

THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB REGISTRY)

Misc Civil Cause No 199 Of 2023,
Arising from Civil Case No. 84 OF 2023

UNIQUE AGRO–INDUSTRIAL LIMITED.....APPLICANT

VERSUS

CRDB BANK PLC.....1ST RESPONDENT

STEAM GENERATION RECOVERIES LIMITED.....2ND RESPONDENT

RULING

3rd & 8th May 2024

KIREKIANO J:

The applicant herein is the plaintiff in Civil Case No. 84 of 2023, pending in this court. In that case, the applicant entered into an asset financing and working capital loan agreement with the respondent to TZS 958,500,000/= TZS 808,500,000/= was for asset financing of 2 crane loaders and TZS 150,000,000/= as working capital.

There is a dispute on the loan servicing; the plaintiff claims that the defendant illegally varied the terms of the loan agreement and that the alleged default, culminating in the attachment of applicant collaterals, was unjustified.

Leaving the details behind suffice it at this stage to say that the plaintiff in that case, now the applicant in this application, brought this application under Order XXXVII Rule 1 (a) (b) and 2 (i). and Section 68 (e) and 95 of the Civil Procedure Code, [CAP 33 R: E 2019] seeking the following reliefs:

- 1. Interim injunction order restraining the respondents, their agents, servants or anyone acting on their behalf from the disposition of any property belonging to the applicant through auction or attaching the applicant's accounts pending hearing and final determination of the Civil Case No. 84 of 2023.*
- 2. Any other relief*
- 3. Costs*

That application is supported by an affidavit of Mr Aman Sinare, the applicant's principal officer. The same narrates the parties' contract's factual background and point of departure. More significantly, the applicant states that in December 2022, the applicant made a payment of Tshs 50 million, followed by a monthly payment of Tshs 10 million from January to March 2023. It is alleged this amount was not reduced. Instead, the respondent issued a notice of sale of the collateral, holding the applicant in default in servicing the loan.

The properties at issue are two crane loaders with registration no. T. 618 DVC BELL, and T.617 DVC BELL.

According to paragraph 13 of the applicant's affidavit, the injunctive order sought aims to ascertain the actual balance to be paid. The first respondent's stance is Tsh 1 123,077,450.97, while the applicant's account debt stands at 747.835126.70 million.

This application was heard through written submissions. The applicant was represented by Mr David Ndosj, a learned advocate, while the respondent had the services of Miss Haika Mrango, a learned advocate.

This court has power under order XXXVII CPC to grant the injunction order sought; however, in this case, the applicant must establish material facts, which, if carefully considered, this court will exercise its discretion in favour of granting the order.

In so doing, the principle is in three tests as articulated in the famous case of **Atilio versus Mbowe (1969) HCD, 284** thus, **first** existence of serious question to be tried on the facts alleged with the probability of success in the suit, **second** demonstration that the applicant stands to suffer irreparable loss requiring the court's intervention before the applicants legal

right is established and **third** proof of more significant hardship and mischief to be sustained by the applicant if the injunction is not granted than the respondent will suffer if the order is given.

I will start with the first test. Mr Ndosu submitted that in paragraphs 4, 10 and 14, 17 of the amended plaint, in the pending case, i.e. civil Case No. 84 of 2023, the issue for this court determination is how an account with a turnover of more than TZS 5 billion fail to cover an outstanding debt of TZS 1.123,007,450 while the said account was operated by the 1st respondent and the repayments were made automatically (automatic deductions). Mr Ndosu cited **Sigori Investment (T) Ltd and Another**, supra while quoting the case of **American Cyanamid Vs Ethicom [1975]. ALL E.R. 504** which stated that to grant a temporary injunction; the court must be satisfied that the claim is not frivolous or vexatious.

Miss Mrango responded that having an undetermined case in court is not enough. Instead, the applicant must show that there is a serious question to be determined by the Court. In support of her submission, she cited the decision in **Nelson M. Matiku Vs EFC Tanzania Microfinance Bank Limited & Another**, Misc—Land Application No. 1023 of 2017 (unreported).

I have examined the applicant's complaint in the main case, as indicated. It is apparent that there is a dispute over servicing the loan, that is, whether the applicant (the plaintiff in the main case) were in default, justifying the respondent defendant initiating the recovery process. The issue is ascertaining the actual balance to be paid. I find that this is a sufficient triable issue to suffice the first test.

On the second point, it is settled law, and the learned advocates for both sides agree that courts will only grant injunctions if there is evidence of irreparable loss, which an award of general damages cannot adequately compensate. This is a position alluded to in numerous decisions, including **American Cynamid Co. V. Ethicon Ltd [1975] 1 All ER 504 at p.509 Per Lord Diplock**) followed by multiple domestic decisions, including **Hotel Tilapia Ltd v. Tanzania Revenue Authority, Commercial Case No. 2 of 2000 (unreported). Sospeter Gallus Ommolo vs Equity Bank Tanzania Limited & Others (Misc. Civil Application No. 245 of 2024) [2024] TZHC 28 (22 January 2024)** In the case of **America Cyamid** 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..."

In this application, as indicated, the applicant seeks to protect properties, including 2 crane loaders with registration no. T. 618 DVC BELL and T.617 DVC BELL. According to Mr Ndosi, the applicant is likely to suffer irreparable loss as his properties, which are tools for his business, will be sold, and the trust and confidence acquired from his business partners and his employees will vanish.

Miss Mrango believed that the respondent would suffer irreparable loss if measures to recover the amount were not taken. According to her, the respondents' main activity is lending money to individuals and companies. She cited the decision in **Benny Josephat Mdesa & Another Vs National Microfinance Bank PLC (NMB BANK) & 3 Others, Misc. Land Application No. 08 of 2021 and Zak Import & Export Company Limited Vs Crown Finance & Leasing Ltd, Civil Case No. 27 of 2000 HC** to the effect that banks need to be protected from defaulting borrowers and the bank's business depends much on lending money.

I have considered the parties' submission on this aspect; what is at issue is not only that one part may suffer loss, but the said loss must be of such kind

that damages cannot remedy it. The party's dispute emanates from a loan contract involving material objects and working capital. In **Kaare Vs General Manager, Mara Cooperation Union (1924) Ltd [1987] TLR 17 Mapigano, J** (As he then was) held,

" By irreparable injury, it is not meant that there must be no physical possibility of repairing the injury but merely that the injury would be material, e.g. one that could not be adequately remedied by damages.

I had a hint of the applicant's claims in the main case. All these complaints may, in my view, be atoned by damages if the main case is decided in the plaintiff. These included the deposition on the loss of trust and confidence acquired from applicant business partners. I thus find that the second test is not sufficiently established.

The third condition is a balance of convenience; the applicant submits that she is likely to suffer more hardship than the respondent if the temporary injunction is withheld. According to Mr Ndosu, if the temporary injunction is withheld at all, then the respondent will obtain the principal amount plus the interest of 20% plus the deducted amount of TZS 375,242,324.27, and the applicant will have no other way to claim the deducted amount.

On the other hand, Miss Mrango pointed out that the money deposited by the bank clients is expected to be withdrawn at any time for the smooth operation of the Bank. If the borrowed money is not paid back in time, the bank will lack funds, an act that may lead to the death of the bank since its survival depends on it.

She cited Benny Josephat Mdesa, & Another vs ***National Microfinance Bank PLC (NMB BANK) & 3 Others***. I am persuaded by Miss Mrango submission that if the application is granted, the same will affect the respondents and other customers. In the decisions in **Sospeter Ommollo**, I held a view that the right of banks to charge interest and assurance of security of collaterals are banks' bedrock for survival, serving several crucial functions in bank operations. This has to be considered when evaluating the balance of inconvenience in applying injunctive orders. When considering balance of convenience, If the parties' rights may fairly be determined in the main case without damaging one part operations, injunctive orders should not be rushed. Given the preceding considerations, I find that the second and third tests are not established; the application is dismissed with cost. Order accordingly.



A. J. KIREKIANO

JUDGE

08.05.2024

COURT

Ruling delivered in presence of Mr David Ndosu, a learned advocate for applicant and in presence of Miss Haika Mrango, a learned advocate for respondents.



A. J. KIREKIANO

JUDGE

08.05.2024