

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO.43 OF 2006

**DUNIA WORLDWIDE
TRADING COMPANY LTD.....PLAINTIFF
VERSUS**

**1.THE PRESIDENTIAL PARASTATAL
SECTOR REFORM COMMISSION**

2.M/S BUNDA OIL INDUSTRIES LTD.....DEFENDANTS

R U L I N G

Dr.BWANA, J:

1. Together with the plaint to the main suit, the Applicant herein filed an application couched in the following words:-

“This honourable court be pleased to issue an order of temporary injunction restraining the respondents, their agents, servants, assigns, workmen or whosoever will be acting through or under them from effecting and registering the transfer of the TANITA II cashewnut factory assets to 2nd defendant/respondent and/or causing the 2nd respondent to be registered as the owner of the said factory or from removing any machinery or part thereof from the factory pending the hearing and final determination of the suit filed herein...”(emphasis added).

2. Filed under certificate of urgency, this application therefore prays for two main orders of this court namely an order to restrain the respondent from effecting and registering the transfer of TANITA II cashew factor in favour of the second respondent; and from removing any machinery or part thereof from the factory. The said orders should be in force until the determination of the main suit

presently pending in this court. This application is supported by an affidavit of one Murtaza Ali Hussein a principal officer with the plaintiff/applicant.

3. In the main suit, the plaintiff prays for, inter alia, a declaration that it is entitled to be awarded the tender for the purchase of TANITA II cashewnut factory; and further that the sale of the said factory to the second defendant/respondent is null and void. Several averments are raised both in the plaint and in the affidavit in support thereof.
4. The application is vehemently resisted by both respondents. It is averred that as between the respondents, the sale agreement (of TANITA II) has already been finalized and the purchased assets have been handed over to the purchasers. It is further averred that matters relating to improvement or removal of any of the machinery are matters which are no longer in the control of the first respondent.
5. On its part, the second respondent avers that the application for temporary injunction does not meet the principles enunciated in the Atilio vs Mbowe (1969) HCD 284 case.
6. The following points need to be noted at the outset. First, is that both parties' submissions seem to touch on issues that may properly be considered in the trial of the main case, not at this stage. Therefore I will refrain myself from discussing such points, in this Ruling. Second, the issue presently is not preventing the sale of TANITA II by the first respondent to the second respondent. The issue is, simply put, to prevent the taking of further action

such as effecting the registration and transfer of ownership to the second respondent pending the determination of the main suit. There is no evidence to show that the transfer and registration has taken place already. The applicant is also asking this court to prevent either respondent from removing any machinery from TANITA II. I consider both prayers to be fair and precautionary in view of what may take place while the main suit is pending in this court. If such restraint orders are not granted, then in the end, the outcome of the main suit may be nugatory especially if the applicant/plaintiff is successful. It is against this backdrop that this court granted interim orders (on 3 August 2006), restraining the respondents from transferring and/or removing any assets from TANITA II. Further, it should be noted that the said registration cannot be effected without leave of the first respondent.

7. Does this application fit in the ambit of the principles enunciated in the Atilio Case? My considered view is that it does. I will now show why I so hold. In the Atilio case, three main principles were stated by Georges, C. J. (as he then was) namely –

7.1 There must be a serious question to be tried on the facts alleged and a probability that the plaintiff will be entitled to the relief prayed for.

7.2 That the Court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established; and

7.3 That on a balance of convenience, there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant by granting it.

8. This application is part of the main suit pending in this Court. Serious issues are being raised in the main case, as particularized in the plaint, especially paragraphs 10 to 15 and 17. In my view, these allegations raise serious questions that are within the purview of the first principle in the Atilio's case.

9. Concerning the need to protect the plaintiff from irreparable injury, again the contents of the plaint speak for themselves. Although controverted by the defence, still, it is my view that the truth of the matter is to be established by adducing evidence in a trial. But at the present stage, as was stated by Mulla: The Code of Civil Procedure (Volume IV) 16th Edition at page 3716:

"For establishing a prima facie case, it is not necessary for the party to prove his case to the hilt and....if a fair question is raised for determination, it should be taken that a prima facie case is established".

The pleadings herein so far tend to establish there is need, on the part of this Court to intervene by issuing the injunctive orders sought. That will prevent the applicant from sustaining the injury feared.

10. In so far as the third principle is concerned, that of balance of convenience – it is averred by the applicant that in case the transfer of TANITA II is effected before the determination of the

main suit, it stands to suffer more than the second respondent. I concur with this reasoning. For example, the issue of the machines already ordered. Even though the respondents challenge this argument on the basis that the applicant ought not to have ordered those machines before being handed over the TANITA II factory, the said argument may be raised during trial, not at this stage. What this court should consider at this stage is that should the transfer of TANITA II be effected, then those machines won't be installed in case the applicant wins this case.

11. All the above considered, this is a fit application for injunctive orders sought. In the circumstances, I issue an order of temporary injunction as prayed for in para 1 hereinabove. I order accordingly. No order as to costs of this application.

Dr. S. J. Bwana

JUDGE

26/9/2006

Court: Ruling delivered.

Dr. S. J. Bwana

JUDGE

26/9/2006

1,147 words