IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF DAR ES SALAAM)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 134 OF 2022

GESONKO PAUL NYASAGUTA ..... APPLICANT

VERSUS

TANZANIA RED CROSS SOCIETY ..... RESPONDENT

RULING

30th March, 2022

ISMAIL, J.

This application has been preferred under a certificate of urgency, and it is intended to ask for temporary injunctive orders. These orders are aimed at putting a halt to a meeting convened by the respondent, and due in the next few minutes. The meeting brings together members of the National Executive Committee to deliberate on items which have not been divulged in the notice.

The applicant suspects that the agenda to be discussed, deliberated upon or resolved, may have an adverse bearing on the ongoing investigation into the allegations of embezzlement of the Society's funds. The applicant,

who describes himself as an active member of the National General Assembly, has alleged, in the supporting affidavit, that the embezzlement and abuse power that is a subject of investigation is likely to feature in the said meeting, with a likely possibility of coming up resolutions that may undesirability nip the ongoing investigation in the bud. The view held by Mr. Alex Balomi, learned counsel for the applicant, is that the meeting will be prejudicial to the applicant, and he has a reasonable apprehension of fear that, if allowed to proceed, the meeting will defeat ends of justice and defeat the purpose for which the intended suit seeks to achieve.

Col. Laizer and Mr. Richard Magaigwa, both learned counsel for the respondent, are opposed to the application. Besides raising questions on the competence of the application, in the absence of any substantive suit, they took the view that no *prima facie* case has been established by the applicant. The contention is that such case would only be established where the main suit is pending, a missing item in this case. No injury, learned counsel argued, has been established by the applicant in this case. They further argued that there is no way the meeting would interfere with the ongoing investigation of the matter. The respondent further submitted that restraining the holding of the meeting will result in a loss to the respondent

as members of the meeting have travelled from all over the country. They prayed that the application be dismissed.

Submitting in rejoinder, Mr. Balomi rebuffed the contention that halting of the meeting will cause loss, since the notice is clear that costs of their travel would be borne by the members themselves. He argued that injury need not be material. It is enough if the injury to the applicant is psychological. He also argued that affairs of the respondent are run by a dedicated machinery and not meetings of the National Executive Committee. This, he argued, rules out the contention that there will be paralysis in the operations of the respondent.

From these brief submissions, the question is whether this is a fit case in respect of which a temporary injunctive order may be granted.

Let me start by stating that temporary injunction is an equitable relief that is issued before or during trial, in order to prevent an irreparable loss or injury from occurring before the court has a chance to decide the case. In other words, the relief of temporary injunction operates as a conservatory restraint, the sole purpose of which is to maintain the state of affairs, as they currently obtain, whilst the contest on the substantive matter rages on between the parties. The applicant must fulfil one condition precedent before

the court moves to grant the relief. This is that, he must demonstrate that he has a concluded right capable of being addressed through the injunctive order (See ***Agricultural Produce Market Committee v. Girdharbhai Ramjibhai Chhaniyara***; AIR 1997 SC 2674).

In our jurisdiction, grant of this discretionary relief is predicated on cumulative fulfilment of three key principles as enunciated in ***Atilio v. Mbowe*** (1969) HCD 284. These are: 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. These principles have evolved over time, gaining some refinement in subsequent decisions. Thus, in ***Abdi Ally Salehe v. Asac Care Unit Ltd & 2 Others***, CAT-Civil Revision No. 3 of 2012, the Court of Appeal of Tanzania (Massati, J.A.) held:

> *"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 Kuioba Principles of Injunctions*** *(OUP) 1981)...."* [Emphasis added]

In the instant case, the applicant has demonstrated his attachment to the affairs of the respondent by a liner, that he is an active member of the National General Assembly. Nothing else has been stated in terms of the injury that he is likely to suffer as a result of the respondent's contemplated action or a concluded right, capable of being enforced by way of injunction. The only worry that he has is that the meeting might probably dwell on matters that touch on the ongoing investigation.

Regarding irreparable loss, the applicant has merely expressed his worries on what may be the subject of discussion in today's meeting without sufficiently exhibiting how his position, will in some way, be changed for

worse; or that that he will suffer damage as a consequence of the respondent's deliberations in today's meeting. Perceived meddling of the investigation is not, in my considered view, enough or personal to the applicant as to move him to scupper the convening of the said meeting. Nothing has been produced to prove that investigative agencies would be impeded in their duties were the meeting to proceed today. Restraining the respondent from convening the meeting whose agenda is not known or includes issues pertaining to finances is, to say the least, to entertain the applicant's fear of threatened damage that is imaginary and lacking in seriousness. I take the view that the applicant's fear is perceived, trivial, minor, illusory and sheer speculation that cannot be entertained. At this juncture, I hold the view that the holding in ***Charles D. Msumari & 83 Others v. The Director of Tanzania Harbours Authority***, HC-Civil Appeal No. 18 of 1997 (unreported) is invaluable and relevant. The Court held:

> *"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 consequence, I hold that the applicant has failed to convince the Court that this is a fit case in which temporary injunction may be granted. Accordingly, I find that the application is destitute of merit and I dismiss with costs.

Order accordingly.

DATED at **DAR ES SALAAM** this 30th day of March, 2022.

M.K. ISMAIL

JUDGE