

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

MISC. CIVIL APPLICATION NO. 26517 OF 2023

(Arising from Civil Case No. 26518 of 2023)

AZOLI WILLIAM KAZIMOTO 1ST APPLICANT

WILLIAM MANGA MERA t/a

AZOWIL GENERAL SUPPLY2ND APPLICANT

VERSUS

AFRICAN BANKING CORPORATION TANZANIA LTD RESPONDENT

RULING

30/5/2024 & 14/6/2024

ROBERT, J:-

This ruling is in respect of an application for an interim injunction order filed by the applicants, Azoli William Kazimoto (1st Applicant) and William Manga Mera t/a Azowil General Supply (2nd Applicant), under a certificate of extreme urgency. The applicants seek an interim injunction order against the respondent, African Banking Corporation Tanzania Ltd (BancABC), to restrain them from selling or transferring ownership of the mortgaged properties located at Plot No. 4/1, Block D, Isamilo Area in Mwanza City with Certificate of Title No. 68812 LO No. 627549 in the name of Dominique Masiba Luboja, and property located at Plot No. 31, Block B, Makongoro Area

in Mwanza City with CT No. 033007/17 LO No. 300817 in the name of Gibro Mayala, pending the hearing and final determination of the main suit, Civil Case No. 26518 of 2018. The application is supported by an affidavit sworn by the applicants.

The applicants and respondent entered into a facility agreement on 26th February 2020, whereby the respondent extended a term loan facility worth TZS 400,000,000 to the applicants for purchasing goods and meeting day-to-day business expenses. This facility was secured by a third-party legal mortgage over the properties located at Plot No. 4/1, Block D, Isamilo Area and Plot No. 31, Block B, Makongoro Area, valued at TZS 333,000,000 and TZS 325,000,000 respectively at the time of signing the agreement.

The loan was restructured on 13th April 2022 through an addendum agreement, with the respondent allegedly promising to issue a payment bank guarantee to the applicants' suppliers. However, despite numerous follow-ups by the applicants, the respondent failed to fulfill this obligation. On 15th August 2022, the applicants received a demand letter from the respondent for TZS 20,000,000, citing non-servicing of the existing term loan as the reason for not supporting the request in the addendum agreement. Subsequently, on 31st October 2022, the respondent issued a 60-day notice

to the guarantors, indicating their intention to enforce the mortgage and alienate the guarantors from the properties, prompting the applicants to lodge a civil suit.

During the hearing, the applicants were represented by Mr. Mwita Emmanuel, learned counsel, while the respondent was represented by Mr. Walter Masawe, learned counsel. The hearing proceeded by way of written submissions.

The applicants' counsel submitted that the court should grant the interim injunction to prevent irreparable harm to the applicants. He argued that the applicants have met the three conditions for the grant of a temporary injunction as established in the case of **Atilio v Mbowe** (1969) HCD 284. These conditions are a serious question to be tried, irreparable injury, and balance of convenience.

On the Serious Question to be Tried, he submitted that there must be a serious question to be tried on the facts alleged, and a probability that the plaintiffs will be entitled to the relief sought. The counsel contended that the respondent's failure to honor the addendum agreement by not issuing the

bank guarantee constitutes a breach of contract, which raises serious questions that need to be addressed by the court.

On Irreparable Injury, the learned counsel argued that, the court's interference is necessary to protect the applicants from irreparable injury before their legal right is established. The counsel emphasized that the sale of the mortgaged properties would cause irreparable harm to the applicants, as physical properties cannot be adequately compensated with monetary damages. He cited **Jaluma General Supplies Ltd and 2 others v International Commercial Bank of Tanzania Limited**, Misc. Civil Application No. 175/2022, to support his argument.

Coming to Balance of Convenience, he submitted that, the balance of convenience favors the applicants, as denying the injunction would unjustly enrich the respondent from its own breach of contract. The counsel argued that the denial of the injunction would result in greater hardship for the applicants compared to any inconvenience the respondent might suffer.

In response, the respondent's counsel argued that the applicants failed to adhere to the conditions of the addendum agreement, thereby disqualifying them from the intended bank guarantee.

He further submitted that, there is no serious question to be tried as the applicants were in default of their loan obligations and failed to meet the conditions of the addendum agreement. Hence, the respondent was justified in its actions, and there was no serious question to be tried.

On irreparable injury, the Counsel contended that any harm suffered by the applicants could be compensated in monetary terms, as the properties in question are quantifiable. He referenced **Cosmos Properties Limited v Exim Bank Tanzania Limited** (Misc. Civil Application 584 of 2021) [2022] TZHC 3073, where the court held that irreparable injury must be substantial and not merely monetary.

On Balance of Convenience, the learned counsel argued that the balance of convenience does not favor the applicants, as they have failed to comply with their loan obligations. He asserted that the respondent has a right to recover the loan amount, and any delay in doing so would cause greater inconvenience to the respondent.

In their rejoinder, the applicants, through their counsel, reiterated their position, emphasizing that the respondent's breach of the addendum agreement constitutes a strong prima facie case. They maintained that

monetary compensation cannot replace the loss of physical property, thereby meeting the irreparability condition. They further argued that the balance of convenience favors them, as the respondent admitted to breaching the contract, which should tilt the scales of justice in their favor.

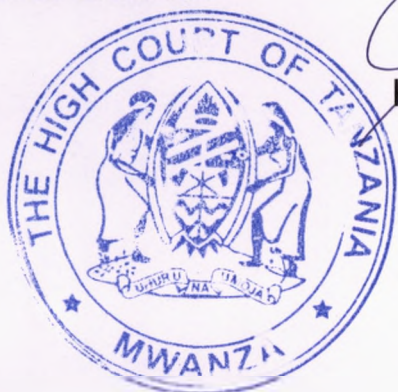
Upon careful consideration of the submissions and the applicable legal principles, this court finds that, the applicants have established a prima facie case. The respondent's admission of not honoring the addendum agreement raises serious questions that warrant a full trial. The court is persuaded that there is a genuine dispute regarding the contractual obligations of the parties, which needs to be resolved through a proper hearing.


On irreparable injury, the court is convinced that the sale of the mortgaged properties would result in irreparable injury to the applicants. Physical property has unique value that cannot be fully compensated by monetary damages, particularly when it involves residential properties. The loss of a home, in particular, goes beyond mere monetary value and touches on issues of emotional and psychological well-being, as emphasized in **Jaluma General Supplies Ltd and 2 others v International Commercial Bank of Tanzania Limited (supra)**.

With regards to balance of convenience, the Court finds that the balance of convenience favours the applicants. Preventing the sale of the properties until the final determination of the main suit ensures that the applicants' rights are protected and that the respondent's financial interests are not unduly prejudiced, as they can still recover the loan amount if the main suit is decided in their favour. The respondent's concerns about delay and inconvenience are outweighed by the potential irreparable harm to the applicants.

In light of the above considerations, this court grants the application for a temporary injunction. The respondent is hereby restrained from selling or transferring the ownership of the mortgaged properties located at Plot No. 4/1, Block D, Isamilo Area, and Plot No. 31, Block B, Makongoro Area in Mwanza City, pending the hearing and final determination of Civil Case No. 26518 of 2018. The costs of this application shall be in the cause.

It is so ordered.




K.N.ROBERT
JUDGE
14/6/2024

