THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

MOROGORO

MISC. LAND APPLICATION NO. 08 OF 2023

(Arising from LAND Application No.1002 of 2022 of District Land and Housing Tribunal for Morogoro)

STARCOM CONSUMER HEALTHCARE LTD .... 1ST APPLICANT

HENRY ABSALUM VEGULA .... 2ND APPLICANT

VERSUS

DIAMOND TRUST BANK (DTB) .... 1ST RESPONDENT

RAISS COMPANY LTD (RAISSA) .... 2ND RESPONDENT

MABUNDA AUCTION MART COMPANY LTD .... 3RD RESPONDENT

APEL PETROLEUM LTD .... 4TH RESPONDENT

RULING

Date of last order: 24/3/2023

Date of Ruling: 21/04/2023

MALATA, J

This is a ruling in respect to the application for interim orders by the applicants seeking to restrain the Respondents, their relatives, agents, or workman from

cultivating, trespassing, selling, or disposing, leasing or evicting the applicants or transferring title of ownership referred to as farm No.638 Kitungwa, Kingolwira, Morogoro Municipality with title No.79855 together with title No.18900 L.O 234388 Arusha Municipality and title No.234389 Arusha Municipality. The application is by way of chamber summons supported by affidavit sworn by **HENRY ABSALUM VEGULA** who is the 2nd applicant and principal officer of the 1st applicant.

In the affidavit the applicants deponed that,

2. *That the 2nd applicant is the lawful owner of farm no 638 kitungwa, kingoluwira in Morogoro municipality with title no 79855 together with title no 18900 L.O 234388 Arusha municipality and title no 234389 Arusha municipality whose value is Tsh 655,000,000/= (say six hundred fifty five million Tanzanian shillings. Copies of certificates of occupancy are hereto attached and marked as* ***ANNEXTURE S-1,2,3*** *Respectively. Court leave is craved for it to form part of this affidavit.*
3. *That sometimes on 20th April 2016 the 1st applicant secured an overdraft loan facility of Tsh 230,000,000 for a period of 13 months. Letter of a loan facility is hereto attached and marked as*

__ANNEXTURE S-4,__ Court leave is craved for it to form part of this affidavit.

4. *That all the certificates of titles referred in paragraph 2 farm no 638 kitungwa, kingoluwira in Morogoro municipality with title no 79855 /together with title no 18900 L.O 234388 Arusha municipality and title no 234389 Arusha municipality were mortgaged to the 1st respondent as a security for a loan advanced to the 1st applicant.*
5. *That the 1st applicant defaulted to repay the loan to the 1st respondent and he requested for rescheduling of the payment of which on 21st February 2021 the 1st defendant refused to reschedule vide a letter, copy of the letter is hereto attached and marked as __ANNEXTURE S 5,__ court leave is craved for it to form part of this affidavit.*
6. *That the 1st and 2nd applicants both were not served with any notice of sale of the referred properties as it was described in the mortgage deed which is sixty days up to the day of preparing this application.*
7. *Upon realising the refusal of the 1st respondent to reschedule the payment schedule the 1st and 2nd plaintiffs agreed with a company known as NATGROUP LIMITED to rake over the loan from the 1st*

respondent and agreement was signed on 4th June 2022 of which NATGROUP could carry the whole loan from the 1st defendant at the consideration of USD 350,000 to pay off a non-performing loan from 1st respondent court leave is craved for it to form part of this affidavit.

8. *That on 19th January 2023 the 2nd applicant received a letter with intention to change ownership of a farm no 638 kitungwa kingoluwira in Morogoro municipal council with title no 79855 to the 3rd defendant. Copy of the letter is hereto attached and marked as* ***ANNEXTURE S-II,*** *Court leave is raved for it to form part of this affidavit.*

9. *That there have been neither 60 statutory days' notice nor 14 days' notice under the both land and auctioneers nor public advertisement in any of the national newspapers as required by procedures.*

Upon being served with application, the respondents entered counter affidavit resisting the application. The **FIRST** respondent filed counter affidavit on 30th January, 2022 stating inter alia that;

5. That the contents of paragraph 5, 6, 7, 8 and 9 of the Affidavit are noted to the extent that there is a valid facility letter which the 1st Applicant breached its terms. It is also noted the suit property was

pledged as security to the loan, the rest of the contents are denied in toto and in further reply I state that;

i. The 1st Applicant through the directorship of the 2nd Applicant and her co- guarantor/Director one "Rena H. Vegulla" approached the 1st Respondent requesting for a Term Loan of TZS 570,000,000 and an Overdraft (OD) of TZS 230,000,000 a request which was approved by the Ist Respondent vide an offer letter dated 20th April, 2016 with terms consented by the 2nd Applicant and her co-guarantor on behalf of the 1st Applicant who had also issued a Board resolution dated 27th April, 2016 to that effect;

ii. In terms of clause 7 of the offer letter, the facilities in addition to the guarantees by the 2nd Applicant and his co-director, were secured by four other securities among them being Farm No 638 with Title No.79855 located at Kitungwa, Kingolwila within Morogoro Municipality. Page 12 of the Facilities Agreement indicates clearly that the all the Guarantors including the 2nd Applicant gave their consent for the loan and mortgaging of the said landed property above;

iii. On 12th September 2017, following the application by the 1st Applicant, a new Term Loan of TZS 250,000,000 which was repayable over a period of 60 months after a moratorium period of 6 months was issued while the 1st Applicant continue to enjoy the Overdraft and Term Loan facilities issued in 2016. The facilities continued to be secured with, among others, the landed property in Farm No 638 with Title No.79855 located at Kitungwa, Kingolwila within Morogoro Municipality. The loan was also guaranteed by the 2nd Applicant and his co-guarantor. Further, page 12 of the letter clearly shows that both Guarantors consented to the loan as required by law and further provided a Board Resolution to the 1st Respondent;

iv. Sometimes in 2018, following the application by the 1st Applicant, the overdraft facility of TZS 230,000,000 was renewed for a period of 12 months. The remaining term loans were amalgamated to a single term loan of TZS 927,992,000.00 repayable in 120 equal months' instalments. The 1st Applicant agreed to these terms, signed a letter of

offer on 29th July 2018;

Copies of the facility letters and Board Resolutions are herewith annexed and marked "DTB -1" collectively to form part of this counter affidavit;

v. In compliance of the conditions to the letter of offer the 2nd Applicant and the 1st Respondent signed a mortgage agreement. Further, the mortgage created was consented by 2nd Applicant co-guarantor (spouse);

Copies of the mortgage deed and spouse consent are herewith annexed and collectively marked "DTB -2" to form part of this counter affidavit;

vi. The 1st Applicant/Borrower defaulted in repayment of the loan despite several demands by the 1st Respondent, hence a sixty (60) days statutory notice was served to the 2nd Applicant/Mortgagor on 26th November 2021 to remedy the default, in vain;

A copy of the sixty days' statutory notice and the demand notices are herewith annexed and marked "DTB -3" collectively to form part of this counter affidavit.

vii. Following a receipt of the demand notices and notice of default, the 2nd Applicant and his co-guarantor approached the 1st Respondent for rescheduling of facility with an additional loan of TZS 100,000,000 which did not materialize. The 1st Applicant therefore requested to have the outstanding loan taken over by another company styled in the name of NATGROUP which by 15th July 2022 the proposed amount stood at TZS 800,000,000. The request was declined by the 1st Respondent for lack of a bank guarantee from the taking over Company's bank. As a result of the default by the 1st Applicant/Borrower, the outstanding loan due to the 1st Respondent stood at **TZS 1,689,673,223.70** as of 17th November 2021 which amount continues to attract interest on accrual basis;

A copy of the Customer Account Statement and the 1st Respondent's letter refusing the take over and restructuring request are herewith annexed and marked "DTB -4" collectively to form part of this counter affidavit.

viii. Following a continued default, the 1st Respondent instructed the 2nd Respondent to commence recovery process whereby the 2nd Respondent issue fourteen days' notice to the Applicants via Raia Mwema Newspaper although the auction was never conducted. Again the 1st Respondent instructed the 3rd Respondent to commence recovery measures against the Applicants to recover the outstanding loan amount. Consequently, the 3rd Respondent advertised the auction through Raia Mwema Newspaper dated 5th - 11th October 2022. Upon lapse of the notice the auction of property under Farm No. 638 with Title No. 79855 located at Kitungwa, Kingolwila within Morogoro Municipality was lawfully conducted on 22nd October 2022 where the 4th Respondent emerged as a successful bidder after failure of the 2nd Applicant to honour the terms of the auction.

Copies of the newspapers advertising the auction, auctioneer report and certificate of sale are herewith annexed and collectively marked **DTB-5** *to form part of this counter affidavit.*

ix. Following the auction, the Registrar for Land transferred ownership of the property to the 4th Respondent who is a *bona fide* purchaser for value in an overt market.

Copy of the certificate of title showing transfer of ownership is annexed marked **DTB-6** *to form part of this counter affidavit.*

x. Accordingly, the 1st Respondent was entitled to dispose of the disputed property in order to recover the loan balance which the Applicants have failed and/or neglected to pay back.

xi. At all material times the Applicants has been in breach and default of its obligations under the said facility letter, mortgage deeds and deed of guarantees.

6. Further, I state that the Applicants are not entitled to the orders sought in the chamber application. I state further that the 1st Respondent stands to suffer more if injunction is granted. In further answer I state that;

   i. The more the recovery is delayed the more the accrual of

the loan balance surpassing the value of the security hence unable to recover full outstanding loan;

ii. Being a *bona fide* lender, the 1st Respondent has already suffered irreparably more than the Applicants in the sense that 1st Respondent's financial position has been compromised by the default;

iii. The 1st Respondent is more inconvenienced than the Applicants. Monies borrowed is public money that must be timely recovered to re-enter the economy;

iv. The suit property has already been sold to the 4th Respondent, a *bonafide* purchaser, who should not be precluded from enjoying his property;

v. The Applicants have no chances of success in the main suit.

Essentially, this is what the 1st respondent stated in opposition of the application for interim orders sought by the applicants herein.

The ***second, third*** and ***fourth*** respondents also filed counter affidavits in opposition of the application for interim orders which affidavits stand and carries similar contents save for some few things including names and

addresses of the parties with the facts deponed by the 1st respondent. Additionally, there is attachment of Land Tittle Number 79855 of land farm No.638 of Kitungwa, Kingolwira in Morogoro Municipality which was transferred **on 1st December, 2022** to the 4th respondent transfer under power of sale.

On 6th March, 2023, this application came for hearing and the parties herein appeared through learned counsels. Mr. Mkilya Daudi learned counsel appeared for the applicants, Mr. Stephen Axweso assisted by David Chillo learned counsels appeared for the 1st ,2nd and 3rd respondents and Mr. Juma Mwakimatu learned counsel appeared for the 4th respondent.

In support of the application, Mr. Mkilya started his submission by adopting the affidavit as basis for submission in support of the application. He stated that the application was made under sections 68 (e) and 95 and Order XXXVII Rule 1 (a) of the Civil Procedure Code Cap. 33 R.E.2019 (CPC). He submitted that, the basis of the application was that, ***one***, the applicants have filed Land Case No. 2 of 2023 which is pending for hearing which case raised triable issues before this court, ***two***, there was no proper process of auction ever been effected by the respondents, thus in violation of section 12 (2) and (3) of the Auctioneer Act Cap. 227 R.E.2002. He submitted that there was no

proper notice issued by the Respondent sale is effected as required by law. ***Three***, is for balance of convenience as the farm is used for farm is used for hotel though it is not stated anywhere in the affidavit, ***forth***, that if interim order will not be granted land case 2 of 2023 will be rendered nugatory and ***fifth***, pleaded that there is great irreparable loss the to be suffered by applicants, however, he stated that, the same is not pleaded and described in the affidavit. To give a boost to his submission he referred this court to decision in the case **Atilio vs Mbowe (1969) HCD. No.286** where the court stated the governing principles in the determination of this kind of application. These are; balance of convenience, irreparable loss and existence of prima facie case. He also referred to the decision in **Esther Joseph Ogutu Vs Equity Bank and another, Comrade Auction Mart company Ltd**, Misc Land Application No.523 of 2021. He finally prayed that the application be granted.

In opposition to the application, Mr. Stephen learned counsel started by adopting the counter affidavit by the 1st respondent and informed this court that, the same shall form the basis of the main submission in opposition of the application at hand. He first stated that, interim orders are equitable remedies which granted by the court upon being satisfied that, there are

compelling circumstances for a grant, otherwise it should not. It is exercised judiciously upon sufficient reasons being adduced to the satisfaction of the court. He submitted that, the applicants have failed to satisfy that ***one***, there is a prima facie case for this court to grant such order, ***two***, no facts pleaded on the existence of any greater irreparable loss as opposed to the respondents herein, ***three***, balance of inconvenience must be demonstrated to the satisfaction of the court and be to the detriment of the applicant. He submitted that all these principles must be complied with.

To ameliorate the submission, he refereed this court to decision in **Christopher P. Chale vs Commercial Bank of Africa, Misc. Civil Application No.635 of 2017** where **Hon. Mr. Justice Mwandambo** as then was High Court Judge principled that;

> *"It is also the law that the conditions set out must all be met and so meeting one or two of the conditions will not be sufficient for the purposes of the court exercising its discretion to grant an injunction."*

He further stated that, ***one***, applicants have through paragraph 5 of their affidavit admitted and confirmed that loan has not been discharged by the applicants, ***two***, that, loan was secured by securities in question, ***three***,

applicants have defaulted payment of loan, ***four***, applicants contravened paragraph 5 (vi), (vii) and (viii) of the 1st respondent affidavit, ***five***, the facts in the 1st respondent's affidavit have not been refuted in any way by the applicants thus confirms the truth, ***six***, the applicants' affidavit confirms the on the liability and securities which secured the loan, paragraphs 2, 3, 4 and 5 elucidate and ***seven***, principles in the case of Atilio Vs Mbowe has not been proved and satisfied as are so required.

To cement his submissions, Mr. Stephen referred this court to the decisions in the cases of East African Cables (T) Limited vs Spencon Services Limited, Misc. Application Case No. 42 of 2016 (unreported) where **Mr. Justice Mruma** principled that;

> *"In law affidavit and or counter affidavit (as the case may be) is evidence. It is a voluntary declaration of the facts written down and/or sworn to by the declarant before an officer authorized to administer oaths. Unlike pleadings (plaint and written statement of defence and other pleadings), affidavit and counter affidavit are prima facie evidence of the facts stated therein.* ***When a fact is stated on oath, it has to be controverted on oath and this gives the court an opportunity to weigh which fact is***

probably true than the other. When the fact sworn to or affirmed is not controverted then it is deemed to be admitted. When a person swears or makes a sworn declaration of a fact, the best way to challenge him/her is to swear a fact which tends to show that what he sworn to was false. Putting him to strict proof of the fact without giving your side of the story which you what to be believed, amount to admission of the fact."

He also referred to the decision in **Inspector Sadick and two others Vs Gerald Nkya, Civil Application 8 of 1996** where the court of appeal held;

> *"First, Mr. Songoro, as a very senior legal officer, ought* ***to have known better that the proper way to contradict the contents of the counter -affidavit of the respondent was not by making statement from the bar but was by filing a reply to the counter -affidavit."***

Lastly, he cited the decision in the case of **Mohamed Iqbal Haji and three others Vs Zedem Investment limited and two others Misc.Land application No. 05 of 2020** and the case of **Godebertha Rukanga Vs CRDB and 3others Civil Appeal No.25/17 of 2017** both unreported.

Mr. Juma Mwakimatu learned counsel for the 4th respondent had nothing much to submit as Mr. Stephen had exhaustively submitted which submission did cater for the interest of all respondents, as such he subscribed to it. He added that his client was o bone fide purchaser and need not to be penalized for no wrong committed.

He thus concluded by submitting that, the applicants have miserably failed to discharge their duty of proving existence of prima facie case, balance of convenience and irreparable loss as per the case of **Atilio Vs Mbowe.** Thence prayed to the court to dismiss the application with costs.

Having analysed the evidence on record, the responses and submissions for and against in this case, I am now left to decide on the fate of application based on what is on record and law governing issuance of interim orders. The issue for determination is whether the applicants have shown and satisfied this court there are compelling circumstances for the issuance of interim orders pending hearing of the main suit.

Before, determining the matter, I am indebted to pinpoint some governing principles for the issuance of the equitable orders. It is called equitable reliefs due to the fact that, it is granted or otherwise after consideration of the prevailing facts in the application from both parties including but not limited

to; ***one***, balance of convenience, ***two***, irreparable loss, ***three***, existence of prima facie case, ***four***, danger of refusing the sought interim orders, ***five***, applicant has clean hands on the matter, **six,** the court is not used as tool to deny or delay attainment of one's rights under the contract of which parties consented to, ***seven***, in case of refusal to grant the order, the applicant's sufferance cannot be attorned by way of damages and ***eight***, public interest and/or public policy Court cannot be used as an instrument to cause injury to society, and or loss to community by exercising equitable jurisdiction to give benefit to somebody the large interest cannot be sacrificed, this principle is gathered in the case **State of Assam Versus M/S M.S Associates Air [1994] Gau 105**

> *"While granting a temporary injunction not only three ingredients' must be observed but in addition to it public interest and/or public policy also will have to be considered. The Court cannot be used as an instrument to cause injury to society, and or loss to community by exercising equitable jurisdiction to give benefit to somebody the large interest cannot be sacrificed"*

The above legal principle has been adopted and used by our Courts through numerous cases, to wit **Misc. Civil Cause No. 54 of 2000 between Alhay**

Muhidin A. Ndolanga and Alhay Ismail Aden Rage Versus The Registrar of Sports and Sports Association and others unreported where the Court held.

> *"It is trite law, as well as trite learning, that in granting or not granting injunction public interest, or Public Policy, has to be considered, so that the Court makes sure, that it is not used as an instrument or tool, to cause injury to society, or loss to community. Thus, in the Courts exercise of its equitable jurisdiction to give benefit to somebody the large interest of the community cannot be sacrificed. In the event, balance of convenience, must always be in favour of the public. In summary therefore, with only one principle satisfied the injunction cannot stand on one foot like a Masai in the grazing grassland".*

and **nine**, is consideration of any other compelling material facts put forward by the applicant necessitating the issuance of this equitable reliefs. Some of the above principles were celebrated in the case of **ATILIO V. MBOWE (1969) HCD 284** as submitted by both parties.

Further, in the case of **TANZANIA COTTON MARKETING BOARD COGECAT COTTON (COSA) [1997] TLR 63,** the Court of Appeal was faced with such equitable application and it qualified the principles by stating that,

i. *the Applicant had not gone beyond, mere assertion that it would suffer great loss and that its business would be brought to a standstill. Unless details and particulars of the loss were specified was no basis upon which the Court could satisfy itself that such loss would incur.*

ii. *the applicant had further more failed to indicate, beyond the vague and generalized assertion of substantial loss, that the loss would be irreparable. Any loss which the Applicant was likely to suffer to could be adequately compensated for by an award of damages.*

This court has repeatedly gone through the applicants' application to ascertain and satisfy itself if it really raised points fulfilling the above requirement for this court to grant what is asked for. What it gathered is that, from paragraphs 1 to 9 of the applicants' affidavit there is nowhere stated, let alone attempt that, why this order should be granted and how the applicants stand to suffer. They did not state any the material facts depicting how the applicants will be; ***one***, inconvenienced, ***two***, suffer irreparable,

three, no establishment of prima facie case, ***four***, no facts that, in case of refusal any subsequent damages will not be attorned by way of damages, ***five***, there is neither facts nor evidence particularizing any loss or hardship likely to occur to the applicants in case of refusal of the said equitable order, ***six***, there is no facts that the applicants stand with high chances of sufferance as opposed to the respondents, ***seven***, no facts demonstrating how innocent or honesty the applicants are in the transaction bearing in mind the respondents have enforced their rights under the loan agreement following the applicants failure to discharge their contractual obligations.

Mr. Mkilya Daudi learned counsel argued the application from the non-existing facts as the applicants' affidavit did not plead facts for reasons for grant of interim orders. Submissions, however, lucrative and amazing, it has to be expanding what is on record, otherwise, it will have no leg to stand on as it is not in support of what is on record. Further, it should be known to everyone that, submissions are not evidence but just an amplification of what is on record. If there is non-record, then that is unfortunate.

Further, the applicants did not state how clean they are to the extent that, the steps taken by the respondents are illegal and contrary to the loan Agreement and that, the securities in question are not the one secured the

loan or that the applicants are not in default. This could have informed the court that, it is not being used to cause injuries to the innocent party, the respondents. He who seeks equity must go to court with clean hands. This sound similar with the position in the case of **Duchess of Argyll Vs Duke of Argyll and others (1965) 2 WLR 790,** where Lord Wheatley principled that;

> *"A person coming to equity for relief and this being an equitable relief which the plaintiff seeks must come with clean hands, but the cleanliness required is to be judged in relation to reliefs that is sought"*

On the other hand, the Advocates for the respondents submitted that through the respondents' affidavits, it has been demonstrated as to how the applicants failed to discharge the loan agreement thence the steps taken to recover the outstanding amount through the deposited securities. They stated that, the transfer has already been effected via **annexture DTB 6** with effect from 1st December, 2022 and endorsed by Government authority thence ownership to the 4th respondent.

This fact has not been controverted in any way by the applicants, that the transfer has already been effected. As, it is not in dispute or counted, then

the said facts convey the correct position. This supported by the afore annexture.

The position is echoed by the principles in **East African Cables (T) Limited vs Spencon Services Limited,** Misc. Application Case No. 42 of 2016 and **Inspector Sadick and two others Vs Gerald Nkya,** Civil Application 8 of 1996 quoted herein above.

In recognition of the undisputed fact that, transfer has already been done, it goes without saying therefore that, what this court has been asked to grant by the applicants is legally untenable as they praying to be issued with, among other, restraint order of transferring ownership which exercise has already been done effectively on 1st December, 2022.

It is trite law that, interim or injunctive orders are only granted by the court in the exercise of court's discretion which, however, must be done judiciously. It has to act judiciously, in the sense that, there must be material facts/grounds/evidence satisfying the court to exercise its discretional supremacies. Short of that, the court will have nowhere to rely upon.

In the present case, there is, ***one***, no material facts/grounds/evidence pleaded which satisfied the court, on the existence of; ***two,*** *no establishment* of a prima facie case, ***three***, no pleaded fact and proof of inconvenience as

against the respondents, ***four***, no facts pleaded for irreparable loss with its particularization, ***five***, no plea of honesty conduct of the matter by the applicants as opposed to the respondents' claim of contractual rights and ***six***, no plea of facts that, in case of refusal of the order the applicants will be more inconvenienced than respondents and that damages arising therefrom cannot be attorney by way of damages.

It is settled law and the learned Advocates for both sides agree that Courts will only grant injunctions if there is evidence that there will be irreparable loss which cannot be adequately compensated by award of general damages (See: **American Cynamid Co. V. Ethicon Ltd** [1975] 1 All ER 504 at p.509 Per Lord Diplock) followed in Various Cases in Tanzania including **Hotel Tilapia Ltd v. Tanzania Revenue Authority,** Commercial Case No. 2 of 2000 (unreported). Lord Diplock stated:

> "... *The object of the temporary injunction is to protect the plaintiff against injury by violation of his right for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour on the trial..."(at p.509)*

Since, there is no such prima facie case established before this court, let alone attempt, as such this court has therefore nowhere to rely upon in granting what is asked for.

The applicants' arguments fall far away in the light of what has been principled in **Agency Cargo International v. Eurafrican Bank (T) Ltd,** HC (DSM) Civil Case No. 44 of 1998 (unreported) whereby the balance of convenience test was adumbrated in an application for injunction against the bank's move to enforce recovery measures as it were in this application. This Court (speaking through Nsekela, J as he the then was) stated thus;

> "... *The object of security is to provide a source of satisfaction of the debt covered by it The Respondent to continue being in banking business must have funds to lend and which [h] as to be repaid by its debtors. If a bank does not recover its loans, it will seriously be an obvious candidate for bankruptcy .... It is only fair that banks and their customers should enforce their respective obligations under the banking system."*

Unless the contrary is stated with cogent reasons, the above position echoes what is stated by Lord Wheatley in the afore cited case that, a person coming for equitable relief which the applicants seek must come with clean hands,

but the cleanliness required is to be judged in relation to reliefs that is sought. This court cannot be used to cause injury or deny a contractual right of an innocent party unless there are compelling cogent reasons for so doing. Parties are duty bound to discharge their contractual obligations. Courts will should always not be used by the defaulting party to grant injunction restraining the innocent party from realizing its contractual accrued rights. By so doing and as we understand that, banks survive through lending customers' moneys, if not collected in all ways from the borrowers, Banks will encounter suffocation, thence failure to retain owners' money and run bankruptcy. As such, it will be subjected to uncalled for litigations preferred by money owners kept under trusteeship of the respective bank. Courts has to assist banks in realizing the accrued moneys from the defaulters and not otherwise unless there are cogent reasons compelling for such interference. In the circumstances, since there is no material facts establishing compelling factors for the grant of what is asked for and that the applicants have miserably failed to discharge their obligations of raising the same, this court has legally nowhere to rely upon in granting the sought orders. Further the applicants did not state or attempt to state in any way, that in case this court

refuses to grant the orders, the applicants will suffer damages which cannot be attorned by way of compensation, in case they win the pending suit.

Consequently, I hold that, the applicants' application is with no merits for failure to meet the legal requirement upon which, this court can exercise its discretionary supremacies and grant what is asked for.

In the event, I hereby dismiss the applicants' application with costs.

IT IS SO ORDERED

DATED at **MOROGORO** this 21st April, 2023

G. P. MALATA

JUDGE

21/04/2023