

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(TANGA DISTRICT REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 69 OF 2023

**AHMED SUUD HILAL (As an Administrator of the Estate of the Late
SUUD HILAL) APPLICANT**

VERSUS

- 1. INDEPENDENT AGENCIES & COURT BROKER LTD ...1ST RESPONDENT**
- 2. HASSANI MOHAMED YUNUS2ND RESPONDENT**
- 3. AHMED OMARI STAMBULI 3RD RESPONDENT**
- 4. SHEKHA SAIDI KHAALIFA 4TH RESPONDENT**
- 5. THE ATTORNEY GENERAL 5TH RESPONDENT**
- 6. THE COMMISSIONER FOR LANDS6TH RESPONDENT**
- 7. THE REGISTRAR OF TITLES 7TH RESPONDENT**
- 8. THE TANGA CITY COUNCIL 8TH RESPONDENT**

RULING

5th & 17th Jan, 2024

M.J. CHABA, J.

The Applicant, Ahmed Suud Hilal (As an Administrator of the Estate of the Late Suud Hilal) by way of Chamber Summons made under certificate of extremely urgency, filed the instant application under the provision of section 2 (1) and (3) of the Judicature and Application of Laws Act [CAP. 358 R.E. 2019] (JALA), and section 95 of the Civil Procedure Code, [CAP. 33 R.E. 2019]

(the CPC). It was filed on the 28th day of December, 2023 and it has been taken out at the instance of Mr. Mwita Waissaka, Learned Advocate, and it is supported by an affidavit affirmed by the applicant, Ahmed Suud Hilal.

In essence, the application centres on the prayers for an interim injunction order in the form of *mareva injunction* against the 1st, 2nd, 3rd and 4th Respondents, restraining them, their servants and/or agents or any person acting on their behalf from evicting the Applicant from his premises pending services of 90 days Statutory Notice to the 5th, 6th, 7th and 8th Respondents and instituting the suit against all the Respondents jointly and severally thereof or an appeal against the 7th Respondent, and any other order (s) or reliefs (s) as this Court may deem fit and just to grant.

As hinted above, the Application has been preferred under the certificate of urgency that, unless restrained by an order of this Court the 1st, 2nd, 3rd, and 4th Respondents will lay waste to the premises which are subject matter of this Application, to wit; the unexhausted improvements situate on Plot No. 1, Block "37" - Ngamiani Area, Tanga City and dispose of to the 4th Respondent.

When the application was called on for hearing on 5th January, 2024, the Applicant was present in person and enjoyed the legal services from Mr. Mwita Waissaka and Mr. Mafuru Mafuru, both Learned Advocates, whereas Mr. Rashid Mohamed being assisted by Mr. Kefa Anase and Mr. Idrisa Mbondela, All State Attorneys, entered appearance for the 5th, 6th, 7th and 8th Respondents respectively. Mr. Rwegoshola Benjamini, Senior Land Officer and

Mr. Juma Nyumba, Senior Registration Officer also joined forces on the side of the Learned State Attorneys. On the other hand, Mr. Peter Bana, Learned Advocate appeared for the 4th Respondent, meanwhile holding brief for Mr. Atranus Mkago Method, also Learned Advocate for 2nd and 3rd Respondents. The 2nd and 3rd Respondents were also present in persons and Mr. Ahmed Omary Stambuli, appeared on behalf of the 1st Respondent.

Services of summons to the Respondents were mostly duly effected on the 4th day of January, 2024. Therefore, until when the matter was placed before me, there was no any counter affidavit filed by either of the Respondents. However, due to the nature of the matter at hand, Mr. Mafuru Mafuru, Counsel for the Applicant informed the Court to intervene the act of the 1st and 4th Respondents to close the Applicant's business and prayed the Court to issue an order for maintenance of *status quo* for a reason that, part of the disputed landed property is used by the Applicant to conduct his business of selling lubricants and doing services of motor vehicles (tyre repair facility) something which the applicant depends upon it for economic gain.

He went on submitting that, following unlawful order and directions issued by the 2nd, 3rd and 4th Respondents whose implementation was duly effected by the 1st Respondent (Court Broker) and condoned by the Police Officers, eventually has led to the closure of his business and something which have directly affected all the employees and his clients as the premises



was sealed off by locking and padlocked by the using chains and tapes. That was on the 8th day of December, 2023.

In view of the above submission, Mr. Mafuru prayed for maintenance of the *status quo* pending hearing of the matter *inter-parties* and further stated that, granting of the orders sought by the applicant will not at all prejudice both the 1st and 4th Respondents and other Respondents. He further urged the Court to preserve the *status quo* for the benefits of the Applicant in terms of economic gain.

In reply, Mr. Rashid Mohamed, Learned State Attorney did not object the prayer sought by the Counsel for the Applicant. Basically, he acceded to the issue of preserving or maintaining the *status quo* of the applicant. Only that, his point of departure from Mr. Mafuru's submission is that, the sought prayer for maintenance of *status quo* shall mean to preserve the current or on-going situation where the applicant's business has been closed but not to allow him to reopen his business.

To his part, Mr. Peter Bana, Counsel for the 4th Respondent seconded to the argument advanced by the State Attorney and added that, the substance of the matter is that, the applicant was evicted and stopped to operate his business. To buttress his contention, Mr. Bana referred this Court to the cardinal principle of law which articulates that, Courts when dealing with this kind of application are urged to refrain from dealing with the substantive issues which are pending for hearing. He further added that, it is a trite law

that, parties are bound by their own pleadings and the Court itself is also bound by the parties' pleadings. He argues that, looking at the chamber summons, there is no such a prayer for preserving the *status quo* of the Applicant as suggested by the Counsel for the Applicant. He argues that, if the prayer sought by the Applicant was not pleaded in the chamber summons, at this juncture, the Applicant or his Learned Counsel cannot emerge and raise the same.

He was of the view that, to avoid confusion, the current status should be maintained by the Court, meaning that, since the shop dealing with the selling of lubricants was closed on 8th day of December, 2023 and the other part of business which deals with the filling station is still open and continuing to operate as usual, therefore, the *status quo* should be granted to that effect.


The 2nd and 3rd Respondents joined their hands with the submissions made by the Learned State Attorney and Mr. Bana, and added that the *status quo* should be maintained as of now.

By way of rejoinder, Mr. Mafuru, Learned Counsel for the Applicant submitted that, when he stated that the *status quo* should be maintained or preserved, he meant, *status quo ante*, which means the status after the event. He accentuated further that, the word *status quo* means before the event and in his submission in chief he meant *status quo* before the event. He argues that, as of now, the Applicant has never been evicted from the landed property but his business has been closed. He averred that, the Applicant and

the 4th Respondent were stopped to continue with their business but later on the 8th December, 2023 the 4th Respondent was allowed to continue with his business. As regards to the issues of cardinal principles and substantive issues, Mr. Mafuru asserted that, Mr. Bana, Counsel for the 4th Respondent did not explain anything as well as the issue of parties being bound by their own pleadings. In his view, Mr. Bana misconceived his submission.

Rejoining the argument put forward by the Counsel for the 4th respondent, Mr. Mwita Waissaka, also Counsel for the Applicant averred that, the issue of balance of convenience is vital in the circumstance of this case and the Court should accordingly consider when determining the issue of granting the order sought for preserving the *status quo* of the Applicant. He submitted that, right now, there is a continuous breach at the crime scene. He underlined that, the 4th Respondent is a tenant (a person occupying rented land or property) to the Applicant but the Applicant's business has been closed. He submitted that, it is a trite law that, whatever is affixed to the soil or land belongs to the soil or it remains part of the land (*Quicquid plantatur solo, solo cedit*).

His argues that, since the Applicant has been restrained from doing or operating his business and the 4th Respondent has been allowed to continue with the operation of his business in the same landed property, to avoid double standards, he prayed the Court to allow the Applicant continue doing his business pending hearing of the Application *inter-parties*.



Having summarised the contending arguments advanced by the Counsels for both sides, the pertinent issue for consideration, determination and decision thereon is whether or not the order sought by the Applicant for maintenance or preservation of the *status quo* in the respective premises is meritorious.

To begin with, I agree with the submission made by the Counsel for the 4th Respondent that, it is settled law that, a party is bound by his pleadings and can only succeed according to what he has averred in his plaint (application) and proved in evidence; hence he is not allowed to set up a new case. **See: MAKORI WASSAGA VS. MWANAKOMBO AND ANOTHER [1987] T.L.R. 88.**

In another case of **BARCLAYS BANK T. LTD VS. JACOB MURO (CIVIL APPEAL 357 OF 2019) [2020] TZCA 1875 (26 NOVEMBER 2020)** [Extracted from www.tanzlii.go], the Court of Appeal of Tanzania made the following observation on the subject:

*"We feel compelled, at this point, to restate the time-honoured principle of law that parties are bound by their own pleadings and that **any evidence produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored**".*

[Emphasis added].



See also the cases of **JAMES FUNKE NGWAGILO VS. ATTORNEY GENERAL [2004] TLR 161**, **LAWRENCE SURUMBU TARA VS. THE HON. ATTORNEY GENERAL AND 2 OTHERS**, CIVIL APPEAL NO. 56 OF 2012; and **CHARLES RICHARD KOMBE T/A BUILDINGS VS. EVARANI MTUNGI AND 3 OTHERS**, CIVIL APPEAL NO. 38 OF 2012 (both unreported).

Guided by the above principles enunciated in the above-mentioned authorities regarding pleadings, in similar vein, not only the parties to the case who are bound by their pleadings but also the Courts are bound by the said pleadings of the parties.

As noted above, this Application centres on the prayers for an interim injunction order in the form of *mareva injunction*. The principle was articulated in the famous case of **MAREVA COMPANIA NAVIERA SA VS. INTERNATIONAL BULKCARRIERS SA THE MAREVA [1980] 1 ALL ER 213**, Court of Appeal, Civil Division, where Lord Denning observed and expounded that: -

"There is only one qualification to be made. The Court will not grant an injunction to protect a person who has no legal or equitable right whatever. That appears from North London Railway Co. vs. Great Northern Railway Co. But, subject to that qualification, the statute gives a wide general power to the Courts".



It is worth noting that, the cardinal principle of *mareva injunction* is a common law doctrine and its applicability in our jurisdiction is vide the provision of section 2 (1) and (3) of the JALA (supra) read together with section 95 of the CPC. It is the principle of law that, for such an injunction to be issued, the Court must satisfy itself that there is no pending suit rather it is an application pending obtaining a legal standing to institute a law suit.

In spite of the fact that, the Application centres on the prayers for an interim injunction order or temporary injunction in the form of *mareva injunction* but the truth is that, it is a specie of temporary injunctions. Hence, the principles in temporary injunction applications are also applicable to *mareva injunctions*. This means that, the applicant has to establish all three conditions which are mandatory in the applications for injunctions. The criteria as set by Georges, CJ in the landmark case of **Atilio Vs. Mbowe [1969] HCD 284** are that, before granting the order of injunction the Court must be satisfied that:

- i. There is a serious question to be tried on the facts alleged, and the probability that the plaintiff will be entitled to the relief prayed.
- ii. The Applicant stands to suffer irreparable loss requiring the Courts intervention before the Applicants legal right is established;




- iii. That, on the balance, there will be greater hardship and mischief suffered by the plaintiff from withholding of the injunction than will be suffered by the defendant from granting of it.

However, considering the nature of prayer sought by the Applicant, at this juncture, I will not dwell on the guiding principles articulated in the case of **Atilio Vs. Mbowe [1969] HCD 284**.

Now, coming to the matter under consideration, in the Chamber Summons, the Applicant is applying for an interim injunction order in the form of *mareva injunction*, restraining the 1st, 2nd, 3rd and 4th Respondents, their servants and/or agents or any person acting on their behalf from evicting the applicant from his premises pending services of 90 days Statutory Notice to the 5th, 6th, 7th and 8th Respondents and instituting the suit against all the Respondents jointly and severally thereof or an appeal against the 7th respondent.

In his submission, Mr. Mafuru, Counsel for the Applicant submitted that, in essence, the Applicant seeks Court's intervention against the act of the 1st and 4th Respondents who caused closure of his business. The Applicant prays the Court to issue an order for maintenance of *status quo* pending hearing and determination of the Application *inter-parties* for a reason that, part of his business, that is lubricants shop and tyre repair facility are no longer in operations. He added that, right now, there is a continuous breach at the crime scene, though did not substantiate his contention.



He further underlined in his rejoinder that, when he said the *status quo* should be maintained or preserved, he meant, *status quo ante*, which means the status after the event. He was of the view that, the word *status quo* means before the event and so he meant in submission in chief. Mr. Mwita Waissaka, also Counsel for the Applicant added that, since the issue of balance of convenience is vital, the Court should consider in full when determining the question of granting the order sought for preserving the *status quo* of the applicant. He accentuated that, since the 4th Respondent is a tenant to the Applicant, and that has been allowed to operate his business but the land lord (Applicant) has been restrained from doing or operating his business, he urged the Court to apply the principle which states that, whatever is affixed to the soil or land belongs to the soil or it remains part of the land (*Quicquid plantatur solo, solo cedit*).

On his part, Mr. Rashid Mohamed, Learned State Attorney did not oppose the prayer sought by the Applicant, that is to preserve or maintain the *status quo* of the Applicant as of now but not otherwise. Mr. Bana, Counsel for the 4th Respondent, and the 2nd and 3rd Respondents, all joined hands with the State Attorney.

I have dispassionately considered the contents of the Chamber Summons / Application and the prayer sought by the Applicant. To be frank, I have found no such kind of prayer raised by the Counsels for the Applicant asking this Court to preserve or maintain the *status quo* before granting or refusing

the order for interim injunction (Mareva injunction). However, on scrutiny of the contending arguments, I noticed that, in principle, both parties do not dispute the fact that the Applicant's *status quo* should be preserved or maintained. But their point of departure is the use of the terms *status quo* and *status quo ante*. The term *status quo* and *status quo ante* have different meaning. According to the Black's Law Dictionary, Eighth Edition, By Bryan A. Garner, Editor in Chief, at page 1448, the term ***status quo*** means, the situation that is currently exists, whereas the term ***status quo ante*** means the situation that existed before something else (being discussed) occurred.

From the above definitions of the two terms, it is evident that the term ***status quo*** means, the situation that is currently exists whilst the term ***status quo ante*** means the situation that existed before something else (being discussed) occurred. With due respect to the Counsels for the Applicant, Mr. Mafuru, I am not in line with his argument. He asserted that, when he said, *status quo* should be maintained or preserved, he meant, *status quo ante*, meaning the status after the event and *status quo* meant before the event. I think in my view that, the Counsel misconceived the two terms.

As correctly submitted by the State Attorney and supported by the Counsel for the 4th Respondent and the 2nd and 3rd Respondents respectively, the *status quo* of the Applicant as of now, which is confirmed by the Applicant's Counsels is that, the alleged lubricants shop and tyre repair facility

which are part and parcel of the Applicant's business, should preserve and maintain its current status as at 8th day of December, 2023 to date.

For the reasons stated above, and in view of what I have endeavoured to deliberate hereinabove, I find and hold that the Applicant's prayer for maintenance of *status quo* is devoid of merits. The matter to continue for hearing *inter-parties* as scheduled by the Court. Each party to bear its own costs. It is so ordered.

DATED at TANGA this 17th day of January, 2024.





M. J. Chaba

JUDGE

17/01/2024

Court:

Ruling delivered under my hand and the Seal of the Court in Chamber's this 17th day of January, 2024 in the presence Mr Mwita Waissaka, Learned Advocate for the Applicant, Mr Atranus Mkago Method, v Learned Advocate for 1st, 2nd and 3rd Respondent, also holding brief for Mr. Peter Bana, Learned Advocate for the 4th Respondent; Ms. Agness Gombe and Mr. Idrisa Mbondela, both Learned State Attorneys for the 5th, 6th, 7th and 8th Respondents.





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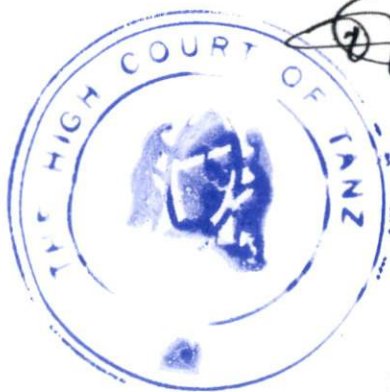
M. J. Chaba

JUDGE

17/01/2024

Court:

Rights of the parties to Appeal to the CAT fully explained.



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M. J. Chaba

JUDGE

17/01/2024

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