, Civil Case No. 30 of 2002 (Unreported)***.

Now having careful gone through the facts disclosed in the Applicants' submission in chief in respect of the instant Application and 23 paragraphs of the joint Affidavit in support

of the Application, it is my considered view that the Applicants have managed through the above quoted paragraphs **4, 5, 16 and 18** to solicit a *prima facie* case to the main suit for the court to determine the controversy at hand. From the same also, I find that the Applicants have **at minimum managed to show at the very beginning of the pleadings that in the absence of some important answers to some matters**, that the Applicants are entitled to the reliefs sought.

For this reason, I will thus hold that **this condition has been satisfied.**

On the second condition which is that of suffering irreparable injury if the prayer for injunction is refused. I am mindful that the purpose of granting temporary injunction is to prevent irreparable injury befalling on the Applicant while the case is still pending.

The tangible issue in this principle is the phrase "*irreparable injury*". What is the irreparable injury? In the case of **KAARE VS. GENERAL MANAGER MARA COOPERATION UNION [1924] LTD [1987] TLR 17 Mapigano, J.** (as he then was) clearly stated that:

"The Court should consider whether there is an occasion to protect either of the parties from the species of injury known as "irreparable injury" before his right can be established....."

By irreparable injury it is not meant that there must be no physical possibility but merely that the injury would be material, for example one that could not be adequately remedied by damages."

It follows therefore that, the irreparable injury is an injury which could not be adequately remedied by damages. If I may take part of the pleading by the Applicants on this aspect under **paragraph 4** of the joint Affidavit, the same reads:

"4. That, on 19th day of June, 2021 the Respondent herein mentioned above unlawfully conducted a press conference at the second Applicant's Premise herein and released some **defamatory and scandal statements against both Plaintiffs herein with intention to damage their reputation before the Public."**

It is at this point I have decided to define the term **"defamation"** to weigh the loss if any to the Applicants in order to determine this Application.

The **Halsbury's Laws of England** Vol. 28 4th Edition, paragraph 10 page 7 defines a **defamatory statement** as:

"a statement which tends to lower a person in the estimation of right-thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or

to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business."

The term has also been reflected and deliberated in the Court of Appeal's Case, ***PROFESSOR IBRAHIM H. LIPUMBA VS ZUBERI JUMA MZEE (Supra)***, whereas defamatory statement was defined as:

"a deliberate, untrue, derogatory statement, usually about a person, whether in writing or orally".

According to the Applicants, the alleged defamatory statements towards them by the Respondent have lowered their reputation in the minds of right-thinking members of the society; and that they have been exposed to hatred towards the public. Further, for the 1st Applicant is to threaten his professional reputation; while for the 2nd Applicant, is to lower its reputation to the members of the church and to the general Public.

I am mindful of the fact that, one of the most important ingredients in proving that there being defamatory remarks is to show that the statement is one which tends to lower a person in the estimation of right-thinking members of the society generally, or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule; but this can only

be done during the hearing of the main case pending this honorable court.

As said earlier, at this stage, the Applicants are required only at the **very minimum** to show in the pleadings that in the absence of any rebuttal evidence they are entitled to said relief.

From the above definition and precedent, I have no query to find that the purported alterations and injury mentioned if not prohibited, will continue to cause the irreparable loss since under the Applicant's condition as pleaded, can't be adequately remedied by damages. In the event therefore, I proceed to find **the second condition likewise has been met.**

The last condition is on **balance of inconvenience**. Of course the question here is who is going to suffer greater hardship and mischief if the temporary injunction order is not granted.

On a comparative basis, as the second condition has been met, the sun follows the night and under the circumstances, the answer to this principle follows the second principle that it is the Applicants who are going to face more hardship if the temporary injunction is denied; unlikely to the Respondent who has denied to utter the defamatory words to the Applicants and further denied the same access to the 2nd Applicant's premises located at Plot No. 1 Pugu Road (Currently Nyerere Road).

On my comparative basis from the submissions for and

against, I proceed to find the **third condition has similarly been met.**

At this juncture therefore, having weighed the facts in totality, I will hold that this is a fit case for temporary injunction because all the conditions for granting temporary injunction have been met.

Consequently, **I hereby grant the Application accordingly.**

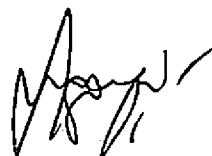
For avoidance of doubt and for the **interest of maintaining peace and tranquillity** between parties, the **Respondent, his Servant(s), Workmen, Agent(s) and or whosoever reporting to act on the Respondent's behalf are hereby and accordingly restrained from continuing to hold press conferences and releasing defamatory statements to the Applicants herein pending the hearing and final determination of the main case before this honourable court.**

Further, the **Respondent, his Servants (s), Workmen, Agents (s) and or whosoever reporting to act on the Respondent's behalf are again restrained to from preventing the second Applicant's Employees and Leaders including the Members of Trustees to enter to the second Applicant's Premises located at Plot No. 1 Pugu Road (Currently Nyerere Road) pending the**

**hearing and final determination of the main case, i.e,
Civil Case 116 of 2021 before this honourable court.**

I make no order as to costs.

It is so ordered.

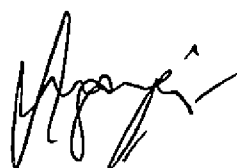


L. E. MGONYA

JUDGE

25/08/2021

Court: Ruling delivered in chambers in the presence of the 1st Applicant and Respondent in persons and Mr. Richard RMA, this 25th day of August, 2021.



L. E. MGONYA

JUDGE

25/08/2021