

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 302 OF 2021

STAR OIL TANZANIA LIMITED.....APPLICANT

VERSUS

ALCHEMIST TANZANIA

TRADING DMC.....1ST RESPONDENT

NMB BANK PLC.....2ND RESPONDENT

Date of Last Order: 24/05/2022

Date of Ruling: 03/06/2022

R U L I N G

MGONYA, J.

Before the Court is an Application for Temporary Injunction made **under Section 68 (e) and Order XXXVII Rule 1 (a), (b) and 2 (1), 4 and Section 95 Of the Civil Procedure Code Cap. 33 [R. E. 2019]**.

The Applicant seeks for an order of Temporary Injunction to restrain the 1st and 2nd Respondents, their Agents, Servants or any other person whomsoever acting under authority from making any payments and to transfer in anyhow, with letter of

Credit No. 206LC01210500001 LC opened by the Applicant in 2nd Respondent's Bank.

The Application is supported by an Affidavit sworn by the Applicant. The Applicant before this Court was represented by Mr. Msuya learned Advocate while the Application takes off *Ex parte* against the 1st Respondent, while and the 2nd Respondent is represented by Mr. Kikwasi Learned Advocate.

With leave of the Court the Application was ordered to be disposed off by way of Written Submissions of which I don't intend to reproduce but have thoroughly gone through the same and shall be considered in determination of this application.

The Application before this Court is on Temporary Injunction, of which the same is the creature of statute under **Order XXXVII of the Civil Procedure Code Cap. 33 R. E. 2019**. The Applicant has moved the Court by **Order XXXVII Rule 1 (a), (b) and 2 (1), 4 (supra)** as it appears in the Chamber Summons together with other supporting provisions.

A Temporary Injunction is a court order that is valid for the duration of the legal proceedings where the court orders a party to do or not to do something until the parties are heard in a trial when there's an emergency of some kind. For the court to issue a Temporary Injunction, the moving party must show that without the injunction irreparable harm will be caused and there

are no other proper legal remedies available to deal with the issue.

As the Application before the court is an Temporary Injunction prayer, it is well established that, there are guiding principles as which the Applicant has to meet for an order of Temporary Injunction to be granted. I will start by sating the said principles of which were established in a number of cases. Just to mention the few. The cases of **ATILIO VS MBOWE 1969 HCD 284, GIELA VS. CASSMAN BROWN & CO. LTD (1973) E.A 358, AND GAZELLE TRUCKER LTD VS. TANZANIA PETROLEUM DEVELOPMENT CORPORATION, Civil Application No. 15 of 2006.** The said principles are:

- 1. That on the facts alleged there must be a serious question to be tried by the Court and a probability that the Plaintiff Applicant will be entitled to the relief prayed for in the main suit;***
- 2. That, the temporary injunction sought is necessary in order to prevent some irreparable injury be falling Plaintiff/Applicant while the main case is still pending; and***

3. That, on the balance, greater hardship and mischief is likely to be suffered by the Applicant if temporary injunction is withheld than may be suffered by the Defendant if the Order is granted.

It is the position of the law that all the above principles must be met by the Applicant for an order of Temporary Injunction to be granted.

With regards to the Application before this Court for the first principle that, ***on the facts alleged there must be a serious question to be tried by the Court and a probability that the Plaintiff /Applicant will be entitled to the relief prayed for in the main suit***, the Applicant has through **paragraph 14.0, 15.0, 18.0 and 19.0** of the sworn Affidavit reiterated the issues that arose out of business with the 1st Respondent. It is from the contents of the said paragraphs that it suffices to say the Applicant has raised a series of issues from the paragraphs listed above and the entire Affidavit that establishes a *prima facie* case for determination. The issues in question are that at the time of making the Agreement between the parties, the Respondent agreed to transport what was the subject matter to the Agreement. However, the Respondent has defaulted in honouring the Agreement even after being

reminded several times. That the Respondent is therefore liable to fraud, misrepresentation, and some continuous breaches and fraudulent acts by the Respondent. Having all these stated in the contents of the Affidavit, I find that **the first principle as to the order sought by the Respondent has been met.**

For the second principle that, ***the temporary injunction sought is necessary in order to prevent some irreparable injury befalling Plaintiff/Applicant while the main case is still pending;*** the Applicant has claimed that, there is a danger to suffer irreparable loss if the prayer sought is not granted. The danger is found at paragraph **21.0** and **22.0** of the Affidavit where the Applicant states that if the Application is not granted, irreparable loss will be suffered since the 1st Respondent is a foreign Company with no assets in Tanzania. If the latter manages to discount the either of redit (LC) without honouring the Contract, it will be cumbersome and almost impossible to recover the value of the LC. It is understood that granting Temporary Injunction is not to prevent irreparable loss *per se* but also to maintain the *status quo* when the Case is still pending. Taking into account the circumstances for the 1st Respondent's status as demonstrated above, and the amount of money in this transaction, it is obvious that, if the Application is denied, the applicant will suffer irreparable loss. From the above

explanation, it is my finding from the given circumstances that the **second principle also succeeds.**

Referring to the third principle that, ***on the balance, greater hardship and mischief is likely to be suffered by the Applicant if temporary injunction is withheld than may be suffered by the Defendant if the Order is granted,*** the balance of convenience herein has been demonstrated at paragraph **24.0** and **25.0** of the Applicant's Affidavit. In questioning as who is to suffer greater hardship and mischief between the parties herein it is likely and it goes without say that, in a given circumstances, the Applicant will suffer greater hardship if the Application is withheld. **This principle to has been fulfilled.**

Having weighed the facts stated in this Application by both parties, I am of the firm view that this Application is fit for an Order of Temporary Injunction to be granted for all the three principles for granting Temporary Injunction have succeeded.

In the event therefore, **the Application for Temporary Injunction is accordingly prayer granted.**

It is so ordered.




L. E. MGONYA

J U D G E

03/06/2022

Court:

Ruling delivered before Honourable **J. Luambano DEPUTY REGISTRAR** in the presence of Ms. Regina Kiumba learned Advocate for the Applicant who also holds brief for Mr. Victor Kikwasi Advocate for the 2nd Respondent; and Mr. Richard RMA on 3rd June, 2022.




L. E. MGONYA

J U D G E

03/06/2022