

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISC. CIVIL APPLICATION NO. 99 OF 2022**

**THE REGISTERED TRUSTEES OF THE  
MOUNT MERU UNIVERSITY.....1<sup>ST</sup> APPLICANT**

**THE REGISTERED TRUSTEES OF THE  
KANISA LA WABAPTIST TANZANIA..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE DEVELOPMENT BANK LTD.....1<sup>ST</sup> RESPONDENT  
TANZANIA COMMERCIAL BANK LTD**

**(Formerly TPB Plc a merger of**

**Tanzania Investment Bank Ltd) .....2<sup>ND</sup> RESPONDENT**

**THE INSTITUTE OF ACCOUNTANCY ARUSHA....3<sup>RD</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**HARRISON OLANG'.....5<sup>TH</sup> RESPONDENT**

**RULING**

03/11/2022 & 14/12/2022

**MWASEBA, J.**

This is a ruling of an application for temporary injunction which was brought under certificate of urgency and made under Section 2(3) of the

**Judicature and Application of Laws Act, Cap. 358 R.E 2019 and**

*ptaraja*

Section 95 of **the Civil Procedure Code**, Cap 33 R.E 2019. The facts ascertainable from an affidavit deposed by one Rev. Isaac Rajabu Sui are as follows: the 1<sup>st</sup> and 2<sup>nd</sup> respondents purportedly alleged to offer a loan to the 1<sup>st</sup> applicant of Tshs. 3,075,198,000/= and an overdraft facility of Tshs. 500,000,0000/= the information which was furnished to them via a letter dated 19/09/2013. It was allegedly further that their properties were offered as collateral /security in the said credit facilities. It was deposed further that, the 1<sup>st</sup> and 2<sup>nd</sup> applicant did not approve or accept the said loan and the 5<sup>th</sup> respondent has no mandate to secure any mortgage in their favour.

He deposed further that, on 16/05/2022 during the evening hours it came to their knowledge that one of their cohorts was unlawfully advertised via tender No. PA/074/2022/HQ/D/01 and the same was in the process be sold to the 3<sup>rd</sup> respondent who previously wanted to lease the property from the 1<sup>st</sup> and 2<sup>nd</sup> applicants. He averred further that, in case the application will not be granted, the applicants will suffer irrepealable loss and gross injustice.

In their joint counter affidavit, which was sworn by Mr Lameck Mavipya, principal officer of the 1<sup>st</sup> respondent, deposed he that the credit facility and overdraft credit facility were duly approved by the board of trustees

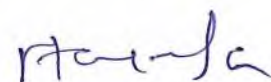


of the 1<sup>st</sup> applicant via its resolution dated 19<sup>th</sup> and 20<sup>th</sup> September, 2013 and mortgaged properties under Plot No. 192 and 192/1 were offered as Collateral. However, they disputed the rest of the averments.

The hearing was done by way of filing written submissions whereas the applicants were represented by Ms Anna Ngoty, learned advocate while the respondents were represented by Mr Peter Musseti and Mkama Msalama, Senior State Attorney and State Attorney respectively.

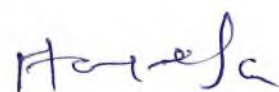
Supporting the application, Ms Ngoty submitted that this application is commonly known as "Mareva Injunction" regulated under common law and statutes and is applicable in our Court vide **Section 2 (3)** of cap 358 R.E 2019. The same was blessed by the court in the case of **TANESCO vs IPTL and Others** (2002) TLR 324. She submitted further that, it is undisputed fact that Plot No. 192 and 192/1 Engare- Olmotony Arumeru District in Arusha Region owned by the 1<sup>st</sup> applicant and the same was advertised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants vide tender No. PA/074/2022/HQ/D/01 contrary to the order of the court of maintaining status quo in Misc. Civil Application No. 60 of 2022.

It was her further submission that, conditions for a temporary injunction to be granted were formulated in the case of **Atilio vs Mbowe** (1969) HCD 284 where the court stated that:



- a) There must be a serious question to be tried on the alleged facts and a probability that the plaintiff will be entitled to the relief prayed.
- b) That, the temporary injunction sought is necessary in order to prevent some irrepealable injury befalling the plaintiff while the main case is still pending, and
- c) That, on the balance, there will be greater hardship and mischief suffered by the plaintiff from withholding on the injunction than will be suffered by the defendant from the granting of it.

It was her further submission that, the intended suit will be filed by the applicants after the expiry of 90 days' notice. She alleged further that, the act of the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondent to file a Civil case No. 2 of 2021 regarding the debts they owe the applicants and then withdraw the claim without determining the rights of the parties was the same as abusing the legal process of the court. Thus, the respondents failed to honour the order of maintaining status quo via Misc. Land Application No. 60 of 2022 and if the claim is still unproven there is no justification to sell the said properties under Plot no. 192 and 192/1 under certificate of title No. 22986. It was her further submission that the said case was filed in order to sell the applicant's properties.

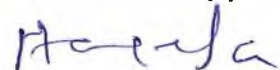


She urged the court to be persuaded by the case of **Paulina Philipo Masaro vs Marwa Damian and Others**, Misc. Civil Application No. 7 of 2022 (HC-Musoma) to grant the temporary injunction under Section 2 (3) of Cap 358 R.E 2019 and **Section 95 of the CPC** since the conditions set forth in in the case of **Atilio vs Mbowe** (supra) have been clearly shown by the applicants.

On his side, counsel for all the respondents firstly adopted their counter affidavit to be part of their submission, he submitted further that it is undisputed that the principles of granting an Injunction were set forth in the case of **Atilio vs Mbowe** (supra).

It was Mr Musseti's submission that the first condition for this kind of application to be granted, was not met by the applicants due to the fact that there is no serious issue to be determined by this court even after expiration of the 90 days since there is no dispute that the 1<sup>st</sup> applicant obtained and acquired a loan at the tune of Tshs. 3,075,198,000/= and the overdraft amount of Tshs 500,000,000/ from the 1<sup>st</sup> respondent. The allegation that the loan was fraudulently acquired was just a baseless since all the procedures of acquiring the said loan were followed.

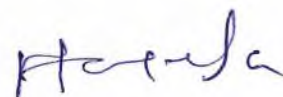
Coming to the second ingredient, counsel for the respondents submitted that, there is no need for the court's interference since the applicants will



not suffer irrepealable loss. More to that, the applicants failed to show and explain what kind of injury and loss they will suffer if the application will not be granted. Therefore, if the court will grant the application, it will prevent the 1<sup>st</sup> respondent from implementing the measures stipulated under mortgage deed and causing him to suffer huge loss – since the applicants have not yet paid even 2% of the total loan. To support his arguments, he cited the case of **Alakaai Alaunonui Laiser vs Zephania Chaula & 6**, Misc. Land Application No. 72 of 2021 (Unreported).

As for the third ingredient, Mr Musseti argued that the Government will suffer greater hardship if this court will grant injunction than how the applicants will be suffered. This is due to the fact that, the 1<sup>st</sup> applicant was given a loan amounted to 3, 575, 198,000/= and if no measures will be taken, the 1<sup>st</sup> respondent will not be able to recover the said amount. Thus, they prayed for the application to be dismissed with costs for want of merit.

In their brief, rejoinder the applicant's counsel submitted that there was no abuse of court process done by the applicants herein and that all the conditions as stipulated in **Atilio vs Mbowe** (supra) were met by the applicants and prayed for the application to be granted.

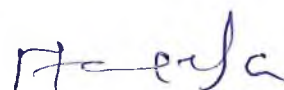


I have considered submissions made by both parties and the court records. The issue for determination before me is whether the application has merit.

This being an application for temporary injunction, this court need to consider fulfillment of three conditions for the grant of temporary Injunction as articulated in a celebrated case of **Atilio vs Mbowe** (supra), cited herein.

Having gone through the entire submission of the parties herein, it goes without saying that the applicants met the first and second requirements for this kind of application to be granted as articulated in the case of **Atilio vs Mbowe** (supra). The records revealed that there is a dispute as to whether the 1<sup>st</sup> respondent furnished the said loan of Tshs. 3, 075,198,000/= and overdraft of Tshs. 500,000,000/=. Therefore, there is a serious question that need to be tried by this court regarding the said loan. More to that, since the said properties belong to the applicants it is crystal clear they are the ones who will suffer a huge loss if the application will not be granted.

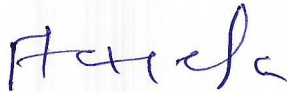
Thus, for the interest of justice and taking into consideration the nature of dispute between the parties, the application is hereby granted pending the expiration of 90 days' notice.



Ordered accordingly.

**DATED** at **ARUSHA** this 14<sup>th</sup> day of December, 2022



  
**N.R. MWASEBA**

**JUDGE**

**14/12/2022**