

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

MISCELLANEOUS CIVIL APPLICATION NO. 144 OF 2022

BATES NATIONAL LIMITED.....APPLICANT

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

TIB DEVELOPMENT BANK.....2ND RESPONDENT


YONO AUCTION MART & CO. LTD.....3RD RESPONDENT

RULING

20th January & 06th February 2023

Kilekamajenga, J.

The instant appeal was brought under **section 2(3) of the Judicature and Application of Laws Act Cap 358 R.E 2019** and **Section 95 of the Civil Procedure Code, Cap. 33 R.E 2022**. The applicant sought Mareva injunction in respect of the applicant's suit premises situated on Plot No. 178, Block 'DD' with title No. 25252 within Mwanza City. The application was brought under certificate of urgency and accompanied with an affidavit deposed by Amran Kheri Batenga, who is the principal officer of the applicant. In response, the first and second respondents filed a joint counter affidavit resisting the application. The



court ordered the case to proceed in absence of the third respondent. When called to defend the application, the applicant's counsel, Mr. Godfrey Martine appeared for the applicant whereas the first and second respondent enjoyed the legal services of the learned Advocate, Mr. Fredrick Ihembe.

In expounding the reasons for the application, the learned counsel for the applicant argued that, the applicant seeks an order to maintain status quo on the above named suit premises pending the determination of an application for temporary injunction to be filed after the expiry of the statutory notice of ninety days to sue the Attorney General. Before going further, the counsel prayed to adopt the applicant's affidavit to form part of the submission. The counsel argued further that, the applicant applied for a loan from the second respondent for setting-up a printing factory. The application for the loan was approved and the applicant received a credit facility of Tshs. 260,000/= on 31st January 2011. The applicant further applied for an over-draft of Tshs. 100,000,000/= and was later supplied with a working capital worth Tshs. 243,000,000/= and Tshs. 50,000,000/= at different times. The counsel further argued that, after receiving the said loan from the second respondent, the government policy changed which affected the intended products of the factory. Specifically, the Value Added Tax (Electronic Fiscal Devices) Regulations of 2010, imposed a requirement to all

government institutions to issue electronic receipts instead of hand written receipts. Therefore, the change frustrated the applicant's business who intended to do business with the government institutions on sale of receipt books.

Thereafter, the applicant communicated with the second respondent on the change of government policy through a letter dated 04th January 2019. In response, the second respondent advised the applicant to expand the business in order to service the loan. Furthermore, the second respondent promised to re-structure the loan agreement before the end of January 2019. However, the second respondent refused to issue the loan of Tshs. 200,000,000/= in favour of the applicant. Thereafter, there were several conversations between the applicant and the third respondent which were not fruitful. As a result, the applicant managed to repay only Tshs. 78,000,000/= as part of the loan facility. As the mortgaged property is in the process of being sold to realise the contractual sum which was frustrated by the change in the government policy, the applicant is likely to suffer irreparable loss. Under section 56(2) of the Law of Contract, the applicant may not be able to recover the loss if the property is disposed of. To bolster his argument, the counsel cited the case of **Active Packaging (T) LTD v. TIB Development**, Commercial Case No. 08 of 2019, HC at Arusha and **News Master Corporation LTD v. AG and two others**,



Misc. Land Application No. 42 of 2022, HC at Mwanza. In his view, as the loan was issued in 2011 and the change of the government policy effected in 2010, the applicant's contract was frustrated from the beginning.

On the other hand, the counsel for the first and second respondent objected the application arguing that, for the order of Mareva injunction to be granted, the following elements must exist: First, there must be serious matter to be tried which entitles the applicant to a relief. Second, the court interference is necessary to protect the applicant's rights. Third, there must be a balance of convenience that may bring great hardship if the injunction is not granted. He cited the following cases to cement the argument; **Atilio v. Mbowe** [1969] HCD 284; and **Christopher P. Chale v. Commercial Bank of Africa**, Misc. Application No. 635 of 2017, HC Dar es salaam.

The counsel for the first and second respondent further argued that, the credit facility agreement between the applicant and the second respondent intended to finance the printing factory. The alleged change of policy is not true because the factory was not limited to printing of receipt books alone. Also, the response from the second respondent did not intend to alter the initial credit facility agreement. Currently, the second respondent is suffering loss as ballooned as

the loan keep on ballooning. The only remedy available is for the second respondent to dispose of the mortgaged property in order to realise the loan. The counsel prayed for the application to be dismissed because the applicant is trying to avoid his obligation.

When rejoining, the counsel for the applicant further argued that, the temporary injunction does not relieve the applicant from loan repayment but to afford the applicant the opportunity to pursue his rights. He insisted for the grant of the injunction.

In this application, the court is called upon to grant mareva injunction in order to restrain the second respondent from disposing of the suit property pending the determination of the suit which may be filed after the expiry of ninety days which is the statutory notice to sue the government. Upon revisiting the facts of the case, it is evident that, the applicant secured a credit facility from the second respondent for establishing a printing factory. The affidavit in support of the application does not leave any shred of doubt that, the applicant enjoyed a loan of Tshs. 243,063,000/= for the purchase of printing machines and also secured an overdraft of Tshs. 50,000,000/= as a working capital. The counsel for the applicant argued that, the applicant was not able to service the loan facility due

to the change of government policy. As the applicant procured the printing machines intending to print receipt books for government institutions/departments, the business was adversely affected by such change of policy. As a result, out of the whole loan and an overdraft rendered to the applicant, only Tshs. 78,000,000/= has been repaid. To recover the loan and the overdraft facility, the second respondent intends to sell the mortgaged property i.e. Plot No. 178, Block 'DD' with title No. 25252 within Mwanza City. The applicant has now filed the instant application to halt the sale process until a main suit is determined which so far has not been filed pending the expiry of ninety days as required by the law.

However, as argued by the counsel for the first and second respondent, the *mareva* injunction only applies where the matter meets key significant qualifications. I wish to reiterate the conditions as follows: **first**, there must be a serious question of law that would entitle the applicant to a relief. **Second**, the courts interference is necessary to protect the applicant against an irreparable injury. **Third**, balance of convenience in that it has to be demonstrated that there will be greater hardship suffered by the applicant if the application is withheld. See, the case of **Christopher P. Chale** (*supra*). Furthermore, in the case of **Charles D. Msumari & 83 Others v. The Director of Tanzania**

Habours Authority, Civil Appeal No. 18 of 1997, HC at Tanga (unreported) which was quoted in the case of **Leopard Net Logistics Company Limited v. Tanzania Commercial Bank Limited and three others**, Misc. Civil Application No. 585 of 2021, HC at Dar es salaam, this court stated that:

*'Courts cannot grant injunction simply because they think it is convenient to do so. Convenience is not our business. Our business is doing justice to the parties. The 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 more highly driving allegations of the applicants such as the denial of the relief will be ruinous 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).*

Also, in the case of **Newsmaster Corporation** (*supra*), Hon. Judge Itemba insisted that, *'mareva injunction can be granted where an applicant has successfully established a prima facie case with a probability of success'.*

Now, back to the application at hand, as already indicated above, in my view, I do not find any prima facie case in the applicant's case. At best, I can fairly state

that, the applicant has no any cause of action against the second respondent. It may be irrational or rather awkward for a person who still owes a huge amount of money to the respondent to establish a cause of action. In my view, the applicant may be trying to use the court process as a tactic to derail the respondents' rights. This court, on several occasions, has condemned the practice of using the court processes as a shield to avoid due obligations. The applicant has clearly demonstrated that, he owes an un-serviced loan from the second respondent. At no point may the court declare rights over an evading defaulter. I find no merit in the application and therefore dismiss it with costs. It is so ordered.

DATED at **Mwanza** this 06th day of February, 2023.



Ntemi N. Kilekamajenga.

JUDGE

06/02/2023



Court:

Ruling delivered this 06th February 20123 in the absence of the parties. Right of appeal explained.



Ntemi N. Kilekamajenga.
JUDGE
06/02/2023

