

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 5681 OF 2024

(Arising from Civil Case No 3918 of 2024)

BETWEEN

A.M. STEEL & IRON MILLS LIMITED..... APPLICANT

VERSUS

EXIM BANK (T) LIMITED..... 1ST RESPONDENT

CDJ CLASSIC GROUP LIMITED 2ND RESPONDENT

RULING

Date of Last Order: 15/05/2024

Date of Ruling: 07/06/2024

NGUNYALE, J.

The applicant filed the instant application praying the court to be pleased to issue a temporary injunctive order restraining all respondents, their agents, servants, workers, employees and anybody else from alienating and/or take possession and/or entering and reentering on the applicants properties on Plot No. 95 Mbagala Industrial Area, property comprised in Plot No. 18, Mbagala Industrial Area Dar es Salaam,



property on Plot No. 325 situated at Msasani Area, Dar es Salaam, property situated at Plots No. 27, 28, 29 and 30 Block "C" Msongola Area Dar es Salaam and property on Plot No. 755 situated at Kisemvule Area, Coast Region pending final determination of Civil Case No. 3918 of 2024.

Before the merits of the application could be heard, the respondents' raised preliminary objections on point of law; -

- 1. That this Application for orders of injunctions is untenable in law and therefore void because the prayers sought cannot issue particularly because the Applicant seeks to restrain execution of decree in Commercial Case No. 120 of 2017 and Commercial Case No. 121 of 2017.*
- 2. This Application is nothing but an abuse of the court processes in view of the fact that the 1st and 2nd Respondents are executing decree of this Court in Commercial Cases No. 120 of 2017 and 121 of 2017.*

The Applicant was represented by Capt. Ibrahim Mbiu Bendera, advocate from Bendera & Co. Advocates while the respondents were represented by advocates from Ms. Immma Advocates and Trustmark

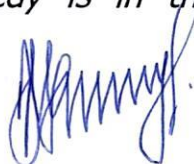
2 

Attorneys. Parties agreed to determine the objection by way of written submissions and they all adhered to the scheduling order.

Before arguing on the objections raised, the respondents advocate started by stating principles governing preliminary objection in law. They made reference to the case of **Mukisa Biscuit Manufacturing Co. Ltd versus West End Distributors Co. Ltd** [1969] EA and the case of **Ali Shahani and 48 others vs Tanzania National Roads Agency and Another**, Civil Appeal No. 261 of 2020 CAT-Tanga (unreported) which guide that the points of objection must be purely on points of law.

Submitting in support of the 1st point of objection, the respondents' Counsel submitted that the reliefs sought by the applicant in the application for temporary injunction are untenable in law and therefore void because injunction orders cannot restrain execution of court decrees in Commercial Cases No. 120 & 121 both of 2017. They cited the case of **National Housing Corporation versus Peter Kassidi and 4 Others**, Civil Application No. 243 of 2016 where the Court of Appeal of Tanzania held that:

"It bears reflecting that a temporary injunction is an equitable relief for maintaining the status quo between the parties pending hearing and determination of an action in court. This remedy is in the nature of a



prohibitory order granted at the discretion of the court against a party. On the other hand, while an order of stay of execution is also in the nature of prohibitory order, it is addressed to the court carrying out the execution to suspend or delay the enforcement of the decree concerned pending hearing and determination of a proceeding, most certainly an appeal. What a stay of execution does, therefore, is to prohibit the Court from proceeding with the execution further. Apart from the two orders being different in terms of their respective object, the learned authors V.S. Sohoni and S. K Sohoni in Sohoni's Law of Injunctions 4th Edition, Premier Publishing Company, Allahabad, India 2013, at page 21, emphasize that the: -'... difference between an order of injunction and an order of stay arising out of the fact that an injunction is usually passed against a party while a stay order is addressed to the Court "

He again referred the case of **Prada Enterprises Co. Ltd versus Jovcc Alex Khalid and 2 Others**, Civil Application No. 279/01 of 2020, where the Court of Appeal affirmed the position of National Housing Corporation (supra).

On the 2nd point of objection, they submitted that the applicant's complaints are touching the manner execution was carried out, they are matters or questions relating to execution of a court decrees which

4 

ought to be dealt by an executing court and not by a separate suit per section 38 of the **Civil Procedure Code**, Cap 33 RE 2019. They stressed that the application for orders of injunction can not be entertained by this court because the law bars such dispute to be determined in a separate suit. It is their prayer that the application be struck out with costs for being incompetent.

Submitting against the objections, Capt. Bendera stated that the raised objections could be better if raised in the main suit and not in the present application. In absent of the objection against the main suit, the respondent can not object the presence of the application pending determination of the main suit which was filed after completion of execution process. It was not true that the applicant intends to restrain the execution of a decree. Those decree issued by the Commercial Court had already been executed by sale of the properties of the applicants. What is in issue at this stage is whether the respondents played their role of executing the decrees in accordance with the law and practice. He was of the view that, the applicant has not caused any abuse of law but rather he is sicking justice. It was his prayer that the objections are devoid of merit and the court should grant an order of injunction as prayed.



In rejoinder, the respondents' Counsels submitted that this court cannot issue a restraint order in the manner prayed by the applicant that is by way of an injunction. The same cannot be done by way of injunction because sale of the suit properties was made in execution of the consent decree issued by this court. The decision in **National Housing Corporation** (supra) and the case of **Prada Enterprises Co. Limited versus Joyce Alex Khalid** (supra) are relevant in these points. It is unfortunate that the applicant has not said how the cited decisions (supra) are not relevant on the point raised. The respondents insisted that the application is incompetently preferred and it should be struck out with costs.

Appreciating the submissions of the parties, the court is going to determine whether the raised objections have merit or not.

The respondents objected the application via two points of objections and they started their arguments by submitting the guiding principles of preliminary objection. That points of objection must be purely on point of law. There is no dispute that a preliminary objection must be on point of law as stated in the cited cases must. Regarding the 1st point of objection it was submitted that the reliefs sought by the applicant in the application for temporary injunction are untenable in law and therefore



void because injunction orders cannot restrain execution of court decrees in Commercial Cases No. 120 & 121 both of 2017. I have managed to pass through the applicant's application, it is true that he prayed for injunctive orders against the respondents to enter into the properties mentioned above, but the question that clicks my mind is whether such prayer restrain execution of the court decree. The applicant stated that, it is not true that they intend to restrain the execution. Execution is already complete. I agree with the applicant on that because the pleadings and submissions in court establish that execution of the court decree in Commercial Cases No. 120 & 121 of 2017 is complete. Therefore, I agree with Capt. Bendera that the 1st point of objection lacks merit as the execution in Commercial Cases No. 120 & 121 of 2017 is complete. Again, I should declare that the cited case of **National Housing** (supra) is a good case law however, it is distinguishable to the case at hand. It is distinguishable for the reason that this application is a result of Civil Case No. 5681 of 2024 pending before this court. In the **National housing** case, the court made reference to the case of **Gazelle Tracker Limited versus Tanzania Petroleum Development Corporation**, Civil application no. 15 of 2006 where it was held that:



*".... I am persuaded by Mr. Kihindu's submission that applications for injunctive reliefs such as this, are more **appropriately suited for the court exercising original jurisdiction** and not the court of appeal....it is therefore clear that injunctive reliefs are according to the law as set out above generally invoked **at the stage where the trial of the suit is in progress or pending.**" (emphasis added)*

For that reason, I am in a humble view that, as far as there is a pending case and as the execution in the commercial cases is complete, the 1st point of objection lacks merit. It is worth of being dismissed as I hereby dismiss it.

Regarding the 2nd point of objection that this Application is nothing but an abuse of the court processes in view of the fact that the 1st and 2nd Respondents are executing decree of this court in Commercial Cases No. 120 of 2017 and 121 of 2017. The respondent submitted that the applicant's complaints in the application are all touching the manner execution was carried out. Those are matters or questions relating to execution of a court decrees which were to be dealt with by the executing court and not by a separate suit. The respondent disputed to have abused the law rather he they insisted that they were seeking justice. I have read thorough the objection together with the relevant

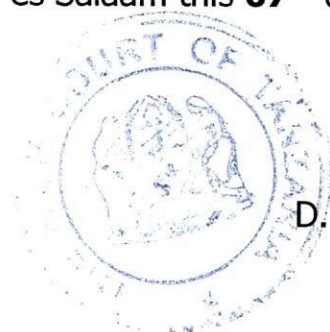


submissions and I noted that the respondent has deviated from submitting on the raised point of objection and decided to argue the merit of the application. He forgets that once an objection is raised it must first be determined before the merits of the application. Likewise, the applicant made the same mistake of deviating from submitting on the raised objection as he finally prayed the court to grant the application while the same has not been heard. In the case of **Mondorosi Village Council & 2 Others versus Tanzania Breweries Limited & 4 others**, Civil Appeal No. 66 of 2017 the Court of Appeal of Tanzania said:

"As the practice of the court demands, we had to dispose of the preliminary objection first..."

In the premises, the raised points of objections are devoid of merit, I hereby dismiss them. Costs to follow the event. It is so ordered.

Dated at Dar es Salaam this **07th** day of **June, 2024**.

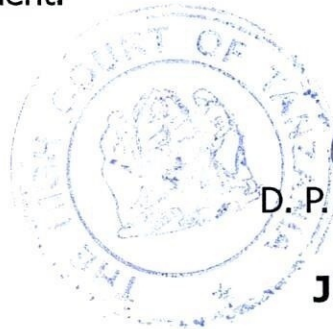


A handwritten signature in blue ink, appearing to read "D. P. Ngunyale".

D. P. Ngunyale

JUDGE

Ruling delivered this 07th day of **June, 2024** in presence of Mr. Godfrey Ukwong'a for the applicant and Idrisa Juma assisted by Eliezer Msuya for the respondent.



A handwritten signature in blue ink, appearing to read "D. P. Ngunyale".

D. P. Ngunyale

JUDGE