

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO.666 OF 2021

(Originating from Civil Case No.216 of 2021

UKOD INTENATIONAL LIMITED.....APPLICANT

VERSUS

EQUITY BANK TANZANIA LTD.....RESPONDENT

RULING

MRUMA J.

This is an application for temporary injunction. It is brought under Rule 1(a) and 2(1) of Order XXXVII and sections 68(c) and (e), and 95 of the Civil Produce Code [cap 33 R.E 2019]. The Applicant UKOD International Company Limited is seeking from this court for Orders of temporary injunction restraining the Respondents Equity Bank Tanzania Limited or its agents from performing further acts that may continue to incapacitate her business pending determination of a defamation Suit (Civil Case No.216) filed against the Respondent.

The record shows that the Applicant did on 29th December 2021 present for filing a plaint in Civil Case No.216 of 2021 against the Respondent claiming for payment of Tshs 49 billion being special damages (ie compensation) on account of defamatory publication made by the Respondent against the Applicant.

It is the Applicant's statement that she had an outstanding long term business relationship with the Respondent which started in 2014. The Applicant avers that she was "lured" by the Respondent to take an initial loan of Tshs 100,000,000/= which was granted upon execution of written loan agreements, registration of securities and/or charges on her fuel stations in the Respondents favour and other covenants. The loan facilities gradually increased to more than Tshs 15.30 billion in 2020.

It is further averred in the plaint that despite challenges she was facing due to COVID 19, the Applicant nevertheless serviced her loan facility from the reduces profit she was making.

It is further stated that despite the facts that the loan facilities advanced to the Applicant were secured by legal mortgages of the Applicant's landed properties, the Respondent filed a winding up proceedings at the High Court (Commercial Division) in Misc. Commercial Cause No.5 of 2021, attempting to wind up the Applicant's company.

To the Applicant's surprise on 15th April 2021, the Respondent maliciously published false and defamatory statements to the effect that the Applicant is insolvent as it cannot pay its dully secured debts with the Respondent. It is the Applicant's statement in the plaint that in the said publication the Respondent attempted to invite other creditors to join hands in winding up of the Applicant's company but was not successful. It is the Applicant's claims that the Respondent's act of publishing statement that she was insolvent, severely injured her business reputation and her business as a result of which she has suffered irreparable loss and hence the pending Suit (ie Civil Case No.216 of 2021).

The Applicant claims that the published information was defamatory and maliciously and false hood also hood in nature and has incapacitated and irreparably injured her business and reputation and from the date of publication of the complained statement the Applicant's company is struggling and despite meeting her obligations of paying her instalment as per the consent judgment in Miscellaneous Cause No.5 of 2021 which settlement was reached out of under influence or/ and coercion from the Defendant's legal counsel and the Applicant was forced to pay over Tsh 50,000,000/= as legal Costs of Misc. Cause No.5 of 2021.

The Applicant asserts that the publication of malicious falsehood information has irreparably injured her reputation as a result of which she has been forced to close all its 15 fuel stations.

In the present application the Applicant asserts, that unless the Respondent is restrained from continuing incapacitating the Applicant by issuing illegal order to her agents to impound the Applicant's trucks, she will suffer irreparably.

The Application is strongly opposed by the Respondent. Submitting in opposition to the prayers in the chamber summons, Mr Semi Malimi counsel for the Respondent has contended that in the first place this court lacks jurisdiction to entertain the present application on the ground that the matter in issue in the main suit is directly and substantially the same in the previously instituted matter that is to say commercial cause No. 5 of 2021 between the same parties.

According to Mr. Malimi , the provision instituted Commercial Cause had been settled and a consent judgment entered. Mr Malimi contends

that the complained publication was actually court approved as it was in the legal process of winding up the Applicant's company.

Regarding whether temporary injunction should be issued in the circumstance of the case, Mr. Malimi is of the view that the Applicant has not met tests laid down in *Atiliyo Vs Mbowe* [1969] HC) 284 case.

I will start with the issue of jurisdiction of the court the matter. Section 9 of the Civil Procedure Code [Cap33 RE 2019] Provide that.

"No court shall by any suit or issue in which the matter directly in and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between the parties under whom they are or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been self sequently passed and has been heard and finally decided by such court."

On the basis of the pleadings and the counsel's arguments before me I have no doubt that the parties in commercial cause No.5 of 2021 are the same as the parties in the present proceedings. However, I have no hesitation to hold that the matter in issue is not directly and substantially the same in the two suits. It has been submitted by the Applicant's counsel and conceded by the Respondent's counsel that the Applicant's claim against the Respondent in the main Suit (ie Civil Case No.216 of 2021) is for payment of Tshs 49,000,000,000.00 being compensation for damages

as the result of defamatory and malicious false hood information that was initiated by the Respondent by publishing in the gazette that he Applicant's company was insolvent and thus ought to be wound up the facts which according to the Applicant were untrue and has caused irreparable loss. Thus the matter in issue in defamation and the consequence thereof. In Commercial Cause No.5 of 2021 the Respondent was seeking for the winding of the Applicant company on the ground of insolvency and inability to pay its debts.

With due respect to Mr. Malimi, the technical argument that the matter is resjudicata cannot be sustained in a situation where although parties are the same but causes of action are different. The only connection between the two issues is that the cause of action in the subsequent suit traces its originality in the former suit. Here the Applicant complains that publication done in the winding up proceedings (ie Miscellaneous Commercial Cause No.5 of 2021) to the effect that the she was insolvent and unable to pay its debts was false and malicious and has caused damage to her.

In my considered opinion whether the complained publication was endorsed by the court and therefore justifiable is an issue which cannot be argued at this stage. This will be argued in the hearing of the matter by production of relevant evidence.

On the issuance of temporary injunction, it is trite law that for the Applicant to succeed to obtain temporary injunction, he/she must satisfy two elementary conditions namely;

- i. That he/she has a prima facie case with a probability of success against the Respondent and;
- ii. That if the injunction sought is not granted the injury that he/she will suffer would be irreparable by way of damages

In the present application it has been alleged that the Respondent published a false and defamatory statement to the effect that the Applicant is insolvent and cannot pay its debts. It is the argument of the counsel for the Applicant that despite the fact that the statement was false and malicious, but winding up was not among the remedies which were available to the Respondent under the loan agreement between her and the Applicant. I find these allegations to constitute a prima facie case against the Respondent and if proved they may entitle the Applicant to reliefs sought in the main suit.

Regarding possible irreparable loss, the Applicant is asking this court to grant "*temporary injunction orders to restrain the Respondent or its agents from performing further acts that may continue incapacitating the Applicant's business pending determination of the suit against the Respondent on defamation and issuing of malicious falsehood publication to the detriment of the Applicant.*"

[See the "**INTERPARTIES**" prayer in the chamber summons]

Since the Applicant is seeking for an order to restrain the Respondent or its agent from performing further acts that are alleged to incapacitate the Applicant's business, and since the complained acts are publications showing that the Applicant is insolvent and unable to pay its debts, the

issue which is under litigation in the main suit, I think the Applicant stands to suffer irreparably if such order is not granted.

Accordingly the application is granted. The Respondent and its agents are hereby restrained from making any and/or further publications tending to show that the Applicant is insolvent and / or unable to pay its debts pending determination of Civil Case No.216 of 2021.

For purpose of clarity this order does not in any way invalidate stay or touch any pending proceedings (apart from Civil Case No.216 of 2021), decree, and /or orders that may exist between the parties, – in respect of any other suit. Costs will be in the cause.



A. R. Mruma

Judge

24/1/2022

24/1/2022

Coram : Hon. A. R. Mruma,J.


For the Applicant : Mr. Jimmy Mroso for the Applicant and Mr. Jamah
Ibrahim Moelim and Ronald Jumbaleket

For the Respondent : Ms. Christabella Madembwe for the Respondent

Cc : Delphina

Mr. Jimmy Mroso: This matter is coming for ruling and we are ready to proceed. My lord this court may take note of the presence of CEO of the Applicant Mr. Jamali Ibrahim Moelim and its general Manager Ms. Ronald Jumbaleliet.

Court: Ruling delivered.


A. R. Mruma

Judge

24/1/2022