

IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM
MISC. COMMERCIAL APPLICATION NO. 25 OF 2022
(Arising from Commercial Case No.28 of 2020)

INCAR TANZANIA LIMITED.....1st APPLICANT
SHIVA IMAGES TANZANIA LIMITED.....2nd APPLICANT
SHIVACOM (TANZANIA) LIMITED.....3rd APPLICANT
STEFNAT ENG. & TECH. SERVICES.....4th APPLICANT
ULTIMATE SECURITY TANZANIA LTD..... 5th APPLICANT
SHIVACOM GROUP OF COMPANIES LTD.....6th APPLICANT
TANIL SOMAIYA.....7th APPLICANT

VS.

STANDARD CHARTERED
BANK TANZANIA LTD.....RESPONDENT

RULING

Date of the Last order: 14/03/2022
Delivery of the Ruling: 25/03/2022

NANGELA, J.:

The Applicants herein preferred this application under a certificate of urgency duly signed and filed in this Court by their advocate Mr Michael J.T. Ngalo, Esq., on 02nd March 2022.

The Applicants' chamber summons was filed under Order XXXVII Rules 1(a) and 2(1), Section 68(e) and 95 of the Civil Procedure Code, Cap.33 R.E 2019 and is

supported by a joint affidavit affirmed by Sonia Tanil Somaiya and Amal Subir Somaiya.

The Applicants are seeking for the following interim orders of the Court, to wit, that:

1. This Court be pleased to grant and issue interim orders: for maintenance of status quo by restraining the Respondent, its directors, employees, servants. Duly instructed agents, including FK Law Chambers or any of the Advocates or Employees therein and or assignees and whomsoever is appointed or instructed by the Respondent from, in any manner whatsoever, selling, alienating, or transfer 1st, 2nd and 3rd Applicant's properties and developments on **Plots Nos. 104-110** with **CT. No. 186078/2** Nyerere Road Industrial Area ("**Incar Plots**"), **Plot No.100** with **CT. No.32467** Vingunguti Industrial Area ("**Shivacom TZ Plot**") and **Plot No.26/3/2** with **CT. No 186081/36** Pugu Road ("**Shivacom TZ Plot**") collectively referred as "the suit properties" all situated in Ilala Municipality within Dar-es-Salaam, **pending the hearing and determination of the application on**

merits inter-parties and by issuing any other order (s) that the Hon. Court may consider or deem fit and proper to grant in the circumstance.

2. Inter-partes application for temporary Injunctive Orders:

- (a) May the Hon. Court be pleased to issue orders of temporary injunction to restrain the Respondents, its directors, employees, servants. Duly instructed agents, including FK Law Chambers or any of the Advocates or Employees therein and or assignees and whomsoever is appointed or instructed by the Respondent from, in any manner whatsoever, selling, alienating, or transfer 1st, 2nd and 3rd Applicant's properties and developments on **Plots Nos. 104-110** with **CT. No. 186078/2** Nyerere Road Industrial Area (**"Incar Plots**), **Plot No.100** with **CT. No.32467** Vingunguti Industrial Area (**"Shivacom TZ Plot"**) and **Plot No.26/3/2** with **CT. No 186081/36** Pugu Road (**"Shivacom TZ Plot"**) all situated in Ilala Municipality within Dar-es-Salaam, (collectively referred as "the suit properties") pending the hearing and

determination of the main case, **i.e.,**

Commercial Case No.28 of 2020;

- (b) Ordering that the costs of the Application be borne and paid by the Respondent; and
- (c) Issuing any other order (s) the Hon. Court may consider fit and proper to grant in the circumstances.

When this application was called on for mention before me on the 3rd of March 2022, Mr Ngalo and Mr Goodluck Ruizer, learned advocates, entered appearance for the Applicants while Mr Deusdedit Duncan, Mr Edward Mwakingwe, and Emmanuel Sagan, appeared for the Respondent. This Court made an interim order that the *status quo* be maintained as per the first limb of the prayers of the Applicants and set the application for its hearing on the 10th of March 2022.

When the parties appeared before me on the 10th of March, 2022 it was noted that, the Respondent had raised preliminary objections which ought to have been disposed first. The preliminary legal issues which the Respondent pleaded were as hereunder:

- (a) That, the Application has been brought, and supported by an affidavit jointly affirmed by persons who lack locus, are total strangers in the suit under which

this Application is brought, to wit, Commercial Case No.28 of 2020 (the Suit).

- (b) The Applicants have preferred the same and/or substantially similar application in the Court of Appeal of Tanzania which is pending for hearing in Civil Application No.149/16 of 2020 (the CAT Application), where the Applicants also seek redress, reliefs and remedies which are the same and, are direct and substantially similar to the orders, reliefs and remedies sought in this Application thereby rendering this Application res-sub-judice; or, alternatively,
- (c) This Hon. Court has no jurisdiction to hear and determine the Application as the Applicants have filed similar application in the Court of Appeal of Tanzania in Civil Application No.149/16 of 2020 in which they seek same reliefs as the reliefs now sought in this Application;

- (d) The Applicants brought same or substantially directly similar application in Commercial Application No.105 of 2019, which was brought under Commercial Case No.105 of 2019, which has already been decided by this Honourable Court (Madam Philip, J).
- (e) Applicants have not exercised their right, nor exhausted the alternative remedies available to them as provided under the provisions of section 138 of the Land Act- Cap.113 R.E 2019 (the Land Act); and
- (f) The Institution of the application for injunctive reliefs is intended to deny the Respondent its rights and statutory powers and remedies conferred upon mortgagees of the recovery of the monies advanced by the Respondent to the 1st, 2nd and 4th Applicants, repayment of which the 1st and 2nd and 4th Applicants defaulted.

In view of the above preliminary objections, this Court made an order to the effect that the preliminary

objections be heard first and, the same were set to be heard on the 14th day of March 2022. On the material date, Mr Ngalo appeared for the Applicants while Mr Duncan and Mr Sagan appeared for the Respondent.

Addressing this Court in support of the preliminary objections, Mr Duncan, who had earlier filed skeleton arguments, requested that I be pleased to adopt such as forming part of his submissions. He added orally, that, what is more comes from the decision of this Court (Nangela, J) in respect of **Commercial Case No. 28 of 2020** in which similar objections were raised by Mr Ngalo, and that, this Court held that, its jurisdiction was curtailed, thereby ordering a stay of the said suit. He submitted that, while being stayed, the Applicants have brought this application, a fact which he considered to be an abuse of the process of the Court.

He submitted, in addition, therefore, that, one of the aspects which this Court did not deal with or consider in its earlier ruling was the fact regarding the pendency of the Court of Appeal **Civil Application No.149/16 of 2020**, also referred to in the supporting affidavit filed by the Applicants. He contended that, this application is still pending in the Court of Appeal. He argued that, the Applicants are now seeking the same orders in different Courts, a fact which demonstrate a clear abuse of the

Court process. He urged this Court to dismiss this application.

In his skeleton arguments filed in this Court, Mr Duncan addressed each point of objection singularly. As regards the first point regarding lack of locus to bring the application, he submitted that, the affiants of the joint affidavit have no powers to represent the 1st to 6th Applicants or the 7th Applicant, even if they have been appointed administrators of his estate. He observed that, they are not directors of any of the six applicant Companies and neither are they principal officers of the 1st to 6th Applicant Companies whose actions can bind the 1st to 6th Applicants.

Mr Duncan submitted that, the affiants of the joint affidavit have not demonstrated their relationship to the 1st to 6th Applicant Companies, rather than stating in Para.2 of their joint affidavit that, they have brought the application as the 7th Applicant and also a dully authorised representative of the 1st and 6th Applicant Companies. Mr Duncan argued that, no proof of authorisation and consent has been provided.

He conceded in his submission that, when a matter calls for evidence it may fail to qualify as a preliminary objection. Nevertheless, he contended that, this Court has a duty to make inquiries to be satisfied that it was

properly moved. He contended, therefore, that, with the exception of the 5th Applicant, all other Applicants had one Sole Director - the late Tanil Somaiya, and, as of now the Applicant companies have no any living director. He asked, thus, who directed the two affiants. Mr Duncan submitted that, this point goes to the root of the application and the issue to be determined is an issue of *locus standi* which goes to jurisdiction of this Court.

Mr Duncan has cited Order XXII rule 4 of the Civil Procedure Code, Cap.33 R.E 2019 and contended that, being an administrator does not make one a party to any suit automatically. He contended that, Sonia and Amal have not been joined to the suit as legal representatives of the late Tanil and there has been no application to that effect. He surmised, therefore, that, they have no locus standi to bring an application arising and brought under the suit.

Mr Duncan has referred this Court to various decisions of this Court and the Court of Appeal to support his first point. These include the case of **Mpanzi vs. Christina Mbaruka**, Civil Appeal No.153 of 2019, (unreported); **Lujuna Shubi Ballonzi vs. Registered Trustees of Chama cha Mapinduzi**, [1996] TLR 203, and **Godbless Lema vs. Mussa Hamis Mkanga and 2 Others**, Civil Appeal No.47 of 2012 (unreported).

As regards the 2nd objection, based on the *res-subjudice* argument, it was Mr Duncan's contention that, should this Court still find that Sonia and Amal have *locus standi*, still, the application at hand is *re-subjudice* due to the pendency of the Civil Appeal No.149/16 of 2020 at the Court of Appeal.

In support of his submissions, reliance was placed on the case of **Allawi Raj Kassim vs. Efatha Bank Ltd (under the receivership of the Director Deposit Insurance Bond, Mark Auctioneers & Court Broker Co. Ltd, Kileo Msongoryu Edmund and Glory Edmond Kileo**, Commercial Case No. 115 of 2019 (unreported) as well as the case of **Standard Chartered Bank Tanzania vs. Incar Tanzania Ltd and Others**, Commercial Case No.20 of 2020.

Further reliance was placed on the case of **Starpeco and Others vs. Azania Bank**, Misc. Commercial Case No.11 of 2020, (unreported) and **Solohaga Co. Ltd vs. Yara Tanzania Ltd**, Commercial Case No.67 of 2020 (unreported). Mr Duncan has urged this Court to dismiss the application and condemn the Applicants to punitive costs for bringing a vexatious application in total abuse of the process of this Honourable Court.

As regards the 3rd objection, Mr Duncan submitted that, this Court lacks jurisdiction to hear and determine the current application as the Applicants have filed similar one at the Court of Appeal, which is **Civil Application No.149/16 of 2020**, emanating from **Civil Appeal No.97 of 2020**, seeking for similar reliefs.

He argued that, once a matter is instituted in the higher court, the lower court loses its jurisdiction over the matter and anything has to be referred to the appellate Court. To bolster his submissions, he referred to this Court the case of **Mohamed Enterprises Tanzania Ltd vs. The Chief Harbour Master and Tanzania Ports Authority**, Civil Appeal No.24 of 2015.

As regards the 4th objection concerning *res-judicata*, Mr Duncan submitted that, the Applicants have brought the same or substantially and directly similar application in **Commercial Application No.105 of 2019**, which was brought under **Commercial Case No.105 of 2019**, already decided by this Court (Philip J). He contended, thus, that, the current application is *resjudicata* and must be dismissed.

Support for his submission was founded on the cases of **Badugu Ginning Co Ltd vs. CRDB Bank and Others**, Civil Appeal No.265 of 2019 and **Peniel Lotta**

vs. Gabriel Tamakand 2 Others, Civil Appeal N.61 of 1999 (both unreported).

Concerning the 5th point of objection, it was Mr Duncan's submission that, the Applicants have statutory rights under section 138 of the Land Act, Cap.113- R.E 2019. He contended that, since an injunction is an equitable remedy, one cannot seek an equitable remedy where there is a legal remedy. He contended that, legal remedies being available, equitable remedies cannot be sought.

Finally, as regards the 6th ground of objection, Mr Duncan submitted that, the Court cannot grant the orders while there is no wrong committed by the Respondent. He contended that, the Respondent is only exercising its statutory right provided for under the provisions of section 126 of the Land Act, and commits no wrong and cannot be hindered by the Court.

To support his views, he relied on the case of **British Airways vs. Laker Airways** [1985] AC 58, at 81, contending that, the power to make any restraint order is dependent upon there being a wrongful conduct of the party to be restrained. Reliance was also place of Order XXXVII rule 2 of the Civil Procedure Code, Cap.33 R.E 2019 and the cases of **Silven Properties Ltd and Another vs. Royal Bank of Scotland and Others**

[2003] EWCA Civ. 1409 and **South Carolina Insurance Co. vs. Assurance Maatschappij de Zeven Provinciën NV.1987**, regarding the power of the High Court to grant injunction.

From the foregone submissions, Mr Duncan urged this Court to dismiss the application with costs and uphold the preliminary objections.

Mr Ngalo made a brief but equally powerful submission against the preliminary objections. In particular, he reminded this Court that, what prompted the Applicants to come before it is the Respondent's advert posted on the Daily News Newspaper dated 22nd February 2022. Prior to that date, submitted Mr Ngalo, there was no any action or measures taken by the Respondent Bank to either sell, alienate or dispose of the Suit Properties that are the subject of the pending **Commercial Case No.28 of 2020**.

Mr Ngalo was in agreement with Mr Duncan that the said **Commercial Case No.28 of 2020** was stayed by this Court in its decision (ruling) dated 26th February 2021. He submitted that, looking at the grounds of objection, only three grounds qualify to be regarded as preliminary objections. These, he pointed out, are grounds 2, 3 and 4.

As far as grounds 1, 5 and 6 are concerned, Mr Ngalo was of the view that, these are not pure ground

which can constitute what preliminary objections are in the eyes of the law because they cannot dispose of the matter before the Court before the Court calls for proof thereof or embark on an analysis of the facts pleaded in the affidavit.

Referring to the Court of Appeal decision in the case of Consolidated Civil Appeal No.90 and 206 of 2013 between **Merchmar Corporation (Malaysia) Benhard (in liquidation) vs. VIP Engineering Marketing Ltd and 3 Others** (unreported), he contended that, the Court of Appeal made a finding in a plea of no *locus standi*, that, such called for an inquiry and call for evidence. On the basis of this authority, he urged this Court to overrule the 1st, 5th, and 6th ground of objection.

As regards the 2nd ground of objection, Mr Ngalo submitted that, the same can be argued together with ground 3. He submitted that, the Court has jurisdiction to entertain this application irrespective of the matters which are pending in the Court of Appeal. Mr Ngalo gave two reasons to support his submission.

The first one is in relation to the applicable rules of procedure which apply in the two Courts, i.e., in this Court and in the Court of Appeal. He argued that, the rules governing the applications before the Court of Appeal are entirely different from those applicable to this Court. He

contended that, in the current application before this Court, the same was brought under Order XXXVII rule 1 and 2 of the Civil Procedure Code, Cap.33 R.E 2019 and, that, the law confers jurisdiction on this Court once a matter is brought under that provision.

He contended further that, one of the requirements under the CPC is that, there should be a suit pending before the Court, and that, such suit in our case is **Commercial Case No.28 of 2022** instituted by the Respondent against the Applicants.

Mr Ngalo argued that, much as the suit was stayed by this Court pending the hearing and determination of the Court of Appeal case No. 97 of 2020; its pendency does not oust the jurisdiction of this Court to hear and determine applications of temporary nature based on that suit. He surmised that, the fact that the suit has not been determined makes this application appropriately made before this Court. In view of that, he urged this Court to overrule ground 2 and 3 of the objections as well.

As regards ground number 4, (*res-judicata*) Mr Ngalo submitted that, although the Respondent contends that a decision was made by this Court, no copy of such decision was availed to the Court and, for that reason, he was unable to make better comments. However, he submitted that, since he was involved in the Commercial

Appl. No.105 of 2019, his recollection was that, the merits of the application were left undetermined.

As regards the decisions relied upon by Mr Duncan, it was Mr. Ngalo's submission that, the decision regarding the issue of *locus standi* were decision issued in relation to consideration of the issue of *locus standi* in the context of public interest litigation.

Finally, as regards the alleged abuse of court process, Mr Ngalo submitted that, such an allegation itself calls for evidence to establish how the Applicants have abused the process of this Court and, as such, it cannot be an issue to be decided on the basis of the preliminary objections. He urged this Court to dismiss the objections with costs.

In a brief rejoinder, Mr Duncan reiterated his earlier submissions. He submitted that, the issue of *locus standi* is a valid issue and, that, the fact that some of the cases that discussed it did so in the context of public interest litigation, does not mean that principle does not apply to private rights litigation. To support his views, he referred to this Court the case of **Peter Mpanzi vs. Christina Mbaruka (supra)** as an example.

In my view, I think I do not need to waste time discussing that point since the above cited case is self

explanatory and, that is indeed the right legal position regarding the applicability of that principle.

Mr Duncan rejoined further that, the said Commercial Appl. No.105 of 2019 and the suit upon which it was based were long disposed of by this Court (Madam Philip, J), as of 6th April 2020 and that, this Court need only to take judicial notice of that fact. He thus urged this Court to dismiss the application as earlier prayed.

At that juncture, this Court raised **suo moto**, an issue regarding, whether the Suit properties for which this application relates to are the same properties for which an order of stay of suit in Commercial case No.28 of 2020 was given. Second, if the answer to the first issue is in the affirmative, was it proper for any of the parties herein to take any steps in relation to the properties while there is already in court a stay order? In other words, what was the effect of the stay order?

To respond to the above, Mr Duncan was of the view that, the suit which gave rise to the application and the stay order is seeking for recovery of facility amount advanced to the 1st, 2nd and 3rd Applicants by the Respondent following a default to pay.

He submitted that, in the suit, the Plaintiff also prayed, under prayer (g) for sale of the securities. As

such, he argued that, the subject of this case is not related to the mortgaged property only but also other securities and the repayment of the loans advanced to 1st, 2nd and 3rd Applicants and guaranteed by the 4th, 5th and 6th Applicants.

He contended, therefore, that, the same is about loan recovery and not about sale and attachment of the suit properties. He reiterated his earlier submissions regarding the rights of the Respondent to sell the mortgaged properties that being a statutory right under section 126 of the Land Act, Cap.113 R.E 2019, read together with section 131, 132, and 134 of the same Act. He argued that, such powers are extra-judicial remedies and so, the existence or not of the case in Court does not affect them. He contended that, the Respondent has right to advertise and sale the suit properties in exercise of such a remedy under the law.

For his part, Mr Ngalo had a different view. He contended that, the basis of this application is the Commercial Case No.28 of 2020. He agreed that, certainly, the Respondent has a statutory right and power to sale. He contended, however, that, a departure comes when the Respondent has decided to come to the Court instead of exercising such rights. As for him, the moment the

Respondent did that, it means that, the Court processes should now be allowed to follow their rightful channels.

He contended that, looking at the payer (g) of the Respondent in the Commercial Case No.28 of 2020, what the Respondent is seeking is an order of attachment and sale. He wondered why the Respondent did not proceed to exercise its rights right away. Mr Ngalo argued that, since the Commercial case No.28 is stayed, there is no way the Respondent can exercise that right because, the effect of that order of the Court was to leave all matters in their current *status quo* until further developments in that case.

In have given due consideration to the lengthy submissions. In the first place, let me start by the issue which this Court raised *suo moto* regarding the status of its earlier orders and whether, during the pendency of those orders of stay in respect of Commercial Case No.28 of 2020, any of the parties is or was justified to take any step in relation to the Suit Properties (or part thereof), which properties or part thereof are also the subject of the application from which the preliminary objections were preferred.

In his submission, if I may paraphrase, Mr Duncan has contended that, regardless of the stay orders the Respondent is legally entitled to exercise his statutory rights under section 126 of Land Act as read together with

other sections. For his part, although Mr Ngalo conceded that the Respondent has a statutory right of sale of the mortgaged property, he saw it differently when it comes to the enjoyment of that right, arguing, that, since the Respondent decided to come to this Court, the stay orders issued by this Court had the meaning of maintaining the *status quo*. In other words, the Respondent's hands are tied to the processes of the Court.

I do subscribe to Mr Ngalo's submission on that point. In my humble view, once a party who, instead of exercising her/his statutory right of sale of mortgaged property under section 126 (d) of the Land Act, Cap. 113 decides to engage the Court by way of filing a suit seeking for orders of the Court in respect of Mortgaged properties, s/he cannot, at the same time, invoke the said provision and run another parallel process. Doing so would be preempting the Court process s/he has chosen to set in motion. By choosing to approach the Court in search of her/his remedies, it means that, s/he has waived her/his right to invoke that provision at will.

Secondly, I do also agree with Mr Ngalo that, this Court's stay order which was issued sometimes on the 26th February 2021 in respect of **Commercial Case No.28 of 2020**, had, and continues to have, the effects of maintaining the *status quo*. With that in mind, it means,

therefore, that, no party to the said suit is free to deal with any of the properties which are the subject of Court proceedings whether such proceedings are stayed or on-going. Holding otherwise is to invite chaos or anarchy, not only in this Court, in terms of disrespect to its lawful Orders, but also within the community in which the Court renders its judicial services. That being said, I will later revert to this same issue later as I wind up my discussion.

Let me now revert to the preliminary objections. Mr Ngalo has consolidated grounds 1, 5 and 6 and contended that, these grounds do not befit to be regarded as preliminary objections because they call for proof and analysis of the available facts.

Indeed, looking at these grounds and how the Respondent has crafted the 1st, 5th and the 6th preliminary points of law, I need not mince my words. They fall short of the standard set out in the case of **Mukisa Biscuits Manufacturing Ltd vs. West End Distributors Ltd** [1969] E.A 696, and the Court of Appeal decisions in the cases of **Karata Ernest & Others vs. Attorney General**, Civil Revision No.10 of 2010 (CAT) (unreported) and **Tanzania Telecommunications Co. Ltd (TTCL) vs. Vedasto Ngashwa and 4 Others**, Civil Application No.67 of 2009, (unreported).

In the TTCL's case (supra), the Court of Appeal of Tanzania held that, for an objection to be competent it must satisfy three conditions:

1. The point of law raised must either be pleaded or must arise as a clear implication from the pleadings.
2. It must be a pure point of law which does not require close examination or scrutiny of the affidavits or counter affidavits.
3. Determination of such a point of law in issue must not depend on the discretion of the Court.

In the case of **Karata Ernest & Others v Attorney General**, (supra), the Court of Appeal further stated that:

"Where a point taken in objection is premised on issues of mixed facts and law, that point does not deserve consideration at all as a preliminary objection. It ought to be argued in the normal manner when deliberating on the merits or otherwise of the concerned legal proceedings."

Further, in the **Merchmar's case** (supra), the Court of Appeal was invited to deal with, among others, objections based on "*locus standi*" and "continued abuse

of Court process". In its deliberation the Court of Appeal held as follows, at page 11 of the typed judgement:

"Obviously, the points raised by the first respondent on the "*locus standi*" of the applicant to sue, continuation of abuse of the Court process ... are matters which cannot be answered without asking the question why and how. Since the question why and how have to be asked, it means that an inquiry has to be conducted in order to resolve the issue of "*locus standi*" and the two remaining points of objection raised by the first respondent. This means the Court has to seek evidence which will enable it to be in a position to resolve the points raised as preliminary objection. By indulging in that process, the points raised ...looses the status of being preliminary objections.

In view of these authorities, I will proceed and overrule the **first**, **fifth** and the **sixth** preliminary objections.

As regards the 2nd and 4th preliminary objections, Mr Duncan has urged me to dismiss the application based on

these two grounds. He contended, inter alia, that, the application at hand is *re-subjudice* due to the pendency of the **Civil Appeal No.149/16 of 2020** at the Court of Appeal or *res-judicata*.

Moreover, in support of the fourth ground, he argued that, there is, in the Court of Appeal of Tanzania, a similar application for same reliefs, which is **Civil Application No.149/16 of 2020**, emanating from **Civil Appeal No.97 of 2020**. For his part, Mr Ngalo has urged this Court to reject and dismiss the 2nd, 3rd, and the 4th grounds of objection.

In my view, as regards grounds No.2 and No.4, it should be noted, first and foremost that, the current application is based on the **Commercial Case No.28 of 2020**, a suit which is still pending in this Court. Essentially and as correctly submitted by Mr. Ngalo, since the application is premised under Order XXXVII Rule 1 and 2 of the Civil Procedure Code Cap.33 R.E 2019, this Court has jurisdiction to hear matters premised under that order. And, given that there is a pending matter in this Court, whether stayed by the Court or not stayed, the requirement under Order XXXVII Rule 1 of the CPC of there being a pending suit in Court is satisfied.

That being said, I cannot uphold the 2nd and 3rd grounds since the application is premised on a suit which

is still pending before this Court and, in relation to properties that are the subject of that same suit, even if the same was stayed by the Court.

A regards the 4th objection Mr Duncan has contended that, the matters at hand are *res-judicata* since they were dealt with to their finality by this Court in **Misc. Commercial Application No.105 of 2019** and **Commercial Case No.105 of 2019**. He invited me to look at Annex-TAB 11 and 12 annexed to the Applicant's supporting affidavit. I have looked at TAB 11 and 12.

In my view, I need not take much trouble or be detained by the 4th point of objection. As I stated earlier here above, this application is premised on **Commercial Case No.28 of 2020** which is still pending in this Court. It is not premised on **Commercial Case No.105 of 2019**. As such, I see no point in this objection and, I will also hereby overrule the same. In the upshot, I find that all six preliminary objections are devoid of merits and I should be dismissed.

As I stated earlier, before I sign off, I still have a few points to knit together in relation to the point of law issue which this Court raised *suo moto*, concerning the legal effect of its orders which stayed the **Commercial Case No.28 of 2020**, upon which this application is premised.

As I noted earlier herein above, the stay order which this Court issued on the 26th February 2021 had the effect of maintaining the *status quo*. As such, it follows that, neither the Applicant nor the Respondent is currently entitled to do anything touching the properties which are still the subject of the pending matters in Court. From that understanding, it is clear, therefore, that, the current application was unnecessary.

I hold it to be so because, **this Court has never vacated its orders of stay of Commercial Case No.28 of 2020 and all parties, their agents, assignees and/or all other persons are by all intent and purpose of the "Stay Order" issued by this Court restrained from interfering in whatsoever manner with the properties that are already a subject of litigation in this Court.** As such, any party doing anything to the contrary will definitely be doing it at the risk of committing a contemptuous act in defiance of the authority of this Court.

In line with the above, I find it apposite to emphasis and bring to the attention of the parties herein the point that, **once disputed matters are laid before the Court of law, all others persons acting under their instructions are by all intent and purpose, restrained from laying their hands on them.** This

includes purported owners of properties or whoever else who may lay claims on the said properties which are a subject of court proceedings. All such interested persons are restrained from laying their hands on them until when the pending Court processes come to their finality.

On the basis of the above reasoning, I find that the application will face a dismissal order and the Respondent are to be directed to strictly respect and adhere to the stay orders of this Court issued in respect of the Commercial Case No.28 of 2020, which is still pending in this Court and whose effects have been elaborated in this ruling. In so doing, the Respondent must cease from any processes touching on any of the properties in question and which have the net effect of pre-emptying the processes of this Court.

Having said so this Court settles for the following:

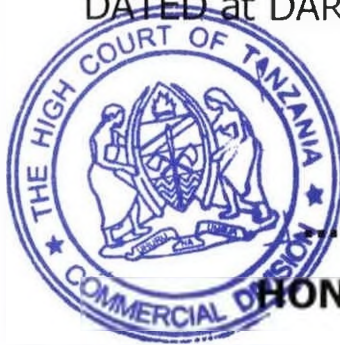
- (1) The Preliminary objections raised by the Respondents are hereby overruled.
- (2) The point of law raised by this Court *suo moto*, is hereby decided to the effect that, the stay orders of this Court dated 26th February 2020 has the effect of maintaining the **status quo** and no party is permitted to do anything in respect of the

properties for which the Court's interventions have been preferred.

- (3) In view of No.2 above, this application was unnecessary and is hereby dismissed. Even so, the Respondent is directed to desist from any act or processes touching on any status quo regarding the properties in question, including acts or processes which have the net effect of pre-emptying the pending and on-going processes of this Court.
- (4) In the circumstances of this application, I make no orders as to costs.

It is so ordered.

DATED at DAR-ES-SALAAM ON THIS 25th DAY OF
MARCH, 2022.



**HON. DEO JOHN NANGELA
JUDGE**