

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF MWANZA)  
AT MWANZA**

**MISCELLANEOUS CIVIL CAUSE NO. 02 OF 2022**

**SUPER SAMI LIMITED .....APPLICANT**

**VERSUS**

**ADMINISTRATOR GENERAL.....1<sup>st</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>nd</sup> RESPONDENT**

**MABUNDA AUCTIONEER MART CO.LTD.....3<sup>rd</sup> RESPONDENT**

**RULING**

*16/08/2022 & 18/08/2022*

**M. MNYUKWA, J.**

This Court is being moved by the applicant through an application which is brought under the certificate of urgency. The application is preferred under section 95 of the Civil Procedure Code, [Cap. 33 R.E. 2019] and section 2(3) of the Judicature and Application of Laws Act, [Cap 358 R.E. 2019].

The application is for grant of *Mareva* injunction restraining the 3<sup>rd</sup> respondent who is acting under the instructions given by the 1<sup>st</sup> respondent from conducting the public auction and sell the motor vehicles which is alleged to belong to the applicant. That, if the



respondents and his agents, workers and any person working under his instructions will not be restrained by the court to conduct the public auction and sell the motor vehicles which belong to the applicant, the applicant will suffer irreparable loss. He, therefore, prays for injunctions pending filing and hearing of a suit to be filed after the expiry of 90 days' notice.

The Application is made by way of a chamber summons supported by an affidavit sworn by Methusela Josiah Methusela. The said application is strongly disputed by a joint counter affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> respondents sworn by Clementina Rishela which raised a preliminary objections to the hearing of the application based on two points of law, namely: -

- 1. That the applicant has no locus stand to file the present application because there is no Board of Director's Resolution of the applicant to consent the filing of the present application.*
- 2. That the applicant was supposed to seek relief provided for under the Probate and Administration Act, Cap 352 R.E 2002 since the matter originates from the Probate Cause No 8 of 2018.*

On his part, the 3<sup>rd</sup> respondent also challenged the application by filling the counter affidavit sworn by Thodeus John Masawe which raised



a preliminary objection to the hearing of the application on five points of law, in which two points are similar to the preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> respondents and therefore I will not reproduce it and other three points of law raised are:-

- 1. The affidavit is defective for want of a proper verification clause which does not disclose source of information as to which information is based on the applicant's knowledge and which information is obtained from other sources.*
- 2. The present application is illegal since it is contrary to the Orders of this court issued on 7/10/2019 and 14/08/2020.*
- 3. This court is functus officio as there was a decision of this court issued on 5/3/2019 in the Probate Cause No 8/2018 in which properties of the deceased were listed and this court cannot go against the said decision.*

As per the initial order of the court, it was ordered that parties to be notified and the matter was scheduled for hearing on 4/4/2022. When the matter came up for hearing, the applicant's counsel informed this court that, he has only served the 2<sup>nd</sup> respondent and prayed to be given time to serve the 1<sup>st</sup> and 3<sup>rd</sup> respondents. This prayer was granted and the matter was adjourned up to 11/04/2022 for hearing and the



respondents were ordered to file a counter affidavit before the hearing date.

After being served, all respondents filed their counter affidavit and the points of the preliminary objections as I have indicated above. Since it is a trite principle of law that once a court is seized with a preliminary objection is required to dispose it first as per the practice of the court which is supported by the decision of the Court of Appeal of Tanzania in the case of **Khaji Abubakar Athumani vs Daudi Lyakugile T.A D.C Aluminium & Another**, Civil Appeal No.86 of 2018. This court was ready for hearing of the preliminary objection first, before going into merits or substance of the application in order to save time and expedite the matter. Fortunately, when all the respondents were ready for hearing of the preliminary objections, the applicant was not ready for reason that, he was served with the notice of the preliminary objection on the date of hearing. Therefore, the matter was adjourned to the next hearing date and the court ordered the status quo of the suit to be maintained. On the next scheduled day for hearing, the applicant's counsel was absent and the matter was lastly adjourned.



Finally, the matter came for hearing on 05/07/2022 in which both parties appeared and the preliminary objections were heard and the date for the Ruling was fixed.

In the course of composing the Ruling, the court noticed that the matter was overtaken by event as 90' days have lapsed and parties were called to address the court specifically on the matter. As the issue was raised by the court *suo moto*, the applicant prayed for a short adjournment for preparation, this prayer was not objected by the respondents. When the court resumed, the applicant's counsel got an excuse and the matter was adjourned.

On the day, when the matter was scheduled for the parties to address the court, the applicant's counsel was absent and therefore the matter proceeded *ex parte*.

Addressing first, Ms. Sabina Yongo representing the 1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that, the applicant brought Mareva injunction to this court on 24/03/2022 praying this court to grant injunction pending the expiration of 90 days' notice. The 90 days have lapsed, consequently, this application lacks legal stand before this court and she, therefore, prayed the same to be dismissed. She went on that, if the applicant still wishes to pursue the matter, she can file the main



case because 90 days of serving notice to the 1<sup>st</sup> and 2<sup>nd</sup> respondents have lapsed.

On his part, the 3<sup>rd</sup> respondent joins hands with the submission of the counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents and insisted that, the matter is overtaken by the event.

Having heard the counsels for the respondents, they are basically conceded on the issue raised by the court *suo moto* that the present application is overtaken by event since the statutory period of 90 days' notice had lapsed.

As I have earlier indicated, the present application is one of temporary injunction which is exceptional to the general rule of injunctions which must be filed when there is a pending suit. This kind of injunction which is filed while there is no pending suit is famously known as *Mareva injunction* which owed its origin from the landmark case of **Mareva Compania Naviera SA v International Bulk Carriers SA** [1980] 1 All ER 213.

In our jurisdiction the application for Mareva Injunction is brought under section 2(3) of the Judicature and Applications of Laws Act, Cap 358 R.E 2019 and section 95 of the Civil Procedure Code, Cap 95 R.E 2019 and there are a number of decisions which are delivered based on





the applications brought under the above provisions of law including the case of **Issa Selemani Nalikila and 23 others v Tanzania National Roads Agency and Another**, Land Application No 12 of 2016 and the case of **Daudi Mkwya Mwita v Butiama Municipal Council and Another**, Misc. Land Application No 69 of 2020.

In the present application, the applicant prayed for injunction pending the lapse of the statutory period of 90 days' notice. The said 90 days have now lapsed. Therefore, as it is conceded by the counsel for respondents, it is my firm view that this application do not have legal stand before this court as it is overtaken by event and for that reason, I don't have the power to proceed with the hearing and determining the merit of the application. Consequently, the application is hereby dismissed.

I make no order as to costs due to the relationship of the parties and based on the fact that, the matter was raised by the court *suo moto*.

It is so ordered.

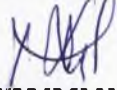


**M.MNYUKWA**

**JUDGE**

**18/08/2022**

**Court:** Ruling delivered in the presence of parties



**M.MNYUKWA**

**JUDGE**

**18/08/2022**