IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOSHI DISTRICT REGISTRY)

AT MOSHI

MISCELLANEOUS CIVIL APPLICATION No. 1 OF 2022

UDURU MAKOA AGRICULTURAL AND MARKETING COOPERATIVE SOCIETY LIMITED (UDURU MAKOA AMCOS) ..... APPLICANT

VERSUS

MAKOA FARM LIMITED ..... 1ST RESPONDENT

ELISABETH STEGMAIER ..... 2ND RESPONDENT

DR. LASZLO GEZA PAIZS ..... 3RD RESPONDENT

5/5/2022 & 8/6/2022

RULING

MWENEMPAZI, J:

The applicant has made an application for an order for Mareva Injunction praying to restrain the respondents, their agents, workmen or whoever acts on their behalf from removing properties in their properties in a piece of land registered under certificate of Title No. NF 443 in respect of Makoa Estate owned by the applicant herein named pending the evaluation of the properties in the applicant's farm in order to institute claims/damages

emanating from the breach of the contract by the Respondent; costs of the application be borne by the Respondent; and, that this Honourable be pleased to grant any reliefs that this Honourable court deems just and fit to grant.

The application is supported by an affidavit of SAELI MAGUE who is also the chairperson of the applicant's organisation. In it the deponent has averred that the applicant entered into a lease agreement with the respondents in 2014 for leasing a piece of land measuring 358 acres for various activities including tourism. A lease agreement has been attached as annexure UM1. The duration of the lease was agreed to be 25 years. In 2021 the applicants noticed breach of lease agreement committed by the respondents. Processes to remedy the situation commenced by holding extra-ordinary meeting to discuss the breach.

Those changes were discussed in an extra ordinary meeting held on 13th November, 2021 to discuss the breach by the 1st Respondent her agents, the 2nd and 3rd Respondents. It was resolved that the applicant should issue a notice of intention to terminate the agreement. It has been attached to the affidavit and marked UM-3. By virtue of paragraph 3 there is a list of items which the applicant alleges to have been breached and has listed in the notice as follows: -

> *".... The following are the terms and conditions of lease agreement which we are of the settled opinion that have been breached:*

a) *There is no development plan which was submitted by your company as stipulated by clause 5.5 of the occluded lease agreement, 2014 of which the absentia of the same may amount to nullify the lease agreement.*

b) *You were opposed to call an annual meeting between the months of April to the month of June each year but the same has not been complied with as required by the provision of clause 5.4 of the lease agreement, 2014*

c) *Our client has noted that your company has employed more than 35 individuals/employees but among the said employees none of them is from UDURU MAKOA AMCOS, thus contrary to clause 11.1 of the lease agreement, 2014.*

d) *Our client has observed that, all times during the existence of the lease agreement coffee farming should be maintained but to date our client finds no single tree in the lease property contrary to clause 14.2(d)(i) of the lease agreement, 2014.*

e) *That, no irrigation systems have been maintained by your company in the lease farm contrary to clause 14.2 (d) (ii) of the lease agreement, 2014.*

f) *That, you have failed to plant new trees for the catchment of the river valley contrary to the provision of clause 14.2(d)(iii) of the lease agreement, 2014*

g) *That, you have failed to rehabilitate coffee facility buildings in the farm contrary to clause 14.2(d)(iv) of the lease agreement, 2014.*

h) You have failed to conduct trainings to our client's members on farming activities as per clause 14.2(d)(v) of the lease agreement, 2014 (if it all any please submit to our client a list of the members you have trained from the AMCOS).

i) Our client has observed that, there is a sub-let agreement between you and other institution without prior consent of our client contrary to clause 14.2(f) of the lease agreement, 2014. eg, and the presence of Kilimanjaro animal crew is purely contrary to the agreement.

j) Our client has observed that, in the lease farm there are animals such as elephants which are dangerous to the community around the farm, thus we require your company to serve to the AMCOS a public liability insurance to that effect and licences of the same.

k) We have observed the cooperative social responsibility has never been paid to the AMCOS as agreed. If at all you have done the same furnish it to our client"

Apart from that, it is stated in paragraph 20 of the affidavit that all machineries and irrigation system in the leased land are damaged irreparably due to the action or neglect of the respondents, and that the applicant intends to conduct an audit and evaluation in order to determine the specific damages and loss caused by the Respondents.

In the averment the deponent has deponed that the applicant stands to suffer an irreparable loss if the orders sought won't be allowed given that

the principal officers of the Respondent who are second and the third Respondents are foreigners.

The respondents are vigorously opposing the application. A joint affidavit in reply has been filed. It is sworn by Eisabeth Stegmmaier and Laszlo Geza Raizs (the 2nd and 3rd Respondents respectively). In it the deponents state facts to counter allegations levelled against the Respondents. The deponents have stated that they and the applicant have been in a good contractual relationship for more than 20 years since first signing the lease agreement in the 1999 with by then Uduru Makoa Rural Cooperative society and now the applicant as herein named.

The 1st Respondent and the applicant entered into the 2nd lease agreement of 25 years in the year 2014. The review and executing the same was necessitated by changes in the applicant's operating regulations, rent increments and to accommodate additional activities to be conducted in the farm. The additional activities include tourism activities and establishment of animal orphanage centre in cooperation with TAWIRI (Tanzania Wildlife Research Institute)

In general, they deny to have breached the lease agreement. They are unaware of the Extra Ordinary meeting dated 13/11/2021 and in their view, the applicant is looking for unjustifiable ways to end the lease agreement. According to paragraph 8 of the affidavit in reply the respondents have listed a number of events which in their view were occasioned with a view to unlawfully terminate a lease agreement whereby on the 21st January,

the principal officers of the Respondent who are second and the third Respondents are foreigners.

The respondents are vigorously opposing the application. A joint affidavit in reply has been filed. It is sworn by Eisabeth Stegmmaier and Laszlo Geza Raizs (the 2nd and 3rd Respondents respectively). In it the deponents state facts to counter allegations levelled against the Respondents. The deponents have stated that they and the applicant have been in a good contractual relationship for more than 20 years since first signing the lease agreement in the 1999 with by then Uduru Makoa Rural Cooperative society and now the applicant as herein named.

The 1st Respondent and the applicant entered into the 2nd lease agreement of 25 years in the year 2014. The review and executing the same was necessitated by changes in the applicant's operating regulations, rent increments and to accommodate additional activities to be conducted in the farm. The additional activities include tourism activities and establishment of animal orphanage centre in cooperation with TAWIRI (Tanzania Wildlife Research Institute)

In general, they deny to have breached the lease agreement. They are unaware of the Extra Ordinary meeting dated 13/11/2021 and in their view, the applicant is looking for unjustifiable ways to end the lease agreement. According to paragraph 8 of the affidavit in reply the respondents have listed a number of events which in their view were occasioned with a view to unlawfully terminate a lease agreement whereby on the 21st January,

2021 the Assistant Registrar of Cooperative Societies issued a letter to the applicant requiring them to call off their move to terminate the lease agreement with the 1st Respondent. This is clearly shown in the letter from Registrar of Societies to the Chairman, UDURU AMCOS with reference No. 54/247/03/81 dated 21st January, 2022. According to that letter, paragraphs 3, 4 and 5 are relevant for the reasons which will be unveiled herein below. For now I wish to quote the letter:

> *"3. Ofisi ya Mrajisi Msaidizi Makoa kupitia notisi husika pamoja na mkataba wa ukodishaji uliofanywa na kubaini kuwa yapo mambo mengi yaliyokiukwa katika kufikia hatua ya kuvunja mkataba husika. Kwa mujibu wa barua yenu, ni dhahiri kuwa upo mgogoro katika Mkataba wa ukodishaji uliosainiwa tarehe 19 Septemba, 2014 kwa kipindi cha miaka 25 hivyo unatarajiwa kufikia kikomo tarehe 18 Septemba, 2039.*
>
> *4. Vipengele 17 na 23 vya Mkataba wa ukodishaji vimeweka utaratibu wa kuzingatia endapo kutatokea mgogoro wowote kwenye mkataba wa ukodishaji na masharti ya vipengele hivi hayakuzingatiwa wakati wa kuvunja mkataba husika. Kipengele cha 16.2 cha mkataba hakiwezi kutekelezwa peke yake bila kuzingatia masharti ya vipengele vingine vya mkataba. Ikumbukwe kuwa kanuni za vyama vya ushirika za mwaka 2015 Kanuni ya 83 imeweka wazi kuwa migogoro yote inayohusisha*

vyama vya ushirika itasulihishwa kwa njia ya majadiliano na maridhiano kwa kuhusisha ofisi ya Mrajis wa Vyama vya usirika

5. Kwa kuzingatia ukiukwaji wa masharti ya mkataba na kanuni za vyama vya ushirika, Uduru Makoa AMCOS inaelekezwa kufanya yafuatayo:

i. Kusitisha mara moja utekelezaji wa notisi ya kuvunja mkataba uliyowekwa tarehe 17 Januari, 2022.

ii. Kuamrisha utaratibu wa kutatua mgogoro kwa kuzingatia masharti ya mkataba na kanuni za vyama vya ushirika.

iii. Kuwa na utaratibu wa kushirikisha ofisi ya Mrajisi wa vyama va ushirika katika kufanya maamuzi yanayohusiana na masuala ya uendeshaji wa chama chenu."

The Responds have then disputed the merits on other facts as to apology letter, assets entrusted to them and have also listed, investment plan of the leased property as per paragraph 18. In general, they are praying for dismissal of the application as it will prejudice them and their rights.

In the affidavit by the applicant in reply to the 2nd and 3rd Respondent's affidavit in reply to the applicant's application for Mareva Injunction the

deponent Saili Mague has deponed that there has never existed good contract relationship and that the 2nd and 3rd Respondent have been inviting other investors to the farm without the applicant's consent as required by terms of lease agreement, 2014. The main emphasis is on the breach of the contract. Without going further into the details, there are a number of issues raising an alert to the parties that something is not proper in the relationship created by the parties in the lease agreement of September, 2014.

The application was disposed of by way of written submission pursuant to the prayer by the parties and subsequent order of this court. The applicant being represented by Mr. Englebert Boniphace, learned advocate and the Respondents were being represented by Mr. Qamara Valerian and Salvasia Kimario, leaned advocates.

In the submission the applicant's counsel has prayed that the chamber summons and an affidavit be adopted to form part of the submission. Then the counsel for the applicant has submitted that the application has been made under the provisions of Section 2(1) and 2(3) of the ***Judicature and Application of Laws Act, Cap. 358 R.E. 2019*** which reads as follows:

> *2(1) Save as provided herein after or in any other written laws, expressed the High Court shall have full jurisdiction in Civil and Criminal matters.*
>
> *(2) N/A*

(3) *Subject to the provisions of this Act, the jurisdiction of the High Court shall be exercised in conformity with the Written Laws which are in force in Tanzania on the date on which this Act comes into operation (including the laws applied by this Act) or which may hereafter be applied or enacted and, subject thereto and so far as the same shall not extend or apply, shall be exercised in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the twenty-second day of July 1920, and with the powers vested in and according to the procedure and practice observed by and before Courts of Justice and justices of the Peace in England according to their respective jurisdictions and authorities at that date, save in so far as the said common law, doctrines of equity and statutes of general application and the said powers, procedure and practice may, at any time before the date of which this Act comes into operation, have been modified, amended or replaced by other provision in lieu therefore by or under the authority of any order of Her Majesty in Council, or by any Proclamation issued, or any Act or Acts passed in and for Tanzania, or may hereafter be modified, amended or replaced by other provision in lieu thereof by or under any such Act or Acts of the Parliament of Tanzania:*

Provided always that, the said common law, doctrine of equity and statutes of general application shall be in force in Tanzania only so far as the circumstances of Tanzania and its inhabitants permit, and subject to such qualifications as local circumstances may render necessary.

In their submission the applicant has submitted that since the Civil Procedure Code, Cap. 33 R.E. 2019 is not exhaustive, the High Court has power to grant the sought order under the cited provision of laws. The grounds on which the court has to rely are:

a) *That there must be a cause of action against the respondent which is justifiable in law.*
b) *That there is a risk and imminent risk of the respondent of removing her assets from the jurisdiction of this court thereby rendering nugatory the judgment which is applicant may obtain.*
c) *The applicant has made a full disclosure of all material facts relevant to the application.*
d) *The balance of convenience is on the side of the applicant.*

The counsel for the applicant has submitted that the cause of action in this application is the breach of contract which was concluded between the applicant and the 1st Respondent and the evidence can be gathered from the affidavit. As a result of breach, the applicant has sustained great loss. There are specific conditions which were agreed to be performed by the

respondent; and the respondent has not performed leading to loss. In submitting further to the points, the counsel for the applicant has stated that the respondents agreed to grow coffee in the applicant's farm which act has not been performed as agreed, erecting buildings without obtaining consent from the applicant contrary to agreement and a lot other breaches as shown in the affidavit together with attached annexures' including failure to employ indigenous people.

The applicant has come to realize that there are breaches of the terms and they are working to recover the loss incurred. As the steps to rectify the situation are going on, the applicant believes the respondent being foreigners they are likely to move their assets outside the jurisdiction of this court which act may hinder them from enforcing a judgement if at all it will be obtained against the respondents. Essentially this is the reason to seek an interim order of Mareva Injunction restraining the respondents from removing assets from the farm pending statutory proceedings. He has cited the case of **Barclays Johnson vs YNill (1980) 1 WLR 1259 at page 1264** and that of customs and **Exercise Commissioner versus Barclays Bank PLC (2005) 2 All ER 852** where in the same position was taken by the court in granting the order of Mareva injunction.

According to the counsel for the applicant, the Respondents have conducted a serious breach of the terms of the lease agreement concluded in 2014 which breach has caused loss to the applicant. He further stated that the applicant has been leasing the farm to other investors without consent of the applicant.

As to the disclosure of the material facts relevant to allow this court act on the prayers the counsel has submitted that is necessary as was held in the case of **Behbehani and Other vs Saelm and Others [1989] 2 ALL ER 143**. These facts are discernible in the affidavit and annexures to the affidavit and a reply affidavit to affidavit in reply be the respondent. In 40 acres of coffee, no mixed farming has been undertaken and the applicant has never been moved for the construction of buildings and a primary school in the applicant's farm; worse enough the respondent has never conducted any yearly meeting as required by the lease agreement of 2014. Communications made by the applicant to remedy the same has failed and the only means is to file a civil suit seeking the respondent to remedy the situation, by seeking compensation on loss incurred.

In the opinion of the counsel for the applicant, the balance of convenience is thus on the side of the applicant as was held in the case of ***Securities and investments Board versus Pantel SA and Another [1989] 2 ALL ER 673*** wherein it was held that:

> *"Where there was a strong arguable case that a company was under investigation by STB had been carrying on an investment business without authority in contravention of S. 3 of the 1986 Act, the court had jurisdiction to grant the orders for Mareva injunction.*

In conclusion the counsel has submitted on the matter at hand; that, the court has jurisdiction to grant the prayer for Mareva Injuction on three

conditions; **one,** if there is a serious trouble issue on the alleged facts and probably that the applicant will be entitled to relief thereof. **Two**, the courts interference is necessary so as to protect the applicant from the kind of injury which may be irreparable before his alleged rights are established. **Three**; on balance of continence the applicant stands to suffer more than the respondents in case the order is not granted, this was well demonstrated.

The court has to satisfy itself that there is damage between the parties on the cause of action and the applicant has *locus standi* to claim for his interests then the court has nothing rather than granting the order. He has cited the cases of ***Giella vs Kasman Brown [1973] EA 358*** and that of ***Chavda Vs Director of Immigration Services [1995] T.L.R 125***. In the latter case the court granted Mareva injunction awaiting expiration of the notice to sue and it was for the first time in Tanzania.

The counsel prays that they are seeking for an order of Mareva injunction awaiting the exhaustion of the statutory requirement under Regulation 83 of the **Cooperative Societies Regulations, 2015**. They thus pray that the orders sought in the chamber's summons be granted.

The counsel for the Respondents has submitted in reply that the order of Mareva injunction emanate from the case of ***Mareva comparing Naviera SA vs International Bulk Carriers SA. The mareva [1980] 1 ALL ER 213***.The court considered the order of freezing assets to the anticipatory case noting that the principle can only apply in special and proper case.

In our jurisdiction, the court has power to grant such injunction under Section 2(3) of the ***Judicature and Application of Laws Act, Cap. 358*** which braces the application of common law and equity in our jurisdiction. For such an injunction to issue, the court must be satisfied that there is no pending suit, it is an application pending obtaining a legal standing to institute the suit.

In the case of ***Daudi Mkwaya Mwita vs Butiama Municipal council & AG, Misc. Land Application No. 69 of 2020, HC at Musoma*** (unreported), Galeba, J at page 3-4 observed: -

> *"This application calls for serious pronouncement in the area of law. First, a mareva injunction cannot be applied or be granted pending a suit. It is an application pending obtaining a legal standing to institute a suit. A Mareva injunction may be applied where an applicant cannot institute a law suit because of the existing legal impediment for instance where the law requires that a statutory notice be issued before a potential plaintiff can institute a suit.*

In this case the applicant has failed to prove the existence of the legal impediment. The applicant has not shown that the application is pending obtaining a legal standing to institute a suit. Thus, if this Honourable court grants this application, then the same will be pending nothing on record. The counsel has also submitted that the principle to other kinds of injunctions apply to Mareva injunction. As propounded in the case of ***Atillio***

vs Mbowe [1969] HC D 284 three things must be available for an injunction to issue.

> **One,** there must be a serious question of law that would entitle the applicant to a relief.
>
> **Two,** the courts interference is necessary to protect the applicant against an irreparable injury
>
> **Three,** balance of convenience in that it has to be demonstrated that there will be greater hardship suffered by the applicant if the application is withheld.

All these conditions must be met for an injunction to be granted in an ordinary injunction as well as in Mareva injunction.

On the first point, the respondent has argued that the applicant has failed to substantiate and or demonstrate presence of triable issue. A *prima facie* case worth of consideration by the court which has a likelihood of the suit to succeed. The allegations that there has been breach of the contract have been denied. The respondents are insisting on the presence of good contractual relationship with the applicant for more than 20 years now since first signing of the lease agreement in the year 1999 as deponed by the 2nd and 3rd Respondent.

The counsel for the respondent has listed a list of long-term plan and achievements. The counsel has also referred this court to paragraph 18 of the joint counter affidavit which he earlier prayed the same to be adopted

and form part of the submission. In general, the respondents are arguing for the proposition that there is no way the Respondents may flee with the alleged assets and go back to their countries of origin taking into consideration all that they have accomplished here in Tanzania and that all the projects are yet to be accomplished by them. The fact that the respondents are foreigners does not pose any risk to the applicants.

Submitting on the 2nd and 3rd principles together the counsel for the respondents has submitted that the applicant has failed the test as to the averment that the applicant stands to suffer irreparable loss and that on the balance there will be greater hardship and mischief suffered by her if the injunction is withheld are merely casual and unsubstantiated hence incapable of forming a basis for a judicial pronouncement. The counsel has referred the case of the ***Trustees of Anglican Church Diocese of Western Tanganyika versus Bulimanyi Village council, Misc. Civil Application No. 01 of 2022, HC at Kigoma*** (unreported) F.K. Manyanda, J at page 10 where it was held that a statement on possible irreparable loss must be accompanied with tangible evidence and not mere statement of remote fear of loss.

According to the counsel for the respondent, the balance of convenience lies to the respondents. They will suffer irreparable loss due to the facts that principal officers of the 1st Respondent are foreigners is baseless and has no legal stand.

The counsel for the respondent has submitted that issuing a notice of termination of lease agreement by the applicant has substantially affected the Respondents' operation taking into consideration that the 1st Respondent was granted lease for a term of 25 years in 2014. The balance of convenience, consequently, lies on the respondent's favour. It is the argument by the counsel for the respondent that the business of the court in dealing with application of such kind is to dispense justice and not to act on convenience of the application which has been placed before it. The court has to exercise its discretion sparingly and only to protect the rights or prevent injury according to the principles stated above. In the opinion of the respondent the applicant has failed to demonstrate the three points in ***Attilio vs Mbowe*** **case** and that since they are necessary then the application should be denied. The respondent has argued on the authority of ***Leopard Net Logistics Company Limited versus Tanzania Commercial Bank Limited and 3 others, Misc. Civil Application No. 585 of 2021, HC at Dar es salaam***(unreported) where the court held that the requirements to demonstrate all the three criteria is mandatory and failure or omission to demonstrate any of them is fatal and attracts dire consequences on the outcome of the application.

The respondent has submitted further that public policy should be considered to make sure that an order should not be a tool to cause injury to the society or community at the sacrifice of an individual person. It has been submitted that the risk asserted by the applicant must accompany a clear demonstration by the solid evidence. For the argument the

respondent's counsel has cited the case of ***Ninemia Maritime Corporation v. Trave Schifffahrtsgesellschaft mbH & Co [1984]1 All ER 398*** where it was observed that it is not enough for the plaintiff to assert a risk that the assets would be dissipated. He must demonstrate it by solid evidence.

The counsel for the respondent has thus concluded that the facts deponed by the applicant in the affidavit are devoid of merit and therefore prays that the application be dismissed with costs.

In rejoinder the counsel for the applicant has submitted that basically the Respondent's counsel has failed to counter the applicant's submission in chief on the points raised. It is his opinion that the counsel has admitted them. The counsel for the respondent has also conceded to the fact that Mareva injunction doesn't need the existence of a pending matter in the court and the same was cemented by the provisions of law. The counsel for the applicant has also cited the case of ***Daudi Mkwaya Mwiga Vs. Butiama District Commissioner and Another,*** **Misc. Land Application No. 69 of 2020, High Court of the United republic of Tanzania -Musoma Registry** for the observation that conceding of this nature by itself concludes the fact that, the Applicant's application is proper before this court and the same ought to be granted.

It is also the position by the counsel for the applicant that the case of **Attilio vs Mbowe[1969]HCD 284** is distinguishable as the same is applicable where one seeks temporary injunction where there is a pending

matter in Court unlike the matter at hand which is on mareva injunction whose peculiarity is on a situation where there is no pending matter in Court. The application is intended to protect the applicant under a situation where properties are in danger of being alienated and wasted, while there is legal requirements to comply with before a suit may be instituted. In this case there is a legal requirement for the Regulation 83 of the Cooperative Societies Regulations, 2015 which is mandatory to be exhausted. The applicant could not leave her properties in danger. Hence to apply for the order as they did.

It is the submission by the counsel for the applicant that the application at hand has no effect of injuring the rights of the respondent. Instead, it is the applicant who will suffer an irreparable loss in case the order is not granted.

The applicant's counsel has also counter argued on the question on consideration of the public policy. It has been argued by the counsel for the applicant that argument fits more to the applicant whose membership consists of more than 600 members. Hence it is in the interest of justice the order be granted as prayed.

I have read the application and the submissions made by the parties. A lot has been submitted and I appreciate and comment counsels for both parties for their work done. Also, I understand each party had to act and try to be detailed in order to convince this court on its position. The record as a whole show clearly that there is no dispute that parties to this case have a relationship which was established by a lease agreement dated 2014. They

existed together for some time believing they are doing well until when the applicant noted breach of the contract and started to act to remedy the situation. However, the respondent is denying that a conflict exists. He is alleging peaceful existence with the applicant.

On a legal standing, a conflict with a cooperative society is subject to arbitration before opting for a suit. Only by doing so the applicant or the respondent may have a legal standing to sue the other party. In other words, the applicant being a cooperative society is subject to laws governing Cooperative Societies Act, 2013 [act No. 6 of 2013]. That law has its regulations and according to the regulations, no suit may be instituted by the applicant unless it has passed through compulsory arbitration as per Reg. 83 of Cooperative Societies Regulations of 2015. That is when it obtains a legal standing.

The application at hand is for mareva injunction and it is applied under Section 2(1) and (3) of JALO (358). The same is not accommodated in our statutes that is the reason for going to the common laws of England. Essentially the remedy under mareva injunction is intended to protect the applicant before obtaining legal standing to sue.

Parties have argued on the need to comply the conditions in the case of **Atillio Vs Mbowe**. However, the applicant has argued that the case is more fit for the temporary injunction not mareva injunction. The reasons are that in the present situation, there is no pending matter in court. The applicant who is the main complainant has not yet obtained the legal

qualification as the conflict has not yet been finalized in compulsory arbitration before the Registrar of Societies.

In my view, I believe there must be a cause of action as argued by the counsel for the respondent; there must be a need for interference by the court and that the balance of convenience must show that the applicant is likely to suffer. I think, the three conditions as per **Attitio vs Mbowe** must be qualified by the need stated above for the application to fit for issuance of Mareva injunction. The applicant must have not yet acquired a legal standing to sue, thus there is no pending matter in court. However, the applicant is at danger of not satisfying a judgement in case a suit is registered and judgement entered in his favour and the properties are alienated.

As to the presence of cause of action parties do differ but I have no flicker of doubt there is a dispute confirmed even by Registrar of Societies and was the basis of the letter by Registrar to stop the operation of the notice. I observed herein above that I will need to use holding in that letter when I referred to it and quoted the three paragraphs. Parties have a dispute and must be intervened by the court subject to available laws.

On the balance of convenience, the property, the subject of lease is a fixed one. The Respondent can move assets to other places or alienate and deprive the applicant of satisfaction of the judgement. For sure no pending suit is there but a requirement to acquire a legal stand to sue by the applicant. The legal standing is obtainable upon determination of arbitration

under Reg. 83 of CSR, 2015. I think the criteria under Section 2(1) and 2(3) of JALO, and **Attitio vs Mbowe** are met.

Therefore, in my opinion I am satisfied the applicant deserve grant of the application, which I proceed to grant it with costs.

Dated and delivered this 8th June, 2022.

T. M. MWENEMPAZI

JUDGE

Ruling delivered this 8th day of June, 2022 in the presence of the Amina Msangi, advocate for the applicant and Denis Maro, advocate holding brief Qamara Valerian Advocate and Salvasia Kimario, Advocate both for the Respondent.

T. M. MWENEMPAZI

JUDGE