

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB REGISTRY)**

AT MWANZA

MISC. APPLICATION NO. 5385 OF 2024

(Arising from Misc. Civil Application No. 87 of 2022 and Misc. Civil Application No.110 of 2023)

BETWEEN

SAHARA MEDIA GROUP LIMITED1ST APPLICANT

CONTINENTAL ROUNDARIES

AND FORGING COMPANY LTD2ND APPLICANT

ANTHONY DIALLO MWANDU3RD APPLICANT

VERSUS

KCB BANK TANZANIA LIMITED..... RESPONMDENT

RULING

17th & 31st .05.2024

A. MATUMA, J.

In this application, the applicants are seeking extension of the period of an order of temporary injunction which was issued vide **Misc. Civil Application no. 87 of 2022** and later extended for six months vide **Misc. Civil Application no. 110 of 2023**.

Briefly, the applicants have their pending Civil case **No. 36 of 2022** in this court against the Respondent. The suit is in respect of a disagreement between the parties for the loan issued by the respondent to the Applicants and its accrued interests.

The applicants being fearful that the respondent may proceed to take recovery measures against some properties which are subject to the pending main suit, instituted **Misc. Civil Application No. 87 of 2022 (supra)** in which a temporary injunction order was granted "***pending determination of the main suit***".

The applicants believing that a temporary injunction order cannot survive for more than six months, instituted another application **Misc. Civil application No. 110 of 2023** to have the period of such temporary injunction order extended. The extension was given to a period of six months which has again expired.

The applicants maintaining that **civil case No. 36/2022** is yet to be determined and the subject matter in that suit is likely to be disposed of, by the Respondent, they are now seeking another extension of the period of such temporary injunction to another six months.

The respondent having been served with this application filed a counter affidavit but also lodged preliminary objection with three points to the effect that;

- (a) That, the application is incompetent and not maintainable in law because there is an existing order of this court which barred further

the extended six months in Misc. **Civil Application No. 110 of 2023.**

(b) That the injunction order which was extended for six months having been expired since 11th March, 2024, there is nothing to be extended.

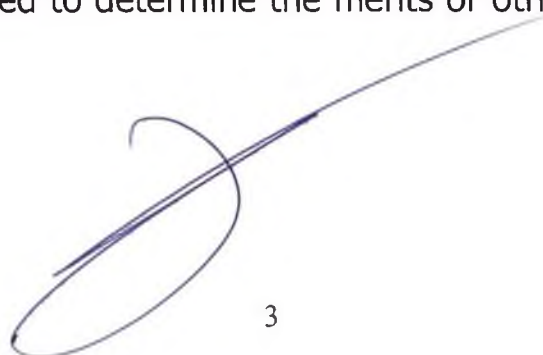
(c) That this application has been brought as an abuse of court process.

At the hearing of this application, the applicants were represented by advocate Boniphace Sariro while the respondent was represented by advocate Libent Rwazo.

The parties argued for and against the preliminary points of objection and having considered their arguments, I formed an opinion that the raised preliminary issues had no merits. I thus dismissed them but reserved the reasons for such decision so that I could hear the application on its merits or otherwise.

The parties then argued for and against the instant application.

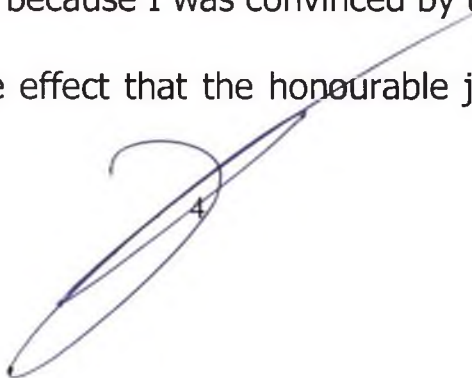
In this ruling I will give reasons for why I dismissed the preliminary objection and then I will proceed to determine the merits or otherwise of the instant application itself.



Mr. Libent Learned advocate submitting in the first point of objection argued that when this court through Misc. Civil application No. 110 of 2023 granted the extension of the injunction order for six months it clearly barred any further extension upon expiry of such six months. In that regard the learned advocate urged that this court is functus officio to vary its own previous order. He cited the case of ***The International Airlines of the United Arab Emirates Versus Nassor Nassor, Civil Appeal No. 379 of 2019.***

Responding against this first preliminary point, Mr. Boniphace Sariro argued that despite the fact that the honourable judge who extended the period of the order stated that there will not be further extension, he pre-conditioned such restriction. He ordered that there will not be further extension unless the parties are seriously prosecuting and or seriously engaging with the main suit. He further argued that the parties are seriously engaging in the main suit and that the honourable judge could not mean the manner of which the respondent interprets the restriction because by doing so would be against the law which allows two extension for six months each and the court has extended only once and this application is seeking the second extension.

I dismissed this objection because I was convinced by the arguments of the applicant's counsel to the effect that the honourable judge sanctioned the

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parties to seriously engage in the prosecution and determination of the main suit failure of which no further extension of the injunction order will be given. It is my firm finding that the learned judge did not mean that the party who is likely to suffer damage or irreparable loss as a result of the main suit being delayed for determination by the court even when the fault is not of the parties but the court, could not seek intervention measures of the court including further injunctions.

Otherwise, such an order would mean to make the main suit a superfluous exercise in case it delays in court at the instances of the court itself.

In the instant matter none of the parties has blamed the other for the delay of the main suit on allegation that such Civil suit No. 36/2022 has not yet been finalized because of any fault of the other party.

It seems, the court diary is controlling adjournments of the matter beyond powers of the parties. It is upon this reason I dismissed this ground of preliminary objection.

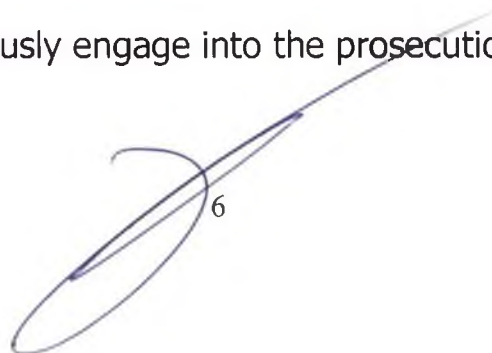
In the second ground of objection, Mr. Libent argued that in terms of the decision in the case of ***African Trophy Hunting Limited versus The Attorney General and 4 others, Civil Appeal No. 25 of 1997***, there can't be extension of an order which is not in existence. He argued that the

order sought to be extended here expired prior to the filing of this application and therefore it was filed when there was no order in existence.

Responding on this Mr. Sariro learned advocate argued that there is no governing law as to whether extension of time should be done when there is still a valid order but the practice has always been to apply for extension when the order sought to be extended has already expired. He distinguished the case of **African Trophy** because the same was in relation to varying a none existing order. On this I once again agree with Mr. Boniphance Sariro that there is no explicit law which states that an application for extending the period of an injunction order must be done before the order is expired or after its expiration. I therefore find no merits in this objection.

The third objection relating to allegations that this application is an abuse of court process need not detain me because it has already been overtaken by the determination made in the first ground of objection. This is because it tries to set out that since there was an order barring further extension, filing of this application is an abuse of court process.

I have already ruled out that the ruling of the previous judge did not bar further extension in its strict terms but the wording in the ruling meant to push the parties to seriously engage into the prosecution and determination



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of the main suit without making the temporary order as a ground of parking such main suit into the court register.

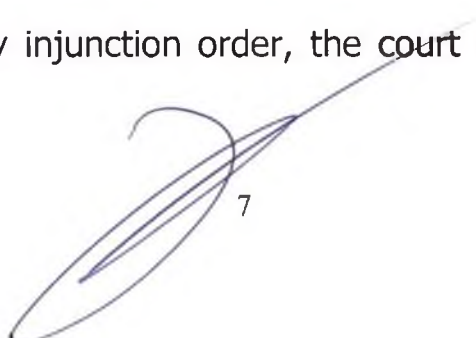
It is upon these reasonings which passed into my mind after having heard the submissions of the parties I decided to dismiss all the three points of objection.

I now resume back to the main application.

According to the arguments and submissions of both learned counsels for the parties, they are in agreement that an order for temporary injunction order cannot survive for more than six months and upon extension the aggregate period of extension cannot exceed one year.

In that respect both parties hold the view that regardless the wording given in an injunction order, the same can only be valid for six months unless otherwise extended and any extension cannot exceed the aggregate period of one year.

It is my firm finding that this understanding is not correct. Such understanding is what made both parties to mislead the court during Misc. Civil Application No. 110 of 2023. I say so because at the first application in Misc. Civil Application No. 87 OF 2022 in which this court (Kilekamajenga, J) granted the temporary injunction order, the court made it clear that **the**



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order shall survive for the whole period when civil case No. 36 of 2022 shall be pending in court. Just to quote, the court ruled out;

"The careful consideration of the counsel's submission does not leave any shred of doubt that the applicants have grievances against the respondent's act of inflating the loan facility. If the mortgaged properties are disposed of, in any way, before this dispute is resolved, the applicants are Likely to suffer an irreparable loss. Prudence and justice demand the parties to maintain their status quo until their differences are cleared out through the main case which is also pending before this court.

*I hereby allow the application and order the parties to maintain their status quo **pending determination of civil case No. 36 of 2022.** No orders as to costs. It is so ordered."*

This ruling as quoted above was enough and clear in its terms that the parties should maintain their status quo by not disposing of, the suit properties **pending determination of the main suit.**

There was therefore, no need to make any further application to extend such order because its life span was set to last for the entire period until when the main suit is finally determined.

But both parties are holding a different view to the effect that any temporary injunction order survives for only six months. That is why the Applicants filed and litigated against the respondent another Misc. Civil Application No. 110 of 2023 to have such order be extended to another six months.

In my view, just as I did in ***Access Microfinance Bank Tanzania Limited and 2 others versus Kitumbo Security Guards and 2 others, Land Case Revision No. 1 of 2023***, High court at Tabora, I find that both counsels were wrong and mislead the court to entertain another application for an order which was still valid and even valid to date and until when civil case No. 36 of 2022 will finally be determined. I will tell why I have arrived to such findings.

In my view the learned counsels for both parties did not direct properly their minds to the applicability of **Order XXXVII** generally and different types of **temporary injunction orders** which can be given under such order XXXVII of the CPC.

The law is very clear. When the temporary order is given under Rule 1 (a) or Rule 1 (b) of order XXXVII supra, such order shall remain intact and valid until final disposal of the suit. That is a clear wording of the provision which states that when it is proved by affidavit or otherwise that the property in dispute in a suit is in danger of being wasted, damaged, or alienated by any

party to the suit or suffering loss of value by reason of its continued use or where the defendant threatens or intends to remove or dispose of, the court may grant a temporary injunction to restrain such an act "***until the disposal of the suit or until further orders.***"

In the circumstances, when the temporary order is issued under such provision, the question of six months life span and extension of further period not exceeding the aggregate of one year does not arise. The temporary order shall remain intact until final disposal of the suit irrespective of the period the suit shall stand undetermined.

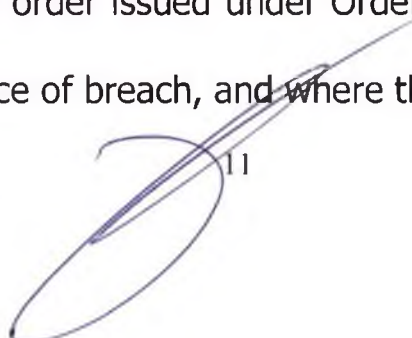
Even when a proper look is taken to Order VIII rule 22 (1), (2), (3) (a), (b), (c) and (d) of the same CPC where speed tracks are set, you will find that the law recognizes that depending to the complexity of the suit, the suit may justifiably stay pending in court up to twenty-four months which is good two years. If the law acknowledges the pendency of the suit in court for two years, it is awkward to interpret that a temporary order safeguarding interests of the parties in the suit cannot exceed one year. Does it mean that once a temporary order is given and so extended, after a year the trial court is powerless of the property at issue and the party in hurry may dispose such subject matter in the suit to render the final outcome unimportant? I stand far from such understanding. Temporary injunction order may be given at

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such terms or period as the court deem fit in the circumstances of the matter at hand and may include restraint orders for the entire period when the main suit is under determination. In fact, the Court of Appeal of Tanzania at Dar es salaam in the case of ***Vodacom Tanzania Public Limited Company versus Planetel Communications, Civil Appeal no. 43 of 2018*** held that temporary injunction orders among others are regulated by section 68 of the CPC. The court referring to the definition of the term temporary injunction under the Blacks Law Dictionary held that;

*"Therefore, the purpose of an injunction in law is said to be interlocutory when granted in an interlocutory application and **continues until a defined period**. It aims at preserving the status quo **until the final determination of the main application or suit**".*

From that authority, it is clearly the law that the court may grant temporary injunction at a defined period or until final determination of the suit. It is not that the injunction cannot exceed the aggregate period of one year. The injunction orders that survive for only six months and upon extensions for the period not exceeding the aggregate period of one year are those injunctions relating to suits adjourned generally as herein below expounded. A temporary injunction order issued under Order XXXVII Rule 2 to restrain repetition or continuance of breach, and where there is any disobedience or

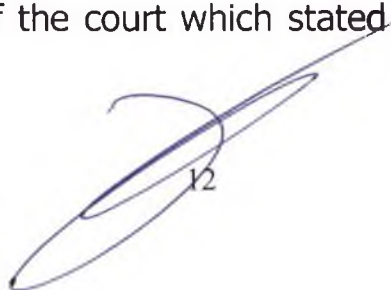


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breach of any such terms, the court granting the injunction under this provision may order the property of the person guilty of such disobedience or breach to be attached but such order shall remain in force for only one year, at the end of which the property may be sold. This is another type of temporary injunction order under the CPC.

But when the temporary injunction order is issued under Order XXXVII Rule 3 which is another type of the temporary injunction orders, the life span is six months and upon further extension the aggregate period shall not exceed one year. But the orders to be given under this provision are clearly stated under the marginal note to be resulting from suits adjourned generally. The parties in the instant matter seems to have been prejudiced their respective mind by this provision making it to be a general interpretation against Order XXXVII generally.

Now, in the instant matter, when the Applicants instituted the main suit, Land Application no. 36 of 2022, they subsequently lodged Misc. Land Application no. 87 of 2022. I asked the parties under what provisions such application was made none recalled for obvious reason that they had no the relevant case file at the time of hearing this application. But the wording of the order in the ruling of the court which stated that the order was given



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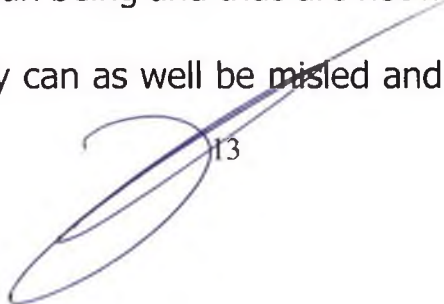
pending final determination of the main suit presupposes that it was given under Order XXXVII Rule 1 (a) (b) of the CPC.

Both parties did not discharge properly their duties to the court by subjecting it to unwarranted litigations on the already settled matter. It was seriously wanting for them to litigate on whether the subject matter in the main suit should be left undisposed of, until disposal of the main suit or not while there was already such an order. They ought to have assisted this court not to adjudicate on the matter which has already been determined. I would like to remind the learned advocates to what was held in the case of ***Nyamunini Ntarambigwa versus Simoni Kikoti, Misc. Land Appeal no. 19 of 2020***, High Court at Kigoma that;

"Court's time is so precious, we are jealous of it when one wants to consume the same with irrelevant arguments to camouflage his mistakes, wrongs, mischiefs or to please his client"

I really don't find any good ground for the learned counsels to have subjected the court to litigations for matters which was already litigated and determined and an order given restraining the parties to their status quo until final disposal of the main suit.

Judicial officers are human being and thus are not free from mistakes or free from being misled. They can as well be misled and make mistakes. It is on



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that basis we need professional and ethical officers of the court to assist us to adjudicate matters judiciously. Or else we might be misguided by technical litigants to issue unwarranted orders and stand meandering on matters already determined and resolved.

The Respondent should not be in hurry to dispose of, the applicants' properties in the presence of the order restraining them to do so. Mr. Libent learned advocate should therefore advise his client accordingly because the advocate has a duty to give due advice to his client even if such would come into conflict with the client's interests.

The order given in Misc. Civil Application No. 110 of 2023 was not to mean doing away the previous order given in Misc. Civil Application No. 87 of 2022 which clearly restrained the parties to maintain status quo and more so the respondent should not dispose of, the mortgaged properties pending determination of civil case No. 36 of 2022.

I therefore find that this application has been misconceived because it seeks for an order restraining the respondent from selling the mortgaged properties while such an order was already given and it is still valid to date and until final disposal of civil case No. 36 of 2022.

I have even asked myself, if I assume that this application is properly before me, properly argued and sufficiently proved then proceed to extend such

period to six other months, would that mean the respondent will be at liberty to sale the suit property if after expiry of such six months the main suit won't be concluded? And if so, is that really the law? I am not positioned to agree with both parties that the court is powerless to restrain the parties from tempering with the suit property pending final determination of the suit on the pretext that it can do so only for aggregate period not exceeding one year. The court as already demonstrated supra, may issue injunction orders at such specified time, period or terms. It may as well issue an injunction order for the entire period of the pendency of the suit in court.

Once the injunction order is given pending determination of the main suit or application, that is enough and the parties thereof should not come again in court to litigate on the same unless there is change of circumstances upon which the court may be moved to vary the order. Any hurry to dispose of, the property in the presence of the court order that the property should not be disposed of until final disposal of the suit is nothing but disrespect to the court order which may sufficiently be penalised.

I therefore struck out this application with clear directions that the order of this court in Misc. Civil Application No. 87 of 2022 is still valid and under it the respondent should not dispose of, the applicants' mortgaged properties which are subject to Civil case No. 36 of 2022 until final disposal of such suit.

Or else, the respondent should challenge such order which was given in Misc. Civil Application No. 87 (supra) without forgetting the rules governing interlocutory orders.

No orders as to costs. It is so ordered.



A. MATUMA

Judge

31.05.2024

Order: Ruling delivered in chambers in the presence of Mr. Inhard Mushongi learned advocate holding brief of Advocate Boniphace Sariro for applicants and also holding brief of advocate Libent Rwazo for the Respondent.



A. MATUMA

Judge

31.05.2024