IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 578 OF 2022

(Arising from Civil Case No. 236 of 2022.)

STEPHANO ABEL SAPI ..... 1ST APPLICANT

NASSORO ATHUMANI SAIDI ..... 2ND APPLICANT

EKALISTA CHARLES NGOROKA ..... 3RD APPLICANT

ASHURA ABDALLAH NYAGONGO ..... 4TH APPLICANT

JOSIA ELIABU KAMSOBA ..... 5TH APPLICANT

STANSALAUS PETRO BUJIJI .....6TH APPLICANT

JOHN MATHIAS BUSUNGU .....7TH APPLICANT

SUPHIAN HAMISI JUMA .....8TH APPLICANT

VERSUS

TANZANIA RED CROSS SOCIETY..... RESPONDENT

RULING

21st, & 28th December, 2022

ISMAIL, J.

This ruling is in respect of an application taken at the instance of the applicants. They seek to move the Court to grant assorted interlocutory orders as follows:

(i) That the Court be pleased to grant an order to suspend the applicability and use of the amended constitution passed in May, 2022;

(ii) That the Court be pleased to grant an order of temporary injunction to suspend the National Executive Committee to perform its daily activities for purposes of saving the Respondent's properties listed for disposal, pending hearing and determination of the main suit;

(iii) The Court be pleased to grant an order of temporary injunction restraining the respondent from the sale of motor vehicles through tender No. 01 TRCS/2002; and

(iv) That the Court be pleased to order the respondent's Secretary general to convene an Extra Ordinary General Meeting to elect interim National Executive Committee members who shall succeed the current Committee and govern the affairs of the respondent.

The application is supported by an affidavit, jointly sworn by all the applicants, and it contains grounds on which the prayers sought are based. Of significance in the supporting affidavit, are the averments on the passage of amendments of the constitution which were not escalated to and

approved by the Joint Commission of the Red Cross Societies. There are also allegations of alienation of vehicles of the respondent in a manner that is considered to be irregular.

When the matter was called on for hearing, only the applicants entered appearance while the respondent, who was evidently served, was not represented. At the instance of Mr. Gaston Garubindi, learned counsel for the applicants, the Court ordered that the application for injunction be heard *ex-parte*.

Submitting in support of the application, Mr. Garubindi argued that performance of duties of the respondent's National Executive Society (NEC) contravenes the provisions of the respondent's Constitution of 2018. He argued that the respondent's NEC had moved the passage of amendments of the Constitution contrary to Article 52 (2) (3), as views collected from the stakeholders were not sent to the Joint Commission. This, Mr. Garubindi contended, renders the amendments irregular.

Learned counsel contended that the amendments, which were surreptitiously introduced in the Constitution, were not tabled for discussion by the General Assembly. These amendments scrapped the position of Registered Trustees of the respondent, who were the stewards of the assets. This potentially places the assets in the danger of being wasted. He added

that, in the absence of the Trustees, NEC is in the process of disposing of some of the assets such as vehicles.

Still on NEC's discharge of its mandate, learned counsel took the view that the same offended the provisions of Article 28A (5) of the Constitution. The infraction, in the applicants' view, lies in the decision to incorporate a company while the law does not give them such power. Learned counsel conceded that there is no express bar to such indulgence, but since the law does not provide for such powers then this was an irregular conduct. Mr. Garubindi also took a swipe at the decision of the respondent to appoint directors of the jointly owned company without involving DMPFA, the other shareholder. He argued that this was in contravention of Article 30 of the Articles of Association.

It is on the basis of the foregoing, that Mr. Garubindi urged the Court to grant the prayers sought in the application.

The pertinent question to be settled is whether the application has what it takes to be granted as prayed.

As gathered from the application, the orders sought are mainly restraint orders. They are orders for temporary injunction to restrain the respondent's action in a number of aspects. They include restraint against the impending sale of vehicles; and suspension of the activities of the NEC.

As far as grant of temporary injunction is concerned, the law is settled in this country. It is to the effect that temporary injunction serves as an equitable relief that is intended to insulate an applicant against possible irreparable loss or injury that may arise in the midst of the proceedings in the substantive claims. It is called temporary injunction because its span or validity cannot outlive the pendency of the substantive claim or action.

The remedy of temporary injunction cannot be granted unless the applicant is able to demonstrate that a concluded right capable of being addressed by the order sought in the application exists (See: ***Agricultural Produce Market Committee v. Girdharbhai Ramjibhai Chhaniyara***; AIR 1997 SC 2674). To put it more elaborately, injunction is not a remedy that can be dished out for convenience of either or both of the parties. There has to be a material on which to base the decision to grant it. It is on that basis that the Court (Rutakangwa, J as he then was) held in ***Charles D. Msumari & 83 Others v. The Director of Tanzania Harbours Authority***, HC-Civil Appeal No. 18 of 1997 (unreported), as follows:

> *"Courts cannot grant injunctions simply because they think it is convenient to do so. Convenience is not our business. Our business is doing justice to the parties. They only exercise this discretion sparingly and only to protect rights or prevent injury according to the above stated principles,*

court should not be overwhelmed by sentiments however lofty or mere highly driving allegations of the applicants such as the denial of the relief will be ruinous and or cause hardship to them and their families without substantiating the same. They have to show they have a right in the main suit which ought to be protected or there is an injury (real or threatened) which ought to be prevented by an interim injunction and that if that was not done, they would suffer irreparable injury and not one which can possibly be repaired." [Emphasis added]

In our case, such remedy is predicated on three main principles as set out in the landmark case of ***Attilio v. Mbowe*** (1969) HCD 284. They include demonstration of existence of a *prima facie* case; likelihood of suffering an irreparable loss; and that the balance of convenience should tilt in the applicant's favour.

The critical and established position of the law is that the court issuing temporary restraint orders must first be satisfied that the damage or threat that is intended to be addressed or forestalled by way of the injunctive order is real, significant and serious. Anything less significant, illusory of less serious would fail the test. The foregoing position is an extraction from the Court of Appeal of Tanzania's decision in the case of ***Abdi Ally Salehe v.***

Asac Care Unit Ltd & 2 Others, CAT-Civil Revision No. 3 of 2012 (unreported), in which the upper Bench guided as hereunder:

> *"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 such applications, the Court is only to see a prima facie case, which is one such that it should appear on the record that there is a bonafide contest between the parties and serious questions to be tried. So, at this stage the court cannot prejudice 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 into at this stage.*
>
> *Once the court finds that there is a prima facie case, it should then go on to investigate whether the applicant stands to suffer irreparable loss, not capable of being atoned for by way of damages.* ***There, the applicant is expected to show that, unless the court intervenes by way of injunction, his position will in some way be changed for worse; that he will suffer damage as a consequence of the plaintiff's action or omission, provided that the threatened damage is serious, not trivial, minor, illusory, insignificant or technical only.*** *The risk must be in respect of a future damage (see* ***Richard Kuloba Principles of Injunctions*** *(OUP) 1981)…."* [Emphasis added]

Taking stock of the applicants' depositions and submission by counsel, I hold the view that a *prima facie* case exists between the applicant, on one side, and the respondent, on the other. Several issues, constituting the applicants' disgruntlement have been raised in the suit that is pending in this Court (Civil Case No. 236 of 2020). They include allegations of trampling the constitution provisions by sneaking in irregular amendments which have changed the architecture of the respondent. In my considered view, these issues raise a *bonafide* contest between the parties and this meets the first criterion in the grant of injunction.

The second principle involves demonstration of irreparable damage to the applicants. This involves carrying out of an investigation through depositions made, if the applicants are likely to suffer damage as a consequence of the respondent's action. It should also come out that the damage likely to be suffered cannot be atoned by way of damages. There is also a question of the weight of the threatened damage.

While it may be appreciated that the amendments which constitute the bulk of the applicants' consternation may have some consequences, some of which may be adverse, I am not convinced that this Court has been treated to any facts which would lead to a clear conclusion that such consequences constitute the damage that is serious and is likely to change

the applicants' positions for worse, at least in the pendency of the suit. It is an apprehension of fear that is speculative and falling nowhere near the threshold set in the decisions cited above. Moreover, the applicants have not demonstrated how the impending sale of the vehicles whose procedure is open and competitive would lead to any damage to them or the institution they subscribe to. The same applies to the continued presence of the NEC, an organ that oversees the daily activities of the respondent. My conclusion in this regard is that what appears to be a threatened damage is neither serious nor is it significant. If anything, the fear is trivial, minor, illusory, insignificant or technical only. It is not worth triggering the Court's discretion and grant the orders sought.

The third pillar is that which involves demonstration that on the balance of convenience, the applicants stand to suffer more if injunctive orders are not granted than the respondent would, were the orders to be granted. On the evidence gathered from the depositions and submission by counsel for the applicants, nothing convinces me that balance of convenience tilts in the applicants' favour. In fact, the reverse is true. The respondent stands to be more prejudiced and have its activities crippled if orders sought were to be granted at this point in time. Suspension of the leadership (NEC) and halting of disposal of the assets for no tangible reason

will only cripple the operations of the respondent, as it is not clear if the parties will convene early enough and be able to come up with a leadership that will operate *ad* interim. Amidst this uncertainty and possible disagreements on the constitutional version to be applied to convene the meeting of the members, the respondent will remain like a rudderless plane and have its activities brought to a halt. This will be profoundly prejudicial to the respondent's operations.

It is my conviction that, on the basis of the foregoing, the applicants' application lacks what it takes to trigger the Court's discretion, and the inevitable conclusion is that the same must fall through.

In the upshot, this application is lacking in merit and, accordingly, the same is dismissed with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 28th day of December, 2022.

M.K. ISMAIL

JUDGE

28/12/2022