THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. CIVIL APPLICATION NO. 18 OF 2022

HUSSEIN VAHAYE ..... 1ST APPLICANT

PHANUEL KATUMBA .....2ND APPLICANT

DANFORD MCHAMI .....3RD APPLICANT

EXAUD MWANJISI .....4TH APPLICANT

KENANI SANGA .....5TH APPLICANT

VERSUS

MBARALI DISTRICT COUNCIL .....1ST RESPONDENT

THE HON. ATTORNEY GENERAL .....2ND RESPONDENT

RULING

Date of last order: 18th July, 2022

Date of ruling: 21st July, 2022

NGUNYALE, J.

In this ruling the applicants have brought this application for maintenance of *status quo* against the respondents, it is made by way of chamber summons under section 2 (3) of the Judicature and Application of Laws Act [Cap. 358 R: E 2019], sections 68(e), 95 and proviso to Order XXXVII (1) (4) of the Civil Procedure Code [Cap. 33 R: E 2019] now R: E 2022. It is supported by an affidavit of Simon T.M. Mwakolo counsel for the applicants and joint affidavit of the applicants. The application is opposed

by all respondents through counter affidavits of Joseph Tibaijuka and Jackline Benedict Ngaiza, both learned State Attorney.

Briefly, it is alleged that the applicants together with other peasants are farmers of rice in various villages in Mbarali District which they transport to their ware-house or stores. The 1st respondent has introduced a cess or levy in every bag of harvested rice when is being transported to the ware-house or store. It is further alleged that the said cess/levy is economically oppressive and harmful to the applicants and other peasants.

In the counter affidavit it was alleged that levy/cess is collected as enacted in the law particularly Sheria Ndogo ya (Ada na Ushuru) Halmashauri ya Wilaya ya Mbarali G.N. No. 693 of 2010. It was further alleged that cess or levy is only applicable to farmers who producer rice at large quantity.

When the application came on for hearing, the applicants were represented by Simon Mwakolo learned advocate whereas the respondents appeared through Joseph Tibaijuka and Jackline Benedick Ngaiza, both learned state attorney. The application was disposed by way of written submission.

Mr. Mwakolo was the first to take the ball rolling he submitted that the respondents are collecting cess/levy from the applicants and other peasants who are not buyers of rice contrary to item 1 of the schedule to the Local Government Finance Act and item 3 of part eight to the schedule of G.N. No. 693 of 2019 which requires buyers to be charged 3% for a sack of 100 kilogram. He added that G.N. No. 180 of 2013 and 364 of 2013 was repealed by G.N. 693 OF 2019. He further submitted that the respondents are collecting the cess/levy which if not stopped by grant of interim order will cause financial loss.

Mr. Mwakolo restated the principles for grant of temporary injunction as expounded in the case of **Atilio v Mbowe** (1969) HC No. 284. Based on those principles he sought indulgence of the court to grant interim injunction by maintaining *status quo.*

In reply Mr. Tibaijuka strongly opposed the application on the ground that principles for grant of temporary injunction have not been satisfied by the applicants because economic loss anticipated by the applicant can be recovered by way of damage. He cited the case of **Mwakeye Investment Ltd v. Access Bank(T) Limited**, Misc. Land Application No. 654 of 2016, **Gwabo Mwansasu & Others v Tanzania National Road Agency & Another**, Misc. Land Application No 72 of

2020 and **Christopher Chale v Commercial Bank of Africa,** Civil Application No. 635 of 2017 (both unreported) to support the argument. He added that collection of levy/cess is in accordance with the law Sheria Ndogo ya (Ada na Ushuru) Halmashauri ya Wilaya ya Mbarali G.N. No. 693 of 2019. He further submitted that the applicant has employed a wrong form in challenging the law.

It was further submission that the applicant has not provided any documentary proof that they have been charged the levy /cess by the 1st respondent. Mr. Tibaijuka travelled through principles for grant of temporary injunction which he found not met by the applicants. He therefore argued the court to dismiss the application.

I have given due consideration to submission of both counsels. The only issue calling for my determination is whether the application is meritorious.

The court has jurisdiction to grant an injunction without a pending suit under section 2(3) of the Judicature and Application of Laws Act, Cap. 358 R.E. 2019. The power also stems under section 95 of the Civil Procedure Code [Cap. 33 R: E 2022] which provides for inherent power of the court where the issue is not specifically covered. This position was illustrated in the case of **Tanzania Electric Supply Company**

(TANESCO) v Independent Power Tanzania Limited (IPTL) and 2 Others [2000] TLR 324, where it was held;

> *'The Civil Procedure Code cannot be said to be exhaustive. It is legitimate, therefore, to apply, under section 2(2) of the Judicature and Application of Laws Ordinance, relevant rules of Common Law and statutes of general application in force in England on the twenty-second day of July, 1920, where the Code is silent. So, the High Court has jurisdiction in a proper case to grant an "interim injunction order" pending institution of a suit or in circumstances not covered by Order XXXVII of the Code.'*

The law on injunctions in this country is well settled with numerous authorities. The leading case in our jurisdiction is that of **Atilio v Mbowe** [1969] HCD No. 284. This case set principles which were later followed and adopted by this court and the Court of Appeal in the case of **Abdi Ally Salelhe Applicant v Asac Care Unit Limited & 2 Others,** Civil Revision No. 3 of 2012. The conditions for grant of temporary injunction are;

i. *The plaintiff must show a prima facie case with probability of success.*

ii. *That, the applicant will suffer irreparable loss if injunction is not granted, such loss being incapable of being compensated by an award of damages; and if in doubt;*

iii. *The balance of inconvenience in favour of the party who will suffer inconvenience in the event the injunction is or is not granted.*

The discussion which follows now will try to show the extent to which the applicants have passed or failed to pass through the three tests. I will limit myself to the affidavit, documents attached to it and the submissions. I will start with the first test. In this area, the court has to find if the applicants have established a prima facie case against the respondents. A cause of action that is sufficiently established by a party's evidence to justify a verdict in his favour provided that evidence is not rebutted by the other party. It is an assumption made by a court that if taken to be true unless someone comes forward to contest it and prove otherwise. The supporting affidavit of Mwakolo at para 6 show that the applicants and other peasants who are farmers are forced to pay cess /levy which ought to be collected from buyers of rice. The same is echoed under para 5 of joint affidavit of the applicants. They call this as being economically oppressive and harmful.

In reply the respondents through joint affidavit of Joseph Tibaijuka and that of Jackline Benedict Ngaiza at para 6, 7 and 5, 6 respectively alleged that the cess/levy is collected as per law under the Sheria Ndogo ya (Ada na Ushuru) Halmashauri ya Wilaya ya Mbarali G.N. No. 693 of 2019.

I have read the pleadings and submission. During reply submission Mr. Tibaijuka stated that the applicants has failed to prove that they are being

charged cess/ levy by the first respondent. I entirely agree with this argument, the applicants were supposed to prove that they are indeed peasants and they are charged cess /levy on the rice they transport. They ought to state in clear words, what will be their case against the respondents so as to put this court in a position to see if there is any prima facie case established. So, the applicants have failed to go through the first test.

The second test is on the irreparable loss, loss which cannot be compensated by an award of damages. I had a close look at the facts stated in the affidavit. I have also considered the counsels submission on this area. The applicants are peasants who are harvesting and transporting rice to their stores. This fact is not admitted by the respondent who in their submission stated they are collecting as per the laws by virtue of the applicant transporting in large quantity. Going through the affidavit or submission there is no any loss to be incurred by the applicants to be termed as irreparable loss. The applicants just stated that the collection of levies is economically oppressive to the applicants without elaborating how they are/will be affected. They are just paying cess/levy to the first respondent which can be easily claimed and

compensated should it be established in the intended suit. The second test is decided against the applicants.

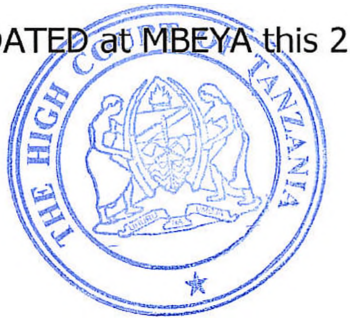
The third test is on the balance of inconvenience. The applicants have demonstrated that the act of collecting cess/levy by the respondents is economically oppressive and harmful to peasants. Can this be said the applicants are more likely to suffer should this court withhold the injunction order. Certainly no, the first respondent is collecting revenue in terms of levy of the farm produce to which she believes is legally allowable by Sheria Ndogo ya (Ada na Ushuru) Halmashauri ya Wilaya ya Mbarali G.N. No. 693 of 2019 which in essence is assessed when the applicants have collected rice and boarded it for transportation. It is a revenue collected by the respondent on rice in transportation from the farms within the council.

Now the applicants want maintenance of *status quo* which means they should be stopped from transporting rice to their store so that the applicant cannot collect levy. In my view this will not work as the applicants' rice will be left in the farm to roast. Having examined the facts closely granting temporary injunction in the circumstance of this case will not benefit either party. Taking cumulatively the circumstances of this

case maintenance of *status quo* will affect both parties. That said this test also fails.

From what I have endeavoured to discuss, I find the application devoid of merits and is consequently dismissed with costs. It is ordered so.

DATED at MBEYA this 21st day of July, 2022



D.P. Ngunyale
Judge