

**IN THE HIGH COURT OF TANZANIA**

**(COMMERCIAL DIVISION)**

**AT PAR ES SALAAM**

**MISC COMMERCIAL APPLICATION NO. 151 OF 2020**

**TARGET INTERNATIONAL (T) LIMITED ..... APPLICANT**

**GODFREY CONSUMER PRODUCTS LTD ..... RESPONDENT**

**RULING**

*Date of the last Order: 18/5/2022*

*Date of Ruling: 14/6/2022*

**Z. MARUMA J.**

The applicant before this Court is seeking for among other orders, this court to discharge, vary and set an order for injunction previously made and issued vide Miscellaneous Commercial Application No.54 of 2019. The application was brought under chamber summons made under XXXVII Rule 5 of the Civil Procedure

Code, Cap 33 RE 2019.

Before proceeding with determination of this application, it is better to understand the trend of the events through the handling of this application. This application was filed in 26<sup>th</sup> October 2020 and assigned to Hon. Fikirin, J (As she then was). The hearing of application was ordered to be through the way of written submission. The parties were complied by the order and filed their written submissions as per court schedule whereby the last submission was supposed to be filed on 31<sup>st</sup> December 2020. The parties were ordered to appear for orders on 29<sup>th</sup> March 2021, 1<sup>st</sup> April 2021, 27<sup>th</sup> April 2021, 1<sup>st</sup> June 2021 and 5<sup>th</sup> August 2021. However, there was no reason for orders given.

On 4<sup>th</sup> August 2021, the case file was re-assigned to Hon. Mteule J on 5<sup>th</sup> August 2021 after the Hon. Justice Fikirini, JA elevated to the Court of Appeal. The application was fixed for ruling on 17<sup>th</sup> November 2021 however, on 8<sup>th</sup> December 2021 Hon. Mteule J, returned the file to the Judge in charge with a view of the ruling to be composed by the Hon. Fikirin, JA. By the wisdom of this Court this matter was re -assigned to me on 17<sup>th</sup> January 2022. Given the

historical trend of this application and the time passed, I was of the view that, to have a better understanding and to proceed with the determination of the application without more delays, I ordered the application to proceed through oral hearing of the parties afresh.

On the date this application was set for hearing *viva voce*, the applicant was presented by learned advocate Mr. Gulam Hassan assisted by Hawa Ms. Turusia and Mr. Martin Frank both learned advocates. While the respondent had the service of the learned advocate Mr. Francis Kamuzora.

Addressing the court, Mr. Gulam submitted that, this Misc. Application No. 151 of 2020 was filed to discharge injunction granted by this Court by Hon Fikiran, J as she then was, but unfortunately it had been overtaken by event. He submitted that as of today, there is no existing injunction due to the fact that it is almost one year has passed and there is no application filed by the Appellant counsel to seek for the renew or seek extension of the said injunction.

Clarifying his point, he submitted that as per order XXXVII rule 3 of the Civil Procedure Code, Cap. 33 of 1966 RE 2019 that the injunction exist only for six months and after that it expires as this injunction which have discharged by the overtaken by event so they

saw no need to waste court's time for something which does not exist. He further submitted that the Applicant and the Respondent did file their submissions on time during that time but due to the busy schedule of the court, the said matter was adjourned due to the speed of the court and ended up to be discharged by itself. He prayed for each party to bear its own costs as the Applicant wish no longer to continue with the expired matter.

Mr. Kamuzora for the respondent conceded on the position of the law that the injunction expired for six months however, he pointed out that the order of the court says something different that, the order was pending till determination of the Commercial Case No.60 of 2019. He said by reading the language of the Court it is not correct to submit such an order has expired by lapse of time. It is one thing may be to say the Judge was errored to grant such big order. He said the order remained valid until it has been discharged or overruled by the subsequent order of the Court. So, I leave to the Court to decide.

Mr. Martin assisting Mr. Gulam made a quick rejoinder insisting that the temporary injunction was granted as prayed. There is no any other word followed there and that is what should be followed.

Therefore, there is no any word stated that injunction was granted pending any other subsequent case.

Considering the submissions made by the learned advocates from both sides, the main issue to be determined at this stage is on legal position of the order of injunction issued against the relief sought in this application to discharge, vary and set an order for injunction previously made and issued vide Miscellaneous Commercial Application No. 54 of 2019.

Going through the Miscellaneous Commercial Application No.54 of 2019, the ruling thereof was delivered on 3<sup>rd</sup> July 2020 granted a temporary injunction which I would like to reproduce the last part of the ruling as here under:-

*" Examining the application as a whole, this Court is satisfied that the application has been able to establish a prima facie case which is paramounting in granting of the temporary injunction. The temporary injunction is thus granted as prayed."*

Based on the above quotation the ruling was granted based on the applicant's prayer. Going through the said ruling at page No. 1, among the prayers sought by the applicant was that;

*"1. That, the honorable Court may, pending determination of the Commercial Case No. 60 of 2019, be pleased to grant injunction restraining the respondent or it's agent or servants from manufacturing, selling, importing or commercially dealing in any other manner with counterfeit mosquito and insect repelling spray bearing the HIT Trade Mark in the Tanzanian market."*

Relating the above prayer with the structured ruling made, it simply means that prayer was granted as prayed. However, there are conditions which have been provided under Order XXXVII rule 3 of the CPC as provided here under:-

*"3. " In addition to such terms as the keeping of an account and giving security, the court may by order grant injunction under rule 1 or rule 2 and such order shall be in force for a period specified by the court, but not exceeding six months:"*

*Provided that, the court granting the injunction may, from time to time extend such period for a further period which in the aggregate shall not exceed one year, upon being satisfied, on*

*the application of the holder of such court injunction that the applicant has diligently been taking steps to settle the matter complained of and such extension sought is in the interest of justice, necessary or desirable."*

Based on the above provision and explanation given therein, the time limit for injunction to remain valid is six (6) months subject to extension which also should not be beyond the aggregate period of more than one year. Moreover, there should be an application for renewal of the same.

What is stated above is not a position in this application. As it is transpiring in the court record, the injunction order was granted on 3<sup>rd</sup> July 2020. It is obvious that the six months has lapsed since January 2021. Assuming the Court ordered otherwise, the same should not exceed more than one year the position which is different in the application at hand. The present application has been in court for more than two years since the injunction was granted and there was no extension applied and granted to such effect.

Therefore, taking into account that the position of the law and

the ruling delivered on 3<sup>rd</sup> July 2020. The injunction given has been overtaken by event after the lapse of six months since it was delivered. Moreover, the period of one year aggregated was also over.

In the event there is nothing before this Court to be discharged in respect to the temporary injunction since this application has been overtaken by event. This application is therefore struck out. Taking into account the handling of the matter since it has been instituted, I ordered each party to bear its own costs.

Dated at Dar es Salaam on 14<sup>th</sup> day of June 2022.



A handwritten signature in dark ink, appearing to be "Z.A. Maruma, J.", written over a circular stamp.

**Z.A. Maruma, J**

**14/06/2022**