

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

AT MWANZA

MISC. LAND APPLICATION NO. 10780 OF 2024

(Arising from Land Case No.....of 2024, before the High Court of Tanzania, Mwanza Sub-registry at Mwanza)

BETWEEN

CHARLES KAHATANO LWEMPISI APPLICANT

VERSUS

NATIONAL BANK OF COMMERCE LIMITED 1ST RESPONDENT

ACCURATE RECOVERT AND AUCTIONS LTD.....2ND RESPONDENT

NATURE'S FISH LIMITED.....3RD RESPONDENT

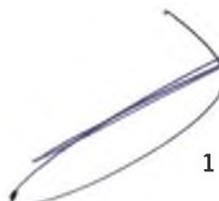
RULING

30th & 30th May, 2024

A. MATUMA, J.

This is a ruling in respect the of ex-parte prayers. In this application, the applicant is seeking temporary injunction to maintain original state of the applicant in the house on plot No. 58 Block "T" Located at Tuwetugawe Street within Mwanza Township **pending the hearing and determination of the main suit filed in this court.**

He is also seeking an order to maintain status quo of the properties **pending determination of the main suit**, costs and any other relief (s).



1

These prayers are made ex-parte although the chamber summons contains the same prayers inter-parties.

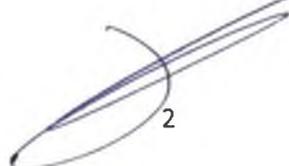
The brief background to this application is that the applicant who is the owner of the landed property hereinabove named stood as a guarantor of one Lwempisi General Company to the loan contract entered between such Company and the first Respondent National Bank of Commerce.

The applicant is now lamenting that his landed property above named has been sold to the 3rd Respondent on allegations of debt default without there being a default notice, advertisement of sale or call for the guarantor to make good the default amount.

At the hearing of this application the applicant was represented by three advocates namely. Lenin Njau, Abdallah Kessy and Charles Kiteja.

Mr. Lenin Njau learned advocate submitting for this application adopted the applicant's affidavit arguing that this court has to interfere the acts of the respondents by issuing temporary injunction against the respondents and ordering the parties to maintain status quo on the property pending determination of the main suit which is pending in this court.

The learned advocate cited the case of **Atilio versus Mbowe** (1969) HCD 284 for principles to be considered in granting temporary injunction.



2

Having heard the advocates of the Applicant and gone through the application before me, I find that these ex-parte prayers need to be rejected. This is because they are coached and were actually argued to pre-empt the prayers inter-parties.

I have been asking myself if I grant these prayers ex-parte which are the same to the prayers inter-parties, what will be the fate of this application inter-parties. Is it not this court is being tricked by the applicant's advocates to issue orders that will cause inconveniences and complications in hearing the application inter-parties? why didn't the applicant seek such orders pending hearing of the application inter-parties. And if it was just errors in drafting, why did the three advocates not address the court to grant the prayers pending hearing of the application inter-parties but argued the court to grant the prayers **pending determination of the main suit.**

Was this not calculated to pre-empt the application inter-parties? I don't know! That is best know to the applicant and his advocates. Given the fact that the applicant is still having an application inter-parties of the same prayers, justice requires that the application ex-parte be denied to accord the respondents an opportunity to be heard before such prayers are granted.

Having said all these I do hereby reject the ex-parte prayers and order that the respondents be served and both parties be heard on the merits or otherwise of this application. No. orders as to costs.

It is so ordered.



A. Matuma

Judge

30/05/2024

Court: Ruling delivered in the presence of the Applicant in person and his advocate Charles Kiteja and in the absence of the Respondents.



A. Matuma

Judge

30/05/2024