

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. LAND APPLICATION NO. 4 OF 2022

SOUTHERN AFRICA EXTENSION UNIT (SAEU).....APPLICANT

VERSUS

KIBABI S/O BUILDING CONTRACTOR CO. LTD.....1st RESPONDENT

DEUS S/O KIBABI NTABHINDI.....2nd RESPONDENT

R U L I N G

21/02/2022 & 28/02/2022

L.M. MLACHA, J.

The applicant, Southern African Extension Unit (SAEU) filed an application against Kibabi Building Contractors Company Limited and Deus Kibabi Ntabhindi seeking a temporary injunction restraining/ordering the respondents, thier agents, workmen, assignees or any other persons working on that behalf, from operating and running daily activities of the suit property and engaging in all financial activities of the school, ordering

the respondents to handle over all financial matters and accessories to the plaintiff for proper operation of the suit property, restricting the respondents from entering the suit property premises pending hearing of and determination of the main suit (Land case No.5 of 2022). They also prayed for costs and any other relief the court may deem appropriate, just and equitable to grant.

The application is supported by the affidavit of Mathias James Mtangi, the Deputy Director of the applicant. The affidavit has several annextures namely; annexure BS-B, a letter written by Kibabi Building contractors Ltd dated 1/2/2019 addressed to Mkurugenzi Mkuu Southern Africa Extension Unit with the heading 'YAH: KUOMBA MKATABA MPYA BAADA YA KUMALIZA MKATABA WA PILI WA 2014-2018', annexure BS-C a letter dated 30/10/2021, coming from Southern Africa Extension Unit addressed to Mzee Deus Kibabi, Meneja wa Shule, Shule ya Sekondari Buseko Hill, headed 'YAH: KUKUHIMIZA KUTEKELEZA AHADI UNAZOTOA KUHUSU MKATABA WA SAEU; TAARIFA ZA SHULE NA KUTUMIWA VITABU', annexure BS-D, 'TEACHER'S AND NON TEACHING STAFF BUSEKO HILL SECONDARY SCHOOL, EMPLOYEE'S PAYROL JANUARY 2021, annexure

BS-E, MANAGEMENT AUDIT REPORT FOR THE YEAR ENDED 31 OCTOBER 2013 and annexure BS-F, NMB CUSTOMER ACCOUNT STATEMENT.

The respondents filled a joint counter affidavit sworn by Dotto Banga who is their advocate. Attached to it is annexure KBCC-1, Property Management Agreement between Southern Africa Extension Unit (SAEU) and Kibabi Building Contractors Company Ltd BISEKO HILL SECONDARY SCHOL – Kasulu 2014 and annexure KBCC-2 collectively (a letter dated 2/12/2021 addressed to Mzee Deus Kibabi headed KUKUTEUA KUWA MWELEKEZI MKAZI WA KUDUMU WA SAEU KASULU NA KUKAIMU NAFASI YA MENEJA WA SHULE YA SEKONDARI BISEKO HILL KUANZIA JANUARY 2022, a letter dated 3/12/2014 addressed to Mkurugenzi Mtendaji Southern Africa Extension Unit OMBI LA KUOMBA KIBALI CHA KUFANYA MAZUNGUMZO NA VIONGOZI WA MAKANISA JIRANI ILI KUBADILISHANA VIWANJA KWA MATUMIZI YA SHULE and a letter dated 29/12/2014 addressed to Mkurugenzi, Kibabi Building Contractors Company Ltd KIBALI CHA KUENDELEZWA MAZUNGUMZA NA MAKANISA JIRANI ILI KUBADILISHANA VIWANJA KWA MATUMIZI YA SHULE YA SEKONDARI BUSEKO HILL.

The applicants were represented by Mr. Eliuta Kiviyiro while the respondents had the services of Ms. Edna Aloyce and Ms. Dotto Banga. Hearing was done through the virtual court services under the Judicature and Application of Laws (Remote Proceedings and Electronic Recording) Rules, 2021 GN 637/2021.

It was the submission of Mr. Eliuta Kiviyiro that an injunction is necessary because problems in the management of the school may cause students to fail to get their education. Referring to para 6 of the affidavit, he said that the second respondent was the manager under a contract which expired in 2018. Counsel proceeded to submit that para 7 shows that the applicant had been reminding the second respondent to sign a new the contract but he could not sign it to get the mandate to run the school. Further, counsel submitted, the respondents started to advertise the school and employ people in a different name. The school was called Southern Africa Extension Unit (SAEU) Buseko Hill Secondary School but the advertisements made by the second respondent, as per para 8 of the affidavit, call it Hope International Church Buseko Hill Secondary School. He added that all this was done without consent of the owner of the school who is the applicant. Referring to the case of **Atilio v. Mbowe** [1969]

HCD 284, counsel submitted that, if an injunction will not be granted the applicant will suffer loss.

Submitting for respondent, Ms. Dotto Banga told the court that the relation between the parties is that of an owner and an agent. The agent had a duty to run the school which was the basis of their relation. He was running the school under a 5-year contract which he sought review. He was not a manager but an agent, counsel submitted. Based on para 6 of the counter affidavit, counsel submitted that the applicant did not need any discussions and modifications of the contract as required by para 14 (3) of the contract which requires the owner and the agent to sit and discuss.

Counsel submitted that the respondents are the ones who are running the school so there was nothing wrong in making the advertisements or employ people. The agent has also invested his assets with the view of developing it as per the contract. The applicant was only getting profits, he had no the day to day control of the school.

Referring to para 9 of the counter affidavit, counsel submitted that the suit land is not in any danger. The respondents who also invested in the school cannot cause damage to the school. She said that the respondents have

made some developments in the school with the consent of the applicants. They cannot damage the school which they have improved. Counsel added that any change of management will affect the peace of mind of students.

Ms. Edna Aloyce added that the case of **Atilio v. Mbowe** (supra) does not support the applicants because the respondents are the ones who will suffer more in the event the injunction is granted because they have invested their money for this academic year. She added that the case was filled without referring the dispute to arbitration as required by para 24 of the contract. She added that Mathias James Ntangi had no power to swear the affidavit as Deputy Director. If he had the position, he could attach the minutes, counsel submitted.

Mr. Eliuta Kiviyiro made a rejoinder and joined issues with the counsel for the applicants. He argued the court to grant the application.

Going through the records I have come across that the following facts which are not disputed; **one**, the school is owned by the applicant but is under the management of the second respondents through a management contract. **Two**, the management contract has expired since 2018 and

efforts to get a second contract could not be successful due to difficulties between the parties. **Three**, that, the school is still under the management of the respondents despite differences between them and absence of a new contract.

Now, the owners of the school want the school to come to them pending hearing and final determination of the main suit and the agents are resisting. The owner is saying that the contract has expired and that, despite failure to renew it, the respondents are still in occupation and are taking steps against their interests; to wit, advertising the school in the name other than the original name and proceeding to employ people in the new assumed name. Issues of finance are also not clear. They have the view that if the injunction will not be granted, their interests in the main suit will be affected; they will suffer more than the respondents who are mere agents. The respondents are saying that they have invested in the school and cannot allow it to be damaged. Further, the students will be affected if management is changed.

I have tried to measure the balance of inconveniences between the two parties. I think that the applicants will suffer more if the injunction will not be granted than the respondents because they are the owners and have a

big interest than that the respondents. Further, there is a danger of the respondents using the period in between to misappropriate the funds or run the school in a way which will affect the applicants due to the conflicts. I agree with them. My perusal of the available records could not get any hint of investment on the side of the respondents other than a word of mouth. I think that in the absence of a subsisting contract between the parties which could allow the respondents to continue to run the school, it is better and safer to handle everything to the applicants pending hearing and final determination of the main suit.

That said, the application is granted as under;

1. The respondents are directed to handle the school management (including assets and finance) to the applicant with immediate effect.
2. The respondents are restrained to do anything in connection with the school till final determination of Land case number 5 of 2022 between the parties.
3. Costs in Course.
4. It is ordered so.



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L.M. MLACHA

JUDGE

28/02/2022

Court:

Ruling delivered in through virtual court services in the presence of Mary Peter Milali for the applicant who was at Kasulu and Doto Banga for the respondents who was at Kigoma.



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L.M. MLACHA

JUDGE

28/02/2022