

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 120 OF 2020

*(Arising from the Misc. Civil Application No. 5 of 2018 Bagamoyo
District Court)*

THE MANAGING DIRECTOR CRDB BANK.....APPELLANT

VERSUS

SUZZANE KASEGE TIMONY..... 1st RESPONDENT

INDEPENDENT AGENCIES AND

COURT BROKERS LTD..... 2nd RESPONDENT

JUDGMENT

Date of Last Order: 31/8/2021

Date of Ruling: 08/03/2022

S.M. KULITA J;

This is an appeal from Bagamoyo District Court. Dissatisfied with the decision of that court delivered on 16/03/2021 the Appellant lodged this appeal relying on the following four grounds;

1. That, the trial court erred in fact and law in entertaining the suit while it had no jurisdiction.

2. That, the trial court erred in law in entertaining the application for injunction without existence of any pending suit between the parties.
3. That, the trial court erred in fact and law in granting the orders for injunction without proper analysis of the evidence and the principles governing the application and the existing laws.
4. That, the trial court erred in law in entertaining the suit without framing issues, or if they were framed for not addressing itself to the issues framed.

The appeal was disposed of by way of written submissions. While the appellant is represented by Mr. Tumaini Msechu, Advocate, the respondent is unrepresented. Before hearing the appeal, Advocate for the Appellant, Mr. Tumaini Msechu decided to abandon the 4th ground of appeal and consolidated grounds of appeal no. 2 and 3.

In his written submission in support of the 1st ground of appeal, Advocate for the Appellant, Mr. Tumaini Msechu submitted that the Respondent was wrong to file this matter at the District court instead of the Land Tribunal. He asserted that the subject matter at the trial court was a land dispute, therefore the District Court of Bagamoyo had no jurisdiction to try and decide on it.

The counsel submitted that by doing so the trial court violated the provisions of section 4(1) of the Courts (Land Disputes Settlement) Act which prohibits the Magistrates' Courts, established by the Magistrate's Court Act [Cap 11 RE 2019], from dealing with land matters. He added that under section 167(1) of the Land Act [Cap 113 of 2019] the District Courts are not vested powers to entertain land matters. He therefore pray the appeal to be allowed.

Replying the 1st ground of appeal the respondent argued that the relationship between the Appellant and the Respondent was not on land issues, but on contractual basis of which the Magistrates' courts have jurisdiction to try. He said that the Respondent obtained the loan of Tsh. 50,000,000/= from the appellant and the former had effected the payment at the tune of Tsh. 15,066,757/=, the remaining balance was therefore Tsh. 34,933,243/= but unreasonably the Appellant intended to auction the Respondent's collaterals worth Tsh. 2,000,000,000/= to offset the said Tsh. 34,933,243/=. Thus the matter was rightly lodged as a civil case at the District court. For those reasons he prayed for the appeal to be dismissed with costs.

Analysing the 1st ground of appeal which states that the trial court erred in law and in fact for entertaining the suit while it had no jurisdiction, that it entertained the land dispute, I have this

observation; the lower court's records transpire that the dispute from which this appeal arises is failure of the Respondent to service loan facility to the Appellant, the act which led to the attachment of the Respondent's properties secured for loan.

The relationship between the Appellant and the Respondent was not on land issues, but on contractual basis of which the Magistrates' courts have jurisdiction to entertain.

Sincerely speaking, that cannot be regarded a land case as wrongly alleged by the Respondent's Counsel in his submission on the 1st ground of appeal.

For the same reason, I find the provision of section 4(1) of the Courts (Land Disputes Settlement) Act which prohibits the Magistrates' Courts, established by the Magistrate's Court Act [Cap 11 RE 2019] from dealing with land matters has not been violated. The same applied to section 167(1) of the Land Act [Cap 113 RE 2019] which vests exclusive jurisdiction on land matters to the Court of Appeal, Land Division of the High Court, District Land and Housing Tribunals, Ward Tribunals and the Village Land Councils. As the dispute in the original case was not concerned with land matters, I find this ground of appeal meritless.

Submitting on the 2nd and 3rd grounds of appeal collectively which states that the trial court erred in law in entertaining the application for injunction without existence of any pending suit between the parties, and that there was no proper analysis of evidence, the Appellant's counsel submitted that among the conditions for granting the temporary injunction is the presence of a pending suit in court. As for this matter the Appellant's counsel said that while the lower court was entertaining the original case, there was no any pending suit before any court. He alleged that the said application for injunction was prematurely filed. The counsel also alleged that there was no proper analysis of evidence at the trial court.

In the reply thereto the Respondent's counsel stated that the District Court, under section 95 of the Civil Procedure Code has inherent powers to halt any unreasonable act which may result into irreparable losses and untold pain and suffering to the respondent. He said that for the interest of justice and protection against irreparable loss which were very likely to take place, it was necessary for the trial court to issue the temporary injunction pending determination of Civil Case No. 25 of 2020 which is still pending at the District Court of Bagamoyo.

The 2nd ground of appeal states that the trial court erred in law in entertaining the application for injunction without existence of any pending suit between the parties. In a very minimal submission the Respondent's counsel mentioned Civil Case No. 25 of 2020 alleging that it is pending case from which the said case arises. There is no any document filed or attached to prove the existence of that said case. Not only that but also that said fact has never been stated at all during trial of the application. In my view mentioning the said Civil Case No. 25 of 2020 is an afterthought. The Respondent never even stated as to when the said suit was filed and which status it had when the Misc. Civil Application No. 5 of 2018 was filed at Bagamoyo District Court. The trial court record is totally silent on the existence of that said case. Impliedly there was no original case when the application for injunction was filed and determined.

The issue to be determined here is whether that is fatal. Basically the application for injunction cannot be filed and entertained in the absence of the main suit. There must be an original case (main suit) from which it arises which is pending before the court.

However, there are some circumstances in which the application for injunction can be filed and tried in the absence of the main suit under section 2(3) of the Judicature and Application of the Laws Act [Cap 358 RE 2019]. Such kind of injunction is called *Mareva*

Injunction. That kind of injunction is granted where an applicant cannot institute a law suit because of an existing legal impediments. See **Daud Makwava Mwita Vs. Butiama District Commissioner and Another, Misc. Land Application No. 69 of 2020, High Court of Tanzania at Musoma (unreported)** at page 3. It is used to be granted where the law requires a statutory notice to be issued before a potential plaintiff can institute a suit. It aims to protect the plaintiff from injury which may be irreparable. A good example in which *Mareva* Injunction can be granted is a scenario in which the applicant intends to file a suit of urgent nature against the Government, like prohibiting Government from demolishing his/her house, but according to the law he is supposed to serve the Government a 90 days' notice before instituting the said suit. Waiting for maturity of the said 90 days' notice period will render the said intended case nugatory, and if at all the said person has right, he may consequently suffer irreparable loss, in case the said house is actually demolished.

As for the matter at hand the injunction granted by the District Court does not qualify to be treated as *Mareva*. I say so because there was no legal impediments that prohibited the Respondent herein to institute a suit at the District Court before filing the said Misc. Civil Application No. 5 of 2018 at the District Court of

Bagamoyo which is the application for injunction. As correctly argued by the Appellant's counsel that the said application was prematurely filed.

As the Misc. Civil Application No. 5 of 2018 which is the application for injunction was filed at the District Court of Bagamoyo in the absence of the main suit, it is regarded to have been prematurely filed.

Therefore, the lower court's proceedings for the Misc. Civil Application No. 5 of 2018 are hereby nullified and its ruling is quashed. As this 2nd ground of appeal is sufficient to dispose of the matter, I hereby conclude that the appeal is allowed with costs.



S.M. KULITA

JUDGE

08/03/2022

