IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF DAR ES SALAAM

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 30 OF 2022

HON. MUSSA HAJI KOMBO ..... 1ST APPLICANT

HON. JUMA A. MAHIMBO ..... 2ND APPLICANT

VERSUS

HON. PROF. IBRAHIM HARUNA LIPUMBA ..... 1ST RESPONDENT

HON. HAROUB MOHAMED SHAMIS ..... 2ND RESPONDENT

HON. MAGDALENA HAMIS SAKAYA ..... 3RD RESPONDENT

THE BOARD OF TRUSTEES OF THE CIVIL

UNITED FRONT (CUF-CHAMA CHA WANANCHI) ..... 4TH RESPONDENT

(Arising from Misc. Civil Cause No. 663 of 2021)

RULING

8th and 11th February, 2022

KISANYA, J.:

The applicants herein have instituted this application seeking several orders as follows:

1. *THAT, the Court may be pleased to suspend the 1st respondent in the Post of National Chairman of the Civic United Front (CUF-Chama cha Wananchi) till the determination of the main case.*
2. *THAT, the Court may be pleased to suspend the 2nd respondent in the Post of Secretary General of the Civic*

United Front (CUF-Chama cha Wananchi) till the determination of the main case.

3. *THAT, the Court may be pleased to suspend the 3rd respondent in the Post of Secretary General-Mainland Tanzania of the Civic United Front (CUF-Chama cha Wananchi) till the determination of the main case.*
4. *Any other relief(s) as the court shall deem fit to grant.*
5. *Costs of the application be awarded to the applicants.*

The application is preferred under sections 68(c) and (e) and 95 and Order XXXVII, Rule 2(1) of the Civil Procedure Code [Cap. 33, R.E. 2019] (henceforth "the CPC"). It is supported by a joint affidavit affirmed by the applicants on the 31st day of December, 2021.

In terms of Annexure 1 to the affidavit, the 1st and 2nd applicants are the Deputy National Chairman-Zanzibar and member of a political party namely, The Civic United Front (*CUF-Chama Cha Wananchi*), (henceforth referred to as "the Party"), respectively. They have instituted a petition against the respondents. The reliefs sought in the petition which is pending before this Court are as follows:

a) The Court may be pleased to declare that the 1st, 2nd, 3rd and 4th respondent (sic) have breached the party constitution and have to vacate their positions forthwith.

b) Declare that the 2019 CUF Constitution was procured illegally and the party continue to use the 1992 Constitution Version.

c) The respondents to pay the costs of new process of the 2014 version constitution.

d) Any other reliefs to be determined by the court.

e) Costs of the petitioners.

During the pendency of the above stated petition, the applicants have filed this application for the foresaid orders.

It is stated in the supporting joint affidavit that the respondents have failed to operate the Party in accordance with its constitution. The applicants depose further that the respondents have damaged the Party's reputation. They also allege that the Party has failed to manage political activities nationwide, train its leaders, involve in the by-election and comment on various national issues. It is also the applicants' claim that the Party is in danger of being deregistered.

Upon being served, the respondents filed counter-affidavit of Prof, Ibarahim Haruna Lipumba, Haroub Mohamed Shamis, Amina Thomas and Magdalena Hamis Sakaya to contest the application

Hearing of this application was done orally, whereby, Messrs Hashim Mziray and Mashaka Ngole, learned advocates, appeared for the applicants and respondents, respectively.

Mr. Mziray, first and foremost prayed to adopt the facts deposed in the supporting joint affidavit and Annexure 1 thereto to form part of his submission in chief. The learned counsel went on to contend that the respondents had contravened the Party's constitution of 1992, Edition of 2014 *vide* the amendments effected in the Edition of 2019. He claimed that clauses 13, 16, 24, 30, 44 and 50 of Party's Constitution, Edition of 2019 were not approved by the General Assembly. Mr. Mziray contended further that the alleged contravention was done by the respondents and that the Party is in danger of being deregistered. In that respect, the learned counsel prayed that the 1st, 2nd and 3rd respondents be suspended from their respective posts pending hearing and determination of the main case. When probed by the Court, Mr. Mziray admitted that the orders sought by the applicants are interim orders.

Submitting in rebuttal, Mr. Ngole began by adopting the respondents' counter affidavit to form part of his submission. He submitted that the facts leading to breach of the Party's constitution was stated from the bar and the supporting affidavit. Referring this Court to

the provision of Order XXVII, Rule 2(1) of the CPC, Mr. Ngole argued that an application for temporary injunction must be proved by an evidence given in the supporting affidavit. He went on to contend that the applicants' joint affidavit does not show the applicants' position in the Party and their claims against the respondents. According to him, the applicants raised a general allegation that the respondents had failed to manage the Party. Counsel further submitted that the said claim ought to have been proved on oath.

Citing the case of **Atilio vs Mbowe** [1969] HCD No. 284 referred to in the case **Anna Investment Co Ltd and 3 Others vs NMB Bank Plc and 2 Others**, Misc. Land Application No. 485 of 2021 (unreported), Mr. Ngole argued that the threshold for the granting of interim orders is whether the *prima facie* case, irreparable injury and balance of convenience are in favour of the applicant. He went on to submit that the application at hand does not meet any of the required conditions for the grant of interim orders.

As regards the conditions of irreparable loss or injury, the learned counsel submitted that the applicants had not stated the extent to which they will suffer if the application is not granted. He also called this Court to consider that the applicants have not produced evidence from the

Registrar of Political Parties to prove the contention that the Party is in danger of being deregistered.

With regard to the condition of balance of convenience, Mr. Ngole submitted that the suspension of the 1st, 2nd and 3rd respondents from their posts will paralyze the Party. He was of the view that, it is the respondents who will suffer greater injury if the suspension order is granted than the applicants would suffer if it refused.

Mr. Ngole concluded his submission by arguing that the relief for interim order must be limited to maintenance of the *status quo* pending determination of the main case. He contended that this application is likely to determine the rights of the parties.

Rejoining to the rebuttal submission, Mr. Mziray submitted that the provision of XXXVII, Rule 2(1) of the CPC does not provide for the contents of the affidavit. Referring the Court to Order XIX of the CPC, he argued that an annexure to the affidavit is part of it. On that note, the learned counsel urged this Court to consider that the facts as to the positions of the applicants in the Party were stated in Annexure 1 to the supporting affidavit.

On the decision of the case of **Anna Investment Co Ltd and 3 Others** (supra) relied upon by the learned counsel for the respondents, Mr. Mziray was of the view that it is distinguishable from the circumstances of this case. His reason was based on the fact that the said case was related to a land dispute and not management of political parties. However, he admitted that the principles established in that case apply to the case at hand.

As to the issue of evidence to prove that the Party is in danger of being deregistered, Mr. Mziray submitted that it is settled position that an appropriate measure against a political party which violates its constitution is to cancel registration of that party. He also submitted that the respondents will not be affected by the interim orders sought because new leaders will be appointed to act for the posts held by the 1st, 2nd and 3rd respondents. The learned counsel replied further that suspension of the 1st, 2nd and 3rd respondents would not determine the main case. Thus, he prayed that the application be allowed.

I have dispassionately weighed and considered the rival positions taken by the learned counsel for both sides. Essentially, both parties are at one that the suspension order is an interim relief or order. Considering that the application is premised, among other, under Order

XXXVII, Rule 2(1) of the CPC, I am of the view that the suspension order sought in this case is injunctive in nature. Its effect is to restrain the 1st, 2nd and 3rd respondents from leading the Party or violating the Party's constitution, pending determination of the main case. I am certain, therefore, that the main issue for determination is whether this is a fit case for the Court to grant the interim orders sought be the applicants.

The starting point is the settled position that an interim order is intended to preserve the pre-dispute state until the trial or further order. This position was also stated in the case of **Abdi Ally Salehe vs Asac Unit and 2 Others**, Civil Revision No. 3 of 2012 (unreported). Therefore, in order the relief for interim order to be granted, it must pass the test of principle of equity. According to the case of **American Cynamid Co. vs Ethicon Ltd.** [1975] A.C. 396 (H.L), the principle entails demonstration of three conditions. The first condition is to the effect that there must be a *prima facie* case. The second condition requires the applicant to prove that he will suffer irreparable harm without injunction or interim order. The third condition is that the balance of convenience inclines more to grant of the interim order in favour of the applicant than it is in rejecting it to the adverse party.

Back home, the said conditions were well stated in the case of **Atilio vs Mbowe** (supra) referred to in the submission of the learned counsel for the respondents. The conditions were also restated in other cases decided by the Court of Appeal including, **Kibo Match Group Limited vs Mohamed Enterprises (T) Limited,** Civil application No.6 of 1999 (unreported) and **Abdi Ally Salelhe vs. Asac Care Unit Ltd and 2 Others** (supra). In the latter case, the Court of Appeal held that:-

> *"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).*

And on the question of balance of convenience, what it means is that, before granting or refusing the injunction, the court may have to decide whether the plaintiff will suffer greater injury if the injunction is refused than the defendant will suffer if it granted."

In view of the above position, the three conditions must be met cumulatively in order the interim relief to be granted. If one or two of the stated conditions are not met, the interim order will not be granted. Therefore, the issue whether the facts in the instant case warrant grant of the orders sought can be determined by considering whether each condition has been met.

At the very outset, I am of the view that the nature of the facts, particularly pertaining to management of the political activities of the party disclose the applicants' prima *facie case* in the main case. Thus, the competing facts give rise the issues whether the respondents have failed to operate the party in accordance with its constitution and whether the respondents have damaged the party's reputation. From

the foregoing, I hold that the application meets the first condition for the grant of interim order.

Moving to the second condition on irreparable loss, the applicant has to prove that the loss is irreparable and that the damage is serious, not trivial, minor, illusory, insignificant or technical. Thus, the court is enjoined not to grant the interim order if there is no evidence to prove that the loss to be suffered is irreparable.

Reading from the supporting affidavit, I am of the view that the applicants have abdicated their duty to prove irreparable loss. This is so because they did not depose at all anything related to irreparable loss to be encountered if the application is not granted.

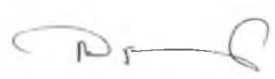
I am mindful of paragraph 5 of the supporting affidavit in which the applicants averred that the Party is in danger of being deregistered. However, I agree with Mr. Ngole that the applicants have not produced evidence to prove that contention. Pursuant to section 19(2) of the Political Parties Act [Cap. 258, R.E. 2019], the Registrar of Political Parties cannot cancel the registration of any political party, unless he has in writing, informed the party concerned, of the contravention and of the intention to cancel the registration. In our case, it was not proved that the Registrar of

Political Parties had expressed his intention to cancel registration of the Party (CUF). Furthermore, the applicants did not demonstrate how suspension of the applicants from their respective posts will deter or bar the deregistration process, if any. All the above considered, I hold the second condition has not been proved.

As to the condition of balance of convenience, the issue for consideration is whether on the balance of probability the applicants stand to suffer the greater hardship and mischief if the suspension order is not granted than the respondents if the same order is granted. Having scanned the applicants' joint affidavit, I find that it was not proved that balance of convenience is in favour of the applicants. This is so when it is considered that the applicants did not state on oath, anything about the balance of convenience.

With the foregoing, it apparent that the facts deposed in the supporting affidavit do not meet the threshold for the grant of orders sought. In the event, the application is hereby dismissed with costs for want of merit.

DATED at DAR ES SALAAM this 11th day of February, 2022.



S.E. Kisanya
JUDGE

COURT: Ruling delivered in open court this 11th day of February, 2022 in the presence of Mr. Hashim Mziray, learned advocate for the applicants and Mr. Mashaka Ngole, learned advocate for the respondents. B/C Bahati present.

S.E. Kisanya
JUDGE
11/02/2022