

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

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 44 OF 2022

(Originating from Misc.Appl No. 584 of 2021 & Civil Case No. 176 of 2021)

COSMOS PROPERTIES LIMITEDAPPLICANT

VERSUS

EXIM BANK (TANZANIA) LIMITED 1st RESPONDENT

WALTER BUXTON CHIPETA AS RECEIVER & MANAGER.....2nd RESPONDENT

RULING

MRUMA,J.

The Applicants Cosmas Properties Limited instituted Civil Case No. 176 of 2021 against the 1st Respondent Exim Bank (T) Limited for the following orders:

1. A declaration that the conducts of the Respondent (the Defendant in that suit) are unjustifiable and unlawful.
2. A declaration that the Defendant's refusal to swap the title caused and frustrated the Applicant's loan repayment plan and opportunity.

3. A declaration that the Responding conduct complained of are being made in bad faith to deny the Plaintiff's right to disposes and obtain better price.
4. Payment of Tshs 1 billion as general damages
5. Payment of Tshs 1 billion as.
6. Costs of the suit.

The suit was presented for filing on 2nd November 2021. While the suit was pending the Applicant did on 15th November 2021 filed Miscellaneous Civil Application No. 584 of 2021 seeking for two injunctive orders divided into two parties, namely

1. An ex- parte interim order – to restrain the Respondents, its directors employees servant agents and/ or assignees and whomever is appointed or instructed by any Respondents from in any manner surveying, connecting, demolishing, cancelling and disposing, transferring any of the titles (mentioned) till determination of this application.

Inter parties:

2. An order for temporary injunction

Restraining the Respondent, its directors, employees, Servant agent and or assignees and whom sover is appointed from in any manner surveying, demolishing, cancelling and disposing transforming any of the titles (mentioned).

As this matter was initially before my sister in bench Itemba J, she heard the ex- parte part of the application and granted an interim order as prayed. Following her transfer to another working station, the matter was re- assigned to me and I heard the 2nd part of the application "***interparties***", which was an application for temporary injunctive orders which were denied.

Now the present application which is registered as Misc. Civil Application No.44 of 2022 was instituted on 18th February 2022 and the Applicants are seeking for orders that;

- i. The 1st Respondents officers, Mr. Jaffar Mtundu, Head of legal, Mr. Edmound Arason Newasaga, Chief finance officer. Mr. Shani Kimwaga and the second Respondent (walther Buxton Chipeta) to show cause why they should not be committed as civil prisoners for their wilful disobedience of the lawful court order (Hon. Itemba,J) dated 18th November 2021.

- ii. That the 1st Respondent's Chief Executive officer Mr. Jaffar Matundu, Head of Legal, Mr Edmund Aron Mwasaga, Chief Finance Officer Mr. Shami Kinawaga and the 2nd Respondent should be convicted and committed to civil imprisonment for Respondents' and their wilful disobedience of the lawful court Order (Hon L.J. Itemba) dated 18th November 2021.

As stated herein before, this court (Hon. Itemba,J) heard and granted an interim temporary injunction orders pending determination of the application (inter parties) of the application for temporary injunction.

Application for temporary injunction orders was heard by this court and ruling was delivered on 21st April 2022 denying the application.

The question for determination now is whether in view of the ruling of this court denying issuance of temporary injunction orders, this same court can enforce consequential orders resulting from an interim orders?

An interim injunction order is a provisional measure or order sought during legal proceedings before trial or determination. In law an interim injunctive order which is expressed to be granted pending the hearing and determination of the application for temporary injunction does not expire until the said application is determined and further order, are given. In

this case the application for temporary injunction was conclusively determined on 21.4.2022. That is the day when the interim orders expired. As it is now expired it cannot be enforced.

That said, this application is dismissed for reason that it has been overtaken by events. In the circumstance (that the application is dismissed simply because it has been overtaken by event) each party shall bear own costs.




A. R. Mruma

Judge

30/5/2022

30/5/2022

Coram: A. R. Mruma

For the Applicant: Mr Well Well for the Applicant

For the 1st Respondent

For the 2nd Respondent Ms Regina Kiumba for Respondent

Cc: Delphina.

Mr. Well Well:

Last time we appeared before you, we were ordered to file our submissions but we were not able to file our reply to c/affidavit as earlier ordered as earlier ordered, the reason was that person who was responsible to swear that affidavit was not within reach consequently we could not proceed to file our submissions as ordered. On 8.4.2022, I wrote to the court and copied the Respondent's counsel informing the court the situation I was facing. In the circumstances I pray for more time to file the requisite reply and for rescheduling order for filing written submissions. I humbly submit.

Ms. Regina:

It is true that we were served with the letter mentioned by7 the counsel explaining why they failed to file the reply to counter – affidavit

and consequently the submissions. We have nothing to add, we leave it to the court.

COURT:

Unfortunately the letter Mr. Well Well is talking about is not in the record. The only letter which is on the record is a letter addressed to the Deputy Registrar with reference No. TMA/ HAK/MARK/1039/letter – 2/EAM/23 from Trust Mark Attorneys dated 22 February 2022 requesting for perusal of Misc. Civil Application No. 584 of 2021 between Cosmos Properties Limited. As court did not have a copy of the said letter it proceeded to compose its ruling basing on the material facts presented before it. I will refuse the adjournment of the matter and proceed to deliver the ruling.



A. R. Mruma

Judge

30/5/2022