

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO.480 OF 2022

***(Arising from Civil Case No.189 of 2022 High Court at Dar es
Salaam District Registry)***

WHITE STAR INVESTMENT LTD.....APPLICANT

VERSUS

PRIME FEI SHANG TRADING SARI.....1ST RESPONDENT

FATMA HASSAN2ND RESPONDENT

RULING

Date of last Order: 14/11/2022

Date of Ruling: 17/11/2022

POMO, J

This Application is brought by the applicant in this court applying for temporary injunction against the Respondents pending hearing and



determination of Civil Case No.189 of 2022 before this court. The injunctive orders sought are as follows. **One**, that the respondents' cargo of logs on trucks of the Applicant and on transit from the Democratic Republic of Congo (the DRC) for shipment to China, Dar es Salaam port, be detained / attached and placed in detention/custody of Tanzania Revenue Authority - customs department, inland Containers Depot (ICD), pending hearing and final determination of the suit or effecting payment or otherwise as may be reached out by the parties. **Two**, the costs of this application and detention charges of the cargo at customs Inland Containers Depot (ICD), customs department, Tanzania Revenues Authority be provided for by the Respondents, and **three**, any other relief(s) this court may deem fit to grant.

On 31st October, 2022 when the matter came for hearing, the Applicant was represented by Mafuru Mafuru, the learned advocate while the Respondents appeared through Kung'e Mabeya, the learned advocate too. Mr. Kung'e prayed for time to file the counter affidavit and thus asked hearing be adjourned to another date the prayer which was granted by this court and ordered him to have filed the counter affidavit on or before



9/11/2022 and hearing to proceed on 14/11/2022. Despite such extension of time, the respondents didn't file the counter affidavit

When this application was called for hearing on the scheduled 14th November, 2022 the Respondents defaulted appearance in court while the Applicant appeared represented by Mafuru Mafuru, the learned counsel. Due to such non-appearance by the Respondents without notice, I ordered the hearing of the Application to proceed *ex parte* against them.

Arguing the Application, Mr. Mafuru started by adopting the affidavit in support of it and submitted that under paragraphs 13; 14; 15 and 13 of the affidavit the applicant has explained the respondents' cargo of logs are on transit from DRC to China via Dar es Salaam Harbour in Tanzania and that all the Applicant's trucks transporting the said cargo of logs are currently within the jurisdiction of this court, Dar es Salaam for that matter, adding that the respondents' logs consignments are under supervision of the Tanzania Revenue Authority (the TRA) as is so stated under paragraph 14 of the affidavit in support of the Application

It was his further submission that the Applicant do not know if the Respondents have any properties in Tanzania which can satisfy the decree



should Civil Case No. 189 of 2022 pending before this court be determined in the Applicant's favour. That, under paragraph 15 of the affidavit the Applicant has demonstrated existence of triable issue in the pending suit and has shown inconveniences the Applicant is likely to suffer should the injunction sought be denied by the court. It is his further submission that logs are not perishable goods therefore can be transported anytime after determination by the court of the rights of the parties herein in the said pending Civil Case No.189 of 2022. That the respondents are derogatory in character in that under paragraph 3 of the affidavit they engaged the Applicant to transport the logs since July, 2022 but until October; 2022 they were yet to allow the logs cargo to be transported as shown under paragraph 12 of the affidavit in support of the Application. They delay deployed is to the detriment of the Applicant who are yet to be paid to date despites transporting the said Respondents' cargo of logs from DRC to Dar es Salaam. In the end Mr. mafuru, the learned counsel, referred this court to the Court of Appeal of Tanzania (CAT) decisions providing conditions the Applicant must meet when applying for temporary injunction, to wit; one, **Abdi Ally Salehe Vs Asac Care Unit Limited and 2 Other, Civil Revision No.3 of 2012 CAT at Dar es Salaam (unreported)** at pp. 6



– 10 and two, **Agness Simbambili Gabba Vs David Samson Gabba, Civil Appeal No.26 of 2008 CAT at Dar es Salaam (Unreported)** at pp.7 – 8. In the end, he prayed to the court to grant the prayers sought.

I have subjected into scrutiny the Applicant's Application and particularly to the affidavit supporting it and out of that I have found that paragraphs 3 – 11 of the said affidavit explain the disputes the parties herein are going through now the subject of Civil Case No. 189 of 2022 pending before this court while paragraph 12 – 13 of the affidavit explain that since 25th October,2022 the Applicant's trucks transporting, on hiring basis, the Respondents cargo of logs, of which the transportation costs and other incidental charges thereto are the subject matter of dispute in Civil Case No.189 of 2022 before this court; were heading to Dar es Salaam Harbour from DRC. The application herein was heard on 14th November,2022 being twentieth day since the said 25th October, 2022 when the journey started. I tend to believe the averment that the Respondents' cargo of logs on transit to China from DRC via Dar es Salaam Harbour are within the jurisdiction of this court as of now.

In the cited case of **Abdi Ally Salehe Vs Asac Care Unit Limited and 2 Other, Civil Revision No.3 of 2012 CAT at Dar es Salaam**

(unreported) at pp. 6 – 10 the court of appeal restated its settled law on the conditions that have to be met in application for temporary injunction before the court can granted it. It stated as follows: -

*"It is common ground in this case, **that the principles of granting a temporary injunction are now well settled;** and they are that:*

- (i) the plaintiff must show a prima facie case with probability of success*
- (ii) 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 convenience in favour of the party who will suffer the greater inconvenience in the event the injunction is or is not granted. (See **GIELLA V CASSMAN BROWN AND CO. LIMITED (1973) EA 358**)".*

The Court of Appeal went further to state at page 7 thus: -

*"The object of this equitable remedy is **to preserve the pre dispute state until the trial or until a named day or further order.** In deciding applications, **the court is to see only a prima facie case,** which is one such that it should appear on the record that there is a bona fide contest between the parties and serious questions to be tried. So, **at this stage the court cannot prejudge the case of either party.** It cannot record a finding on the main controversy involved in the suit; nor can genuineness of a document be gone*

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into at this stage (See SARKAR ON CODE OF CIVIL PROCEDURE (10th ed. Vol. 2 pp 2009- 2015)“. End of quote

Reverting to the Application herein, in the manner I have alluded above, these conditions stand met by the applicant. The pending suit is there, that is Civil Case No.189 of 2022 between the parties herein. Triable case exists, on the face of record of the plaint as is well stated under paragraph 3 – 11 of the affidavit in support of the application. As to balance of inconveniences, the same is stated under paragraph 14 of the affidavit that the cargo is on transit to China and the Respondent being not based here in Tanzania have no properties known to the Applicant which could be used to satisfy the decree should the suit be determine in her favour.

Under the circumstances therefore, I hereby grant the temporary injunction prayed for by the Applicant. The Respondents' on transit cargo of logs to China via Dar es Salaam Harbour from the Democratic Republic of Congo transported by the Applicant from DRC to Dar es Salaam are hereby temporarily restrained from being shipped to China pending hearing and determination of Civil Case No.189 of 2022 which is pending before this Court. The Respondents' cargo of logs storage charges and any other

costs incidental thereto shall be born by the Respondents. The Application is granted with no order as to costs

It is so ordered.

Dated at Dar es Salaam this 17th day of November, 2022



Musa K. Pomo

Judge



This ruling is delivered on this 17th November, 2022 in presence Mafuru Mafuru, advocate for the Applicant and in absence of the Respondents and their advocate

C.M. Madili

Ag. Deputy Registrar

17/10/2022

