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

MISCELLANEOUS CIVIL APPLICATION NO. 97 OF 2022

(Arising from Miscellaneous Civil Application No.98 of 2022)

IN THE MATTER OF COMPANIES ACT

BETWEEN

JITESH JAYANTILAL LADWA

AND

IN THE MATTER OF PETITION FOR UNFAIR PREJUDICE BY

JITESH JAYANTILAL LADWA.....PETITIONER

VERSUS

HOUSE AND HOMES LIMITED.....1st RESPONDENT

BHAVESH CHANDULAL LADWA.....2nd RESPONDENT

AATISH DHIRAJLAL LADWA.....3rd RESPONDENT

NILESH JAYANTILAL LADWA.....4th RESPONDENT


CHANDULAL WALJI LADWA.....5th RESPONDENT

DIRAJLAL WALJI LADWA.....6th RESPONDENT

RULING

MRUMA, J

This application arises out of Miscellaneous Civil Application No. 98 of 2022 instituted by the Petitioner, Jiteshi Jayantilal Ladwa, a share- holder and director of the 1st Respondent's company against his co-shareholders and directors of the said company, seeking for an interim order to restrain the Respondents, their employees, agents, and or assignees and



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whomsoever is appointed and/or instructed by them in any manner from dealing with the affairs of the company fashioned as Houses and Homes Limited pending the determination of this application inter-parties. The application seeks for interim injunctive orders pending hearing and determination of Miscellaneous Civil Application No. 98 of 2022 in which the Applicant is seeking for among other orders:

- (a) A declaration order that there is a serious unfair prejudice of the company and Petitioner's affairs;
- (b) That the Respondents jointly and severally be barred from interfering with the assets of the company;
- (c)
- (d)
- (e)
- (f) That the Petitioner's guarantee document used to secure the loan was fraudulent and illegal etc.

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The Chamber summons in present application was divided into two parties. One part (i.e. a prayer for interim orders) was designed to be heard Ex-Parte and the temporary injunction prayer's part was designed to be heard Inter-Parties.

I rejected a prayer to entertain the prayers for interim injunctive orders ex-parte which was made by Mr. Nashon Nkungu learned counsel who appeared for the applicant. I rejected that prayer because I didn't see any justification, logic and/ or reason whatsoever for a party to proceed


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ex-parte in presence of the opposite party. This is so because justice is not a hide and seek game.


I also rejected to entertain preliminary objections raised instantly by Mr. Robert Rutaihwa counsel for the Respondents. I rejected to entertain them on the same ground that justice being about fairness, it would not be fair to take the opposite party by surprise. It is surprising, to say the least, to hear advocates who are officers of the court and who has noble duty to assist court to reach a just and fair decision of a disputed trying to short circuit the process of justice.

Arguing his quest for interim orders counsel for the Applicant submitted that his client, the Applicant who is the shareholder and director of the 1st Respondent's company has been precluded by his co-shareholders and directors of the company from dealing with the affairs of the company and in his absence and without his consent the Respondents are in the process of disposing all assets of the company an act which will be to his detriment. Further to that it is the learned counsel's contention that fraud and forgeries has been committed in dealing with the affairs of the company and that unless this court interferes by issuing interim injunctive orders, he faces danger of being criminally charged with the offences relating to forgery and fraud which are being perpetrated by the Respondents.


Responding to the counsel for the Applicant's submissions, Mr. Robert Rutaihwa counsel for the Respondent contended that the orders sought by the Applicant are illegal and that no court worth the name would



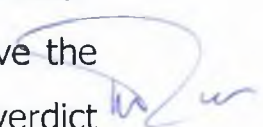
dare to grant them. The learned counsel submitted that if the orders sought are granted and the Respondents who are shareholders and directors of the 1st Respondent's company will be barred from running the company and the company will automatically be wound up having nobody will be available to transact its business. To support his argument the learned counsel cited the provisions of **Section 180 of the Companies Act** which, according to him requires a company to have at least two directors and that if all directors are barred from attending affairs of the company, then the company will be dead.



The learned counsel submitted further that the Applicant has failed to demonstrate any aggravating factor which would warrant this court to issue interim orders against the Respondents. He said that looking at the evidence of the Applicant in the affidavit in support of the application there is nothing which suggests that the Respondents are about or intending to dispose of the assets of the company. He said that court cannot act on mere suspicion and make orders sought



Before I delve to discuss the merits or otherwise of the present application I find pertinent to define what is an interim injunctive orders as opposed to temporary injunction orders. Interim orders and Injunction orders are all temporary orders issued by courts in order to preserve the rights and/or assets of the applying party until the court renders its verdict on the dispute before it. However, the two temporal orders are different and are issued in different circumstances. Interim injunctive orders are temporary orders for purposes of maintenance of status quo while awaiting




court to make its decision on how the status should be while entertaining a dispute between parties. They are usually made when there is an urgent issue that needs immediately action while the court processes are ongoing.

On the other hand temporary injunction orders entail provisional reliefs that aim to protect the subject matter in the existing condition without the Respondent's interference or threat. It aims to protect the Applicant's property from being disposed of or getting destroyed. Unlike in granting interim orders, urgency is not prerequisite condition before granting temporary injunction orders.


In the present Application, the Applicant is seeking for issuance of interim injunctive orders pending hearing of a prayer which is embodied in the same application for temporary injunction pending the hearing of the Petition (i.e. Miscellaneous Application No. 97 of 2020) which is also pending in this court.

It seems to me that in the grant of interim orders unlike in the grant of temporary injunction orders, the Applicant is not required to establish principles laid down in the famous case of **Atilio Versus Mbowe (1969) HCD n. 284**. What is required to be demonstrated before temporary injunctive orders are granted are; first that there is a dispute pending in court between the Applicant and the Respondent in which the Applicant has claims against the Respondent and is intending to produce evidence in support of his claim and the Respondent has denied or is disputing the allegations thereof and intends to adduce evidence to support his denial it is therefore impossible to assess the plaintiff's chances of success in the




substantive action and secondly, that there is a substantial question to be investigated.

In determining whether the matter should be maintained in status quo, or interim orders should be issued regards must be had to the balance of convenience and the extent to which damages to the Applicant could be cured by payment of damages rather than by granting an interim orders.

 As I understand it the object of an interim orders is to keep matters or things in status quo, in order that, if at the hearing of the substantive action the Applicant obtains a decision in his favour, the Respondent, will have been prevented, in the meantime from dealing with the property or the subject matter in such a manner as to make that decision ineffectual **HALSBURY'S LAWS OF ENGLAND, 3rd Edition, Volume 21**, page 343, paragraph 716 states thus;

A plaintiff is entitled to an interim injunction if he satisfies the Court in, inter alia, the following Respects first, that there is a substantial or a serious question to be investigated"



Both the Applicant's and the Respondent's counsel accept that there are disputes amongst themselves on which several cases have been instituted in courts of law, among them the present case. The Respondent's counsel has intimated that this case may be both **Res-judicata** and **Res- subjudice** in respect of other pending cases among them a case which is pending before this very court. This means that there



is a substantial or serious question of both law and fact to be investigated. The question includes investigation on whether this application and its substantive petition are *res judicata* and *res sub judice* therefore an abuse of court processes or not. Counsel for the Respondent couldn't of hand produce for court's reference citation of other cases between the parties which are pending in this court or the Commercial Division of this court. That notwithstanding, as indicated hereinbefore those points must be raised formally as to give the opposite party opportunity to prepare and respond if they so feel.

On the basis of what has been discussed above, and given the nature of the present application and the fact that the interim injunctive order is in the form of maintenance of status quo pending the hearing and determination of the application for temporary injunction which application is brought under a certificate of urgency, I am of the considered view that this is a fit case to grant an interim orders sought.

Accordingly I order that:

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1. An interim order be issued to restrain the Respondents, its employees, servants, agents and/or assignees and whomever is appointed and/or instructed by the Respondents from dealing with the affairs of the 1st Respondent's company.
 2. This interim order is interim and it will last for the period of the pendency of Miscellaneous Application No. 97 of 2022 and in the event the application is not determined within a period of 30 days, and for purpose of avoiding abuse of court orders, the interim orders

herein shall elapse and the Applicant may apply to the court for its renewal;

3. That this interim injunctive order is in respect of this very application and has nothing to do with any other pending or decided cases between the parties herein.
4. Costs will be in the cause.


A.R. Mruma,

Judge

Dated at Dar Es Salaam, this 14th Day of March 2022.