

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOSHI DISTRICT REGISTRY

AT MOSHI

CONSOLIDATED MISC. CIVIL APPLICATION NO. 20/23 OF 2022

(C/F Civil Case No. 04 of 2022)

1. MAKOA FARM LIMITED

2. ELIZABETH STEGMAIER

3. DR. LASZLO GEZA PAIZS

.....**APPLICANTS**

VERSUS

UDURU MAKOA AGRICULTURAL AND

MARKETING COOPERATIVE CO-OPERATIVE

SOCIETY LIMITED (UDURU MAKOA AMCOS)RESPONDENT

RULING

Date of Last Order: 12.12.2023

Date of Ruling : 14.02.2024

MONGELLA, J.

This is a ruling on temporary injunction applied for in Miscellaneous Civil Application No. 20 of 2022 and Miscellaneous Civil Application No. 23 of 2022.

The brief facts behind this application are that: the 1st applicant and the respondent entered into a lease agreement in 1999 for leasing of 358 acres of land registered under Certificate of Title No.

NF 443 in respect of Makoa Estate owned by the respondent. In 2014, the two signed another lease agreement with modified terms. In between, there arose disputes between the parties with each accusing the other for breaching the terms of the agreement. Amid eviction process initiated by the respondent, the applicants filed Civil Case No. 04 of 2022 against the respondent.

The applicants also filed Miscellaneous Civil Application No. 20 of 2022 seeking for temporary injunction against the respondent, for the court to restrain them from forcefully evicting them from the leased property pending determination of Civil case No. 04 of 2022. Subsequently, the respondent filed Miscellaneous Civil Application No. 23 of 2022 seeking for an order of *status quo ante* against the applicants for this court to restrain them from proceeding with breaching the lease agreement between them pending determination of Civil Case No. 04 of 2022. Given the nature of the two applications, for interest of justice and expedition of trials, the two applications were consolidated.

This consolidated application was resolved *viva voce* whereby both parties were represented by learned advocates. The applicants were represented by Mr. Emmanuel Chengula and Ms. Salvasia Kimaro. The respondent was represented by Mr. Engelberth Boniphace.

Mr. Chengula started addressing the court in relation to Miscellaneous Civil Application No. 20 of 2022. He first adopted the

joint affidavit of the 2nd and 3rd applicants. He averred that he brought the prayers under section 68 (e), Order XXXVII Rule 1 (a); 2(1) and (2) and Rule 4 of the Civil Procedure Code [Cap 33 RE 2019] praying for temporary injunction based on the four conditions in **Atilio vs. Mbowe** [1969] HCD 284.

Addressing the conditions set under this case, he averred that first, there must be a legal issue to be determined by the court and there must be probability of the applicant to be granted reliefs prayed in the main case. In relation to his case, he argued that the applicant has a serious issue on lease which is to be determined in Civil Case No. 4 of 2022.

Second, he said that the applicants stand to suffer irreparable loss if the application is not granted while the main case is still pending in court. Explaining the irreparable loss, he contended that it is due to the nature of activities conducted by them on the leased land. That, while they deal with treatment of wild animals in their facilities, they were issued with only 48 hours to vacate the leased property. That, they had pulled funds from various sources and they had a Memorandum of Understanding with the Centre for Wildlife Research TAWIRI. In the premises, he contended that if the applicants are evacuated the agreement would be frustrated. He added that there is also a risk that the animals could die on the said transfer which would lead to the applicants losing their jobs and earnings.

Third, he contended that the applicants stand to suffer greatly than the respondent who is just a lessor. He pleaded that the renovations done by the applicants would be rendered useless if the temporary injunction is not granted. To support his arguments, he referred the case of **Aisha Khalfan Soud vs. Amana Bank Ltd & 3 Others** (Misc. Application 663 of 2021) [2022] TZHCLandD 90 TANZLII. He finalized his submissions by praying that the court grants injunction order against the respondent who wanted to evacuate the applicant within 48 hours. He further prayed for the application to be granted with costs.

In reply, Mr. Boniphace, adopting the respondent's counter affidavit, averred that while he agrees with Mr. Chengula that for temporary injunction to be issued, the conditions he mentioned must be met. He added that the conditions must be collectively met and not in isolation. However, addressing the first condition, that is, there must be triable issues displayed by the facts laid out by the applicant; he contended that the applicants have failed to provide sufficient facts to demonstrate the same. That, the applicant made reference to the 1999 lease agreement which does not exist and thus failed to show triable issue. He added that the applicants did not demonstrate details on the lease agreement, rather they only mentioned the existence of the lease agreement. In that regard, he prayed for the application to be disregarded.

As to the second condition, he averred that the applicants ought to have furnished sufficient facts to show that they would suffer irreparable loss. He challenged Mr. Chengula's argument as to the nature of the work of the applicants whereby he claimed that they deal with treatment of animals. On this he contended that the applicants do not own the animals as the same are government property through TAWIRI as they demonstrated under paragraph 5 of their application. He added that the applicants ought to have demonstrated how they stand to suffer loss out of projects they do not own at 100%. He further challenged the applicant's claim that there is a treatment facility for animals. He found that being a new fact as it was never pleaded in the applicants' affidavit, hence prayed for the same to be disregarded. In addition, he challenged Mr. Chengula for not disclosing the amount of money used in treating the alleged wildlife. As to the MoU between the applicants and TAWIRI, he alleged that the same was not elaborated on the affidavit nor attached to ascertain the irreparable loss they stand to suffer.

Reacting to the argument that the animals were at risk of dying if the evacuation takes place, he challenged the same for being a new fact not pleaded in the applicants' affidavit. That, Mr. Chengula failed to demonstrate what loss the applicants stand to suffer if the animals belonging to the government die. As to the 2nd and 3rd applicants standing to lose their job, hence having no purpose being in Tanzania, he argued that the applicants were never instructed to engage in a business not agreed upon. Apart

from his arguments, he also found the same being a new assertion that was never pleaded in the applicants' affidavit.

Mr. Boniphace further argued that Mr. Chengula's submissions as to irreparable loss the applicants stand to suffer was generalized. In his stance, it was the respondent who stands to suffer injustice. That, the applicants' vague and generalized claims have no place in court as would cause injustice. He supported his stance with the case of **Quality Corporation Ltd & Others vs. Forsters Auctioneers & General Traders & Another** (Misc. Commercial Application 55 of 2019) [2019] TZHCComD 162 TANZLII. Still on the loss to be suffered by the applicants, he further contended that the respondent stands to suffer more harm than the applicants as they adhered to the terms of the contract which require disputes to be referred to arbitration prior to termination of the lease agreement. That, having followed all processes for dispute resolution, clearly, the respondent would stand to suffer if the orders for temporary injunction are issued.

As to the third condition, Mr. Boniphace averred that the applicants must show sufficient cause as to why he thinks there is balance of convenience. He contended that in the application, the applicant argued that the renovations made would be rendered useless while the respondent only received rent. He challenged the argument on the ground that all issues related to renovations were not stated in the applicant's affidavit, thus new facts. He had the

same observation on the allegation that the respondent only received rent over the leased property.

Mr. Boniphace argued further that the 2014 lease agreement states obligations of both parties and the applicants never performed their obligations. In that respect, he found the applicants failed to demonstrate sufficient reasons on balance of convenience, but only addressed unsound matters in their pleadings. He thus prayed for the application to be dismissed with costs for failure to meet conditions set in **Atilio vs. Mbowe** (supra).

Mr. Boniphace then proceeded to submit in chief on the respondent's application in Miscellaneous Civil Application No 23 of 2022. He started by stating the law under which the application was made, that is, **Order XXXVII Rule 1 (a), (b); 2(1), (2) and (4) and section 68 (e) of the Civil Procedure Code** [Cap 33 RE 2019]. He then argued that the application is made to stop the respondents (in Misc. Civil Application No. 23 of 2024) and their agents from continuing with breach of the 2014 lease agreement and operation of any activities on the applicant's farm with CT No. NF 443, pending determination of Arbitration cause filed by the respondent before the registrar of Cooperative Societies.

Submitting in reference to principles laid in **Quality Corporation Ltd and 4 Others** (supra), he averred that in an application for *status quo ante* the applicant has the duty to show that there is imminent danger looming upon the applicant and that if no such step is

taken or order is given, the consequences and hardships to be faced will be greater than if the order is given. He averred that the respondents (in Misc. Civil Application No. 23 of 2022) have been breaching the terms of the agreement by conducting tourist activities and abandoning the terms stipulated in the lease agreement. Further, he argued that the respondents (in Misc. Civil Application No. 23 of 2022) have neglected paying rent since 2021, thus deprived the applicant from obtaining any profit or gain from the respondents (in Misc. Civil Application No. 23 of 2022) while the lease property continues to be used for tourist activities.

Mr. Boniphace further argued that the other danger likely to be faced if this application is not granted, is that the entire society of the applicant would continue to suffer irreparable loss as they do not gain any profits while the respondents (in Misc. Civil Application No. 23 of 2022) continue to use the lease property for economic gain. He thus prayed for the application to be granted with costs.

Rejoining on Miscellaneous Civil Application No. 20 of 2022, Mr. Chengula, while reiterating his submission is chief, averred that the applicants have displayed that there are triable issues as found in their affidavits. That, they showed they had a contract of 25 years with the respondent and they had also informed this court that the respondent had issued a 48 hours eviction notice to the applicants. Further, that. they stated that there is Civil Case No. 4 of 2022 in which it ought to be determined that there is a breach of lease

agreement. He averred that he had also adopted the applicants' affidavit which show that there are triable issues.

Regarding the argument on irreparable loss, he did not dispute that the animals do not belong to the applicants. However, he averred that according to their affidavit, their activities include tourism and an orphanage centre for the animals which is managed in collaboration with TAWIRI. He further averred that such fact had been conceded to by the respondent in his own counter affidavit. He maintained that the applicants stand to suffer irreparable loss if the injunction order is not granted.

Mr. Chengula disputed the assertion that the 2014 lease agreement never allowed the applicants to conduct business. He argued that the annexed lease agreement stipulated all agreed activities, thus it is not a new fact.

With regard to balance of convenience, he disputed any new fact being introduced. He contended that the attached rent agreement provides for consideration, which is rent, and the applicant shall suffer loss. He countered Mr. Boniphace's argument that there is generalization of claims.

In his reply submission on Miscellaneous Application No. 23 of 2022, Mr. Chengula, adopting the joint counter affidavit of the 2nd and 3rd respondents, averred that the conditions for grant of status quo are similar to those of issuing injunction orders. In that regard, he

contended that the applicant's (in Misc. Civil Application No. 23 of 2022) assertion that there is a serious case to be tried was baseless. He added that the issue of there being an arbitration cause before the Registrar of Cooperative Societies, this court did determine that the respondents (in Misc. Civil Application No. 23 of 2022) are not a cooperative society and thus they cannot go for such arbitration. He asked the court to take judicial notice of its decision issued on 27.04.2023 and refrain from determining the issue.

Mr. Chengula held the view that the applicant (in Misc. Civil Application No. 23 of 2022) ought to have shown that there is a *prima facie* case as instructed in **Trustees of Anglican Church Diocese of Western Tanganyika vs. Bulimanyi Village Council and 2 Others** (Misc. Civil Application No. 1 of 2022) [2022] TZHC 719 TANZLII. He averred that the applicant (in Misc. Civil Application No. 23 of 2022) failed to show that there are triable issues. With regard to the argument by Mr. Boniphace that the applicant is suffering, he denied the same averring that the respondents (in Misc. Civil Application No. 23 of 2022) have been paying rent since 2021 as found in the receipts attached to the applicant's counter affidavit. He challenged the applicant for not disputing such fact.

Mr. Chengula further argued that tourist business was part of the 2014 lease agreement that was restructured to allow the same. In the premises, he held the stance that if the application for maintaining *status quo ante* is granted, the respondents (in Misc. Civil Application No. 23 of 2022) stand to suffer. He challenged Mr.

Boniphace for not explaining which activities were agreed on but had not been implemented by the respondents (in Misc. Civil Application No. 23 of 2022).

Concluding, he prayed for the application to be dismissed as the same has no legs to stand on given that there was no claim filed by the applicant (in Misc. Civil Application No. 23 of 2022) as to breach of contract or any claim whatsoever.

Rejoining on the arguments advanced by Mr. Chengula on Miscellaneous Application No. 23 of 2022, Mr. Boniphace first reiterated his submission in chief. He averred that the conditions set under temporary injunction differ from those in application for maintaining *status quo ante* as provided in **Quality Corporation Ltd** (supra). He thus prayed for Mr. Chengula's assertion that, the conditions are the same, to be disregarded. On the cited case of **Trustees of Anglican Church Tanganyika** (supra), he found the case distinguishable on the ground that in the said case the prayers sought were for temporary injunction.

On payment of rent, he averred that the respondents' (in Misc. Civil Application No. 23 of 2022) assertion in their counter affidavit and the annexures thereon do not serve as proof of payment of rent. He had such stance on the argument that what was annexed thereto were invoices and not receipts. As to the argument that the application for maintenance of status quo should be filed by a complainant, he disputed the same arguing that they too had filed

a counter claim before the amendment of the Plaint. He thus prayed for the application to be allowed with costs.

I have accorded the rival submissions of the learned counsels for both parties in the two applications due consideration. In determining the applications at hand, I shall first resolve Miscellaneous Application No. 20 of 2022 in which the applicants seek for an interim temporary injunction to restrict the respondent from evicting them from the leased property.

It is well settled that in granting temporary injunction there are three conditions that must be fulfilled. These are: **one**, there must be a *prima facie* case or arguable case on a serious matter; **two**, the applicant must have shown that he stands to suffer irreparable loss if the application is not granted and; **three**, the balance of convenience must be in favour of the applicant who showed he will suffer greater inconvenience if the application is not granted. These conditions have been discussed in extenso in plethora of decisions. See; **Atilio vs. Mbowe** (supra); **Giella vs. Cassman Brown & Co Ltd** [1973] 1 EA 358 (CAK) and; **Abdi Ally Salehe vs. Asac Care Unit Limited & Others** (Civil Revision 3 of 2012) [2013] TZCA 179 (30 July 2013) TANZLII.

Substantiating on the conditions, in **Giella vs. Cassman Brown & Co Ltd** (supra) the defunct East African Court of Appeal stated:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. (E.A. Industries v. Trufoods, [1972] E.A. 420.)”

Explaining on presence of an arguable case, the applicants have well established that there is a claim of breach of the 2014 lease agreement between them which is to be determined in the main case. The presence of this assertion has not been denied by the respondent. Thus, in my view, the first condition has well been established.

The second condition is proof of irreparable loss. The Court of Appeal in **Abdi Ally Salehe vs. Asac Care Unit Limited & Others** (supra) elaborated on issues to be considered in determining whether the applicant stands to suffer irreparable loss if the interim injunction is not granted. The Court stated:

“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 the 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 or minor, illusory, insignificant, or technical only. The risk must be in respect of a future damage (See RICHARD KULOBA PRINCIPLES OF INJUNCTIONS (OUP) 1981)."

The applicants, apart from deponing that the respondent had initiated the eviction process and only stating that they would likely suffer irreparable loss, there is no detailed account provided by them, in their affidavits, on the kind of loss they would suffer. They only afterward, in their submission, raised issues pertaining there being projects in the leased property, such as, a treatment facility of wild animals and that the 2nd and 3rd applicants, being foreigners, shall have no meaning being in Tanzania as they shall lose their jobs.

It is well settled that parties are bound by their pleadings and may not deviate from the same. See; **Masaka Mussa vs. Rogers Andrew Lumenyela & Others** (Civil Appeal No.497 of 2021) [2023] TZCA 17339; **Barclays Bank T. Ltd vs. Jacob Muro** (Civil Appeal 357 of 2019) [2020] TZCA 1875; **Hood Transport Company Limited vs. East African Development Bank** (Civil Appeal No. 262 of 2019) and **Yara Tanzania Limited vs. Ikuwo General Enterprises Limited** (Civil Appeal 309 of 2019) [2022] TZCA 604 (All from TANZLII).

The implication of departing from pleadings is that the same cannot be considered. Clearly, those facts argued in the

applicants' submission were never pleaded and thus, for interest of justice I shall not consider them.

Given that the 2nd condition was unsatisfied, I am afraid that at this point, it is pointless to address the final condition which is on balance of convenience. This is because, the three conditions for granting temporary injunction come in a pact and are mandatory prerequisites in an application for temporary injunction. See: **Abdi Ally Salehe vs. Asac Care Unit Limited & Others** (supra).

In the foregoing Miscellaneous Civil Application No. 20 of 2022 is thus without merit and is dismissed.

As to Miscellaneous Civil Application No. 23 of 2022, foremost, as seen on record, the respondent herein is the applicant in this application. In the Chamber Summons the respondent has advanced two prayers, being: **one**, for this court to restrain the applicants from continuing with breach of the 2014 lease agreement and; **two**, an order for *status quo ante* preventing both parties from conducting any business in the leased property; pending the determination of Miscellaneous Civil Application No. 20 of 2022, Civil Case No. 04 of 2022 and Arbitration Cause filed by the applicants.

From the wording of the two prayers, I find both being prayers for restrictive orders. I say so because in both prayers, the respondent seeks for an order of the court restraining the applicants from

continuing with breach of the lease agreement and both parties from conducting any business in the leased property.

In that regard, concerning the first prayer, I hold the view that the same is untenable. This is because, the primary rule of an interim order is that it should not be given if it has the impact of finally determining the case. See; **Abdi Ally Salehe vs Asac Care Unit Limited & Others** (supra). The respondent has requested for this court to stop the applicants from further breaching the terms of their lease agreement. I find this is still a question that is yet to be answered by this court. The respondent's prayer calls for this court to acknowledge that the applicants have breached the lease agreement and continue to do so and thus restrain them. This kind of deliberation shall definitely defeat the purpose of an interim injunction. In the circumstances, I hereby reject the prayer.

As to the second prayer, Mr. Boniphace argued that an application for maintenance of *status quo ante* is distinct from an application for temporary injunction and thus the conditions in granting the two applications differ. His reasoning emanates from the case of **Quality Corporation Ltd & Others vs. Forsters Auctioneers & General Traders & Another** (supra) determined by this court. He contended that what is required in granting an order for *status quo ante* is the presence of an imminent danger looming upon the applicant and if no such step is taken or order is given the consequences and hardships to be faced will be greater than if the order is given.

According to **Black's Law Dictionary, 9th Edition**, *status quo ante* means *state in which previously*. This simply means the situation that existed before something else. I suppose, the primary issue to be considered is that there must have been a previous situation to which parties will return to, before they experienced the event that brought them to court. However, the respondent has, in the same prayer, sought for no business to be conducted by any of the parties in the leased property. I find this being an ambiguous request. I am torn as to whether I am to let the parties revert to when they had no contractual relations or simply restrain them from doing nothing and if the latter is done, will that not be issuing an interim injunction? In these circumstances, I cannot entertain this part of the application either. In the premises, I also find the entire Miscellaneous Civil Application No. 23 of 2022 being without merit.

As elaborated hereinabove, both applications are without merit. Therefore, I dismiss both applications. Costs shall follow events.

Dated and delivered at Moshi on this 14th day of February 2024.



X

L. M. MONGELLA
JUDGE
Signed by: L. M. MONGELLA