IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 230 OF 2022

CHAMA CHA WAKULIMA DODOMA ..... APPLICANT

VERSUS

TERUMO INVESTMENT LIMITED ..... RESPONDENT

RULING

6th June, 2022

ISMAIL, J.

The applicants seek to move the Court to grant temporary injunctive orders to restrain the respondent from exporting the containers, containing 17,500 metric tons of wheat swarms until determination of Civil Case No. 81 of 2022, pending in this Court. The value of the consignment is USD 1,050,000.

The application is supported by an affidavit sworn by Method Leonard Kagoma, learned counsel for the applicants, containing grounds on which the application is based. The contention by the deponent is that the respondent owes the applicants, and that the consignment is about to be

exported to Doha, Qatar, despite the fact that the applicants are yet to be paid. Should that succeed, the applicants aver, irreparable loss is to be suffered.

The respondent is opposed to the application. In the counter affidavit affirmed by Abdullah Mohamed Ahmed, respondent's principal officer, the contention that loss will be suffered has been rebuffed, as the applicants will be paid after the swarms are exported and payments in respect thereof are made.

At the hearing, Mr. Ndege, learned counsel who, together with Mr. Mathew Kagoma, represented the applicants argued that the application has met all the criteria set out in ***Atilio v. Mbowe*** (1969) HCD 284. He argued that it is only fair that an injunctive order be granted as they await the verdict in the pending suit.

In rebuttal, Mr. Abdul Kalamba, learned counsel for respondent, urged the Court to consider that the respondent has already made a booking and that the respondent stands to suffer an irreparable loss in case the consignment is destroyed or wasted due to delays in the shipping or delivery. Learned counsel argued that the respondent is a resident company whose

place of abode is known. He urged the Court to refuse to grant the temporary injunctive order.

Mr. Ndege argued, in rejoinder, that the arguments raised by the respondent's counsel do not constitute a deposition in the counter-affidavit. He argued that the contract is clear that in case of failure to pay the recourse is to return the swarms to the applicants at the respondent's costs.

The question to be determined is whether conditions exist for granting the prayer sought in the application.

It is a settled position that temporary injunction is a conservatory order or an equitable relief that is intended to insulate the applicant from an irreparable loss or injury that may occur in between the filing of the suit and having it determined. It maintains the state of affairs, as it obtains at the filing, while the parties await the settlement in the substantive claim by the plaintiff. Grant of this relief is upon demonstration that the applicant has a concluded right capable of being addressed order craved in the application (See ***Agricultural Produce Market Committee v. Girdharbhai Ramjibhai Chhaniyara***; AIR 1997 SC 2674).

Grant of this order is premised on the applicant's ability to cumulatively demonstrate that three key principles, postulated in ***Atilio v. Mbowe*** (1969)

HCD 284 exist in the matter. These are: demonstration of existence of a *prima facie* case; likelihood of suffering an irreparable loss; and that the balance of convenience should tilt in the applicant's favour. Accentuating the need for fulfilment of these conditions, the Court of Appeal came up with a fabulous reasoning, ***Abdi Ally Salehe v. Asac Care Unit Ltd & 2 Others***, CAT-Civil Revision No. 3 of 2012. It was held:

> *"The object of this equitable remedy is to preserve the pre-dispute state until the trial or until a named day or further order. In deciding such applications, the Court is only to see a prima facie case, which is one such that it should appear on the record that there is a bonafide contest between the parties and serious questions to be tried. So, at this stage the court cannot prejudice the case of either party. It cannot record a finding on the main controversy involved in the suit; nor can genuineness of a document be gone into at this stage.*
>
> *Once the court finds that there is a prima facie case, it should then go on to investigate whether the applicant stands to suffer irreparable loss, not capable of being atoned for by way of damages.* ***There, the applicant is expected to show that, unless the court intervenes by way of injunction, his position will in some way be changed for worse; that he will suffer damage as a consequence of the plaintiff's action or omission,***

> ***provided that the threatened damage is serious, not trivial, minor, illusory, insignificant or technical only.*** *The risk must be in respect of a future damage (see* ***Richard Kuloba Principles of Injunctions*** *(OUP) 1981)…."* [Emphasis added]

While the applicants have demonstrated the existence of a *prima facie* which is predicated on a contract entered by the parties, the implementation of which is allegedly shrouded in breach, two other principles have not been sufficiently demonstrated. I will explain.

Regarding an irreparable loss, the applicants have only shown that the respondent owes them and that she is yet to fulfil her part of the bargain as undertaken in the contract. While the contention of reneging on the undertaking is taken note of, and that substantial loss may be suffered should the respondent delay or fail to repay the sum owing, it has not been submitted, sufficiently, that whatever loss that may be suffered is irreparable, meaning that it cannot be atoned by any form of monetary compensation. The applicants have expressed fears that the respondent's officer may evade the liability because he is Kenyan. This fear is imaginary for, as the applicants' counsel has concede, the respondent company is resident and with a known place of abode. There cannot be any possibility

of evading the liability merely because one of the respondent's director is a foreigner.

In my considered view, the fear evasion is perceived, trivial, minor, illusory and sheer speculation that cannot be entertained.

The applicants have also failed to demonstrate that balance of convenience operates in their favour if the order is refused than it would were the orders to be granted. In my considered view, the respondent stands to be more inconvenienced if the application is granted than the applicant if the application is refused. This is in view of the danger, financial and reputational, that may be suffered if the application is not granted.

As I move to the tail end of the application, I feel inspired by the scintillating reasoning of this Court (Rutakangwa, J as he then was) in ***Charles D. Msumari & 83 Others v. The Director of Tanzania Harbours Authority***, HC-Civil Appeal No. 18 of 1997 (unreported), wherein it was held follows:

> *"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 the parties. They only exercise this discretion sparingly and only to protect rights or prevent injury according to the above stated principles, court should not be overwhelmed by sentiments however lofty or mere highly driving allegations of the applicants such*

as the denial of the relief will be ruinous and or cause hardship to them and their families without substantiating the same. They have to show 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 by an interim injunction and that if that was not done, they would suffer irreparable injury and not one which can possibly be repaired." [Emphasis added]

Consequent to the foregoing, I hold the view that the application has failed to meet the threshold for its grant. Accordingly, I dismiss it with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 6th day of June, 2022.

M.K. ISMAIL

JUDGE

06/06/2022