

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC LAND APPLICATION NO. 512 OF 2022**

**BETWEEN**

**UNCTION TRADING COMPANY LTD ..... APPLICANT**

**VERSUS**

**KCB BANK ..... 1<sup>ST</sup> RESPONDENT**

**MM AUCTIONEER AND DEBT COLLECTOR**

**COMPANY LTD MART ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**A. MSAFIRI, J.**

The applicant UNCTION TRADING COMPANY LTD has filed this application in this Court seeking for the following orders;

- a) That this Honourable Court may be pleased to grant orders of temporary injunction restraining the respondent, her agents and/or workmen from selling the applicant's mortgaged house Plot No. 2443 Block A, CT NO. 151737, L.O No. 630967 situated at Pugu Kajiungeni, Ilala District at Dar es Salaam and House located at Plot No. 1253/28 Block C, CT No. 131999 Lo No. 487762 situated or located at Mtoni

*Alls.*

Kijichi, Temeke District at DSM (Herein as suit properties), pending determination of the main suit.

b) Costs.

c) Any other and further orders as this Honourable Court deems just and equitable to grant.

The application is supported by an affidavit of Christopher Robert Kajituel, advocate of the applicant.

The respondents did not file counter affidavits. However, the 1<sup>st</sup> respondent filed a preliminary objection through her advocate Mr. Leonard Masatu. On the date which the preliminary objection was set for hearing, the applicant was represented by advocate Benson Florens who was holding brief of Mr. Benedict Pius, advocate. The 1<sup>st</sup> respondent was represented by Mr. Makaki Masatu, learned advocate, and the 2<sup>nd</sup> respondent was absent without notice.

It should be noted that by that time the respondents had not filed their counter affidavits despite there being the Court order to do so.

Before commencement of hearing, Mr. Masatu prayed to the Court for the withdrawal of the Notice of preliminary objection which was filed by the

*Alle*

1<sup>st</sup> respondent. He also informed the Court that the 1<sup>st</sup> respondent is not contesting the application so he prayed for the same to be granted.

Mr. Florens had no objection to the prayers and after addressing the Court on the orders sought, he prayed for the Court to grant the application.

Since the 2<sup>nd</sup> respondent did not file their counter affidavit and neither did they enter appearance in Court despite being duly served, the Court drew an inference that they are not contesting this application.

The issue for my determination is whether the application has merit.

The advocate for the applicant in his affidavit stated that the applicant was successfully granted the loans from the 1<sup>st</sup> respondent. That, the loans were secured by the suit properties. He stated that the loan was meant for business purpose but in the course of the business, the applicant encountered business difficulties.

The advocate for the applicant submitted further that, despite facing business difficulties, the applicant has paid and is still paying the remaining balance as much as he gets and that only Tshs. 360,000,000/= remain out of USD 350,000 which was taken as a loan.

*Alle*

He said that, surprisingly on 21/7/2022, the 2<sup>nd</sup> respondent made a publication through Nipashe Newspaper announcing the public auction of the suit properties, and without serving the applicant with 14 days' notice before the auction.

He concluded that if the application is denied, the applicant will suffer irreparable loss considering that the applicant resides with his family in one of the houses on the suit properties.

As pointed earlier, this application was not contested and in consideration of that, I find that the applicant has managed to establish, through the affidavit, that she has a prima facie case against the respondents, and that he will suffer irreparable loss if this application will not be granted.

Also, considering the circumstances of this matter, I find that on the balance of convenience, it is the applicant who will suffer more mischief if this application will not be granted, compared to the respondents.

To the above reasons, I find the merit in the application and I hereby *Alle* grant it.

The temporary restraint order is hereby entered against the respondents and their agents on the suit properties pending the hearing and determination of the main suit i.e. Land Case No. 222 of 2022.

Each party to bear their own costs in this application.



A handwritten signature in blue ink, appearing to read "A. Msafiri". The signature is written in a cursive style and is positioned above a horizontal dashed line.

**A. MSAFIRI  
JUDGE**

**24/10/2022**