

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND CASE APPLICATION NO. 699 OF 2022

(Originating from Land Case No. 290 of 2022 of the High Court Land Division)

HAROON HUSSEIN HAROON 1ST APPLICANT
JABEEN IQBAL NORAY 2ND APPLICANT
MOHAMED IKBAL HAJI MOHAMED 3RD APPLICANT
SHAMMAH IMAN ABEID 4TH APPLICANT
HASSANAT MOHAMED IKBAL HAJI MOHAMED 5TH APPLICANT
PRIVAN SAKARCHAND DHARAMSI CHAVD 6TH APPLICANT
ABDULLAH GULAMSHAF ALIMOHAMED 7TH APPLICANT
TANZIL GULAMSHAFI ALIMOHAMED 8TH APPLICANT
TONGSHUN PLASTIC PACKING COLOR PRINTING CO. LTD . 9TH APPLICANT
YASMIN RAFIK NURMOHAMED 10TH APPLICANT

VERSUS

COSMOS PROPERTIES LIMITED 1ST RESPONDENT
EXIM BANK (TANZANIA) LIMITED 2ND RESPONDENT
WALTER BUXTON CHIPETA AS RECEIVER & MANAGER .. 3RD RESPONDENT

Date of last Order: 09/03/2023

Date of Ruling: 20/04/2023

RULING

I. ARUFANI, J

The applicants filed in this court the present application seeking for an order of temporary/interim injunction to restrain the respondents, their servants, agents and other persons deriving titles from them from entering, selling and or exercising any legal action against the properties

of the applicants described as apartments Nos. 2402 and 2405 on 24th floor, Nos. 2302 and 2305 on 23rd floor, No. 1504 (E) on 15th floor, No. 1802 on 18th floor, No. 2001 on 20th floor, No. 1004 on 10th floor, No. 1205 on 12th floor, No. 1305 on the 13th floor, basement shops Nos. 25, 28, 21 and basement shop No. 18; penthouses No. 3 and 5 and the respective parking slots over Plot No. 63/27 UWT Street, Upanga Area within Dar es Salaam city pending hearing and determination of main suit pending in this court.

The application is made under section Order XXXVII Rule 1 (a) and 4, section 68 (c) and (e) as well as section 95 of the Civil Procedure Code, Cap 33 R.E 2019. The application is supported by a joint affidavit of all the applicants together with the affidavit of Bing Li, the principal officer of the ninth applicant. The application was opposed by the counter affidavit of the first respondent sworn by the first respondent principal officer namely, Festo Sylvester. While the counter affidavit of the second respondent was sworn by Mr. Edmund Mwasaga who is the second respondent's principal officer, the counter affidavit of the third respondent was sworn by the third respondent in person.

While the applicants were represented in the matter by Mr. Chrispin Mwebesa, learned advocate, the first respondent was represented by Mr. Ambrose Menance Nkwera, learned advocate, the second and third

respondents were represented by Mr. Elisa Abel Msuya, learned advocate. By consent of the counsel for the parties the application was argued by way of written submissions. The counsel for the applicants prayed the court to adopt the joint affidavit of the applicants to form part of his submission.

He stated the first respondent approached the applicants through their representatives namely Mr. Mohamed Owais Pardesi and or Mr. Arshad Hassan and informed them the first respondent had obtained permission and is planning to begin construction of a multi-storey modern building complex comprised of a basement, ground floor, mezzanine for car parking and various residential apartments on the suit property. He stated the first respondent's representatives told them the first respondent was mobilizing funds from various financiers through pre-selling of the apartments so as to commence construction and thus the best-selling offer was available to the persons who would have accepted the invitation to purchase the apartments and other parts of the building.

He stated the applicants accepted the offer on various dates and months in the years 2008 and 2010. Thereafter they entered into agreements with the first respondent for purchasing apartments and other parts of the suit property. He went on stating that, on 26th January, 2022 the applicants learnt there was an advertisement made in the Nipashe

newspaper informing the general public that the second respondent had appointed the third respondent to be the receiver manager of inter alia the applicants' suit properties. He argued the stated advertisement jeopardized the applicants' right over their respective suit properties and decided to file the present application in this court urging the court to grant an order of temporary injunction to restrain the respondents, their servants, agents and other persons deriving title from them from entering, selling and or exercising any legal action against the applicants' suit property.

He argued the conditions for the grant of an order of temporary injunction in Tanzania are well settled and cited in his submission the case of **Atilio V. Mbowe**, (1969) HCD 284 where it was held that, an application for temporary injunction is supposed to be determined basing on three conditions which are as follows: -

- (a) That there must be serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed.
- (b) That the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal rights is established, and;

(c) That on the balance of convenience there will be great hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it.

He stated in relation to the first condition that, prima facie case is established by looking at the affidavit accompanying the application. He argued that, the joint affidavit of the applicants establishes clearly that there is a serious issue on the ownership of the suit property that needs to be determined by the court. He referred the court to various paragraphs of the applicants' joint affidavit which shows how the applicants entered into the agreements with the first respondent and how they became bona fide purchasers of the suit properties.

He submitted that, the applicants deposed at paragraph 17 of their joint affidavit that the first respondent mortgaged to the second respondent the suit properties without the knowledge and consent of the applicants who have proprietary and possessory rights in the suit properties. He submitted further that, the applicants have deposed at their joint affidavit the second respondent issued a loan to the first respondent that was secured by the suit properties while with full knowledge of the applicants prior proprietary and possessory rights over the suit properties.

He based on the facts pleaded in the joint affidavit of the applicant to urge the court to find there are serious issues of ownership of the suit properties, the legality of the mortgage and the ability of the second respondent to recover their loan from the mortgaged properties through the receivership. He supported his submission with various cases including the case of **Kibo Match Group Limited V. H. S. Impex Limited**, [2001] TLR 152 which quoted with approval the case of the **Colgate Palmolive V. Zacharia Provision Stores & Others**, HC Civil Case No. 1 of 1999 (unreported) where it was held that, the court is not required to examine the material before it closely to find the plaintiff has a case in which is likely to succeed but the court is required to be satisfied the plaintiff has a case which need consideration and that there is likelihood of the suit to succeed.

In arguing the second condition of irreparable loss the counsel for the applicants referred the court to the case of **Abdi Ally Salehe V. Asac Care Unit Limited & Two Others**, Civil Revision No. 3 of 2012, CAT at DSM (unreported) and **Mohamed Abdillahi Nur Robert** (suing as an administrator of the estate of the late **Mahad Abdillahi Nur**) **V. Bank of Africa Tanzania Limited and Others**, Misc. Commercial Application No. 163 of 2020, HC Com. Div. at DSM (unreported) where it was held

that, the court is bound to investigate whether the applicants stands to suffer irreparable loss, not capable of being atoned by way of damages.

He argued that, the applicants stated at paragraphs 15 of their joint affidavit that they are residing in their apartments and penthouses together with their families. He stated that, the ongoing action by the respondents are putting the applicants at a high risk of losing their suit properties before determination of the main suit pending in the court. He stated the ongoing actions will render the applicants and their families homeless and thus it will cause emotional injury to the applicants which cannot be atoned by way of damages. He stated that, some of the suit properties are shops which are currently used by the respective applicants for business of supporting their families. He submitted that, sale of such shops and or closure of the shops will not only affect the applicants not to be able to financially sustain their families but will also affect their reputation which injuries are irreparable.

He argued in relation to the third condition for grant an order of temporary injunction that, as pleaded in the joint affidavit of the applicants, if the ongoing action of selling the suit properties is allowed the applicants and their families will encounter unreasonable hardship, agony and inconveniences. In support of his submission, he referred the court to the case of **Asteria Augustine Mokwe @ Asteria Charles**

Marwa V. National Microfinance Bank Ltd & 3 Others, Misc. Civil Application No. 148 of 2020, HC at Mwanza (unreported) where when the court was considering who will mostly be inconvenienced if the injunctive order will not be granted it held that, the applicant is placed to suffer the most if injunctive order will not be granted because the houses which included residential and business for her daily bread earning cannot be recovered in their existing form in case they are sold.

He submitted the respondents will not seriously suffer loss because if the main case is decided in their favour the suit properties will be available for realization of the loan. He stated the balance of inconvenience squarely falls on the applicants if the order of temporary injunction is not granted. At the end he prays the court to find all the conditions for granting an order of temporary injunction laid in the case of **Atilio V. Mbowe** (supra) have been established in the present application and the application be granted with costs and any other reliefs the court may deem fit and just to grant.

In their reply the counsel for the first respondent prayed to adopt their counter affidavit to form part of his submission and argued in his submission how the first respondent mobilized fund for construction of the building where the applicants suit properties situate. He stated all that was done in the full knowledge of the second respondent. He stated

further that, at the time of issuing the facility to the first respondent the second respondent was fully aware of the existence of the agreements signifying the applicants' interest over the suit properties. He stated they are conceding to the applicants' application for temporary injunction and submitted that, as advocates they owe a duty of not misleading the court to the facts and law. To support his submission, he referred the court to the case of **Lobo V. Salehe S. Dhiyebi**, [1961] EAR 223 where it was stated an advocate is an officer of the court and he owes a duty of not misleading the court.

As for the second and third respondents, their counsel started by showing what is a temporary injunction and the circumstances upon which is issued as stated in various texts and cases. He conceded to the established three conditions which must be proved to move the court to grant an order of temporary injunction which are prima facie case, irreparable loss and balance of convenience. He referred the court to the cases of **Edu Computers (T) Limited V. Tanzania Investment Bank Ltd**, Comm. Case No. 38 of 2004, HC Comm. Div. at DSM, **Ingoma Holdings Limited V. Kagera Cooperative Union (1990) Limited & Another**, Civil Application No. 166 of 2005, CAT at DSM and **Charles D, Msumari & 83 Others V. the Director General T.H.A**, Civil Case No. 18 of 1997 (all unreported) where it was held the three conditions for

granting an order of temporary injunction must exist conjunctively in the suit before a temporary injunction is granted and the serious questions to be tried should be based on the facts as alleged in the main suit.

He argued in relation to the first condition for granting an order of temporary injunction that, there is no dispute that the suit properties were mortgaged to secure the loan facilities advanced by the second respondent to the first respondent. He stated it is also not disputed that the first respondent defaulted to repay the loan facility and resulted into the appointment of the third respondent as a receiver manager. He challenged the applicants' averment that the suit properties were sold to them by the first respondent by stating the alleged sale agreements did not comply with requirements provided under section 37 of the Land Act, Cap 113 R.E 2019 and Regulation 3 (a) – (h) of the Land Regulations, GN No. 74 of 2001.

He submitted the stated provisions of the law requires all disposition of land under the Land Act to be approved by the Commissioner for Land. To support his argument, he referred the court to the case of **Abualy Alibhai Azizi V. Bhatia Brothers Ltd**, [2000] TLR 288 where it was held a contract for disposition of land which is otherwise proper but for lack of required consent from the Commissioner for Land is inoperative. He stated if it will be said the sale agreement is valid then the said

agreements are enforceable against the first respondent and not against the second and third respondents. He submitted that shows the applicants' main suit has no chances of success at all.

He argued that, as there is no dispute that there exists a mortgage agreement between the first respondent and the second respondent then as stated in the cases of **Mboje Jilala V. National Bank of Commerce**, Civil Case No. 3 of 1993, HC at Tabora and **Harold Sekiete Levera & Another V. African Banking Corporation Tanzania Limited (Bank ABC) & Another**, Civil Appeal No. 46 of 2022, CAT at DSM (Both unreported) the mortgages are contractual transaction and their sanctity must be upheld. He argued further that, under section 128 (1) of the Land Act the second respondent has power to appoint the receiver manager if the borrower default to repay the loan and a mortgagee has also a power to sale the charged security.

He stated another legal aspect to be considered in the present application is the status of the second respondent vis-à-vis the applicants on the context that the second respondent is a secured creditor and the applicants are unsecured creditors. He referred the court to the case of **Siraje Ndugga V. Kabito Karamagi & Another** which cited the case of **Kenya National Capital Corporation Ltd V. Albert Mario Cordeiro & Another**, [2014] KLR where it was stated that, the court

cannot interfere with the suit property and grant an order of specific performance against the secured creditor. He submitted that, basing on the above cited authorities the applicants cannot claim any superior title over the suit properties and the legal remedy available as stated in the case of **Abualy Alibhai Azizi** (supra) is to file in the court a suit against the first respondent for recovery of any benefits unlawfully obtained.

He referred the court to sections 110 (1) and (2) and 111 of the Evidence Act, Cap 6 R.E 2019 together with the case of **Pauline Samason Ndawavya V. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017, CAT at Mwanza where it was stated who alleges has a burden of proof and the court will sustain such evidence which is more credible than the other on a particular fact to be proved. He argued that, apart from bear allegations made in the present application that the second respondent had knowledge of pre-sale; expressly, impliedly and or by conduct, no any other tangible evidence has been produced to prove those allegations to the required standard.

He submitted that, on the other hand the respondents have produced written contract to disprove the allegations by the applicants and referred the court to the case of **Umico Limited V. Salu Limited**, Civil Appeal No. 91 of 2015 CAT at Iringa (unreported) where it was stated that, where the parties have reduced their agreement into writing no

evidence of oral agreement or statement shall be admitted for the purpose of contradicting, varying adding to or subtracting from its terms. He submitted that, the applicants' allegations stand a very little and or no chances of succeeding in the pending suit at all.

He argued in relation to the second condition of the irreparable loss to be suffered by the applicants if the order of temporary injunction will not be granted that, the irreparable loss of losing the property the applicants occupy with their families and the argument that they shall encounter unreasonable hardship and agony have no merit because all the applicants were well informed formerly, physically and individually that the properties are now under receivership and the appointment of the third respondent as a receiver manager was well communicated to them.

He argued that, the applicants have not deposed in their affidavit or rejoinder that they will suffer irreparable loss. He stated that is a new fact and supported his evidence with the case of **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Company Limited V. Mbeya Cement Company Limited & Another**, [2005] TLR 41 where it was held submission is a summary of arguments and not evidence and it cannot be used to introduce evidence. He prayed the argument that the applicants will suffer irreparable loss introduced in

the submission of the counsel for the applicants be expunged or disregarded.

As for the argument that the applicants and their families will be rendered homeless if they will be evicted from the suit properties the counsel for the respondents argued that, the same depends on the first condition which asks whether the applicants have any known legal rights over the suit properties. He submitted as they have already submitted in the first condition that the applicants have no known legal rights requiring protection by the court the least the applicants can do is to sue the first respondent for breach of sale agreement if they wish. He added that is because as stated in the case of **Charles D. Msumari & 83 Others** (supra) all conditions for granting an order of temporary injunction must exist conjunctively to move the court to grant it.

With regards to the third condition of balance of convenience the counsel for the respondents argued that, the pending suit is void because the cause open to the applicants is to file suit in the court against the first respondent who breached the sale agreements. He stated no cause of action lies against the second and third respondents. He submitted that, under that circumstances the applicants stands to suffer no inconvenience and the cases cited by the applicants are distinguishable from the present

suit. He concluded his submission by praying the court to dismiss the application with costs.

In his rejoinder the counsel for the applicants conceded to the introduction given by the counsel for the second and third respondents and continued to counter all what was argued by the counsel for the mentioned respondents. He argued the counsel for the respondents has misdirected himself by going into the merit of the main suit in proving the condition of prima facie case. He submitted it is very important to note in the application of this nature that there are well known parameters that court are not required to go to the issues which are supposed to be determined in the main suit. He supported his submission with the case of **Abdi Ally Salehe** (supra) where it was stated the object of an order of temporary injunction is to preserve the pre dispute state until the trial or until a named day or further order.

He stated in relation to the issue of sanctity of the mortgage agreement entered between the first and second respondents that, it is irrelevant in the present application for simple reason that it is a legal argument that initiates discussion on the validity and enforceability of the mortgage agreement which clearly goes beyond what is required to prove a prima facie case is in existence or not. He argued that, as the application is not attacking or questioning the terms and conditions of the mortgage

agreement but rather the circumstances around which the mortgage agreement was formed it is irrelevant to use that principle of sanctity of a contract to try and prove that a contract is valid.

As for the issues of lack of approval of disposition from the Commissioner for Lands and the argument that the second respondent is a secured creditor while the applicants are unsecured creditors he stated those are matter requires evidence and they are supposed to be determined in the main suit. Likewise the issue of who alleges must prove the counsel for the applicants stated the same has been raised prematurely and is misguiding applicability of the principle at this stage. He stated the principle is applicable in the main suit. He based on the above submission to urge the court to find the applicants have shown they have triable issues in the main suit ought to be determined by the court.

As for the second condition of irreparable loss to be suffered by the applicants if the order sought will not be granted the counsel for the applicants argued it is not true that it was not pleaded in the joint affidavit of the applicants. He referred the court to paragraph 28 of the joint affidavit of the applicants where it is deposed the suit properties are occupied by the applicants and their family for residence and business purposes and if they will be sold the applicants will encounter unreasonable hardship and agony.

Coming to the third condition of balance of convenience the counsel for the applicants reiterated what he submitted in the first condition for the order of temporary injunction to be granted. He submitted that, as the counsel for the second and third respondents has not stated they will be inconvenienced if the injunctive order will not be granted, they will not suffer any inconvenience. He ended up his submission by submitting that, if the application is not granted the applicants are likely to suffer more hardship than the respondents will suffer if it is granted.

After carefully considered the rival submissions from both sides the court has found the issue to determine in the application at hand is whether the applicants deserve to be granted the order of temporary injunction they are seeking from this court. The court has found that, as rightly argued by counsel for the parties the conditions governing grant of an order of temporary injunction in our jurisdiction are well established in the famous case of **Atilio V. Mbowe** (supra) where it was stated that:

- (i) *There must be a serious question to be tried on the facts alleged, and the probability that the plaintiff will be entitled to the relief prayed.*
- (ii) *The applicant stands to suffer irreparable loss requiring the courts intervention before the applicant's legal right is established.*

(iii) *On the balance of convenience, there will be greater hardship and mischief suffered by the plaintiff from withholding of the injunction than will be suffered by the defendant from granting of it.*

Therefore, in determining the present application the court will be guided by the stated conditions. Starting with the first condition the court has found it is required to be satisfied there is a triable issue or in other words the applicant has a cause of action against the respondent. The court has found that, as stated in the case of **Surya Kant D. Ramji V. Saving and Finance Ltd & 3 Others**, Civil Case No. 30 of 2000, HC Commercial Division at Dar es Salaam (unreported), in determining there is a prima facie case or serious issue for determination in the main suit the court is required to use the facts deposed in the joint affidavit of the applicants supporting the application and as disclosed in the plaint.

In doing so and as stated in the cases of **Kibo Match Group Limited** and **Colgate Palmolive** (supra) cited in the submission of the counsel for the applicants the court is not required to examine the material before it closely to find the plaintiff has a case in which he will succeed but the court is required to be satisfied on the basis of the facts disclosed in the case the plaintiff has a case which need consideration of the court and there is likelihood of the suit to succeed.

While being guided by the position of the law stated hereinabove the court has found the joint affidavit of the applicants supporting the application shows at its paragraphs 2 to 15 how the applicants acquired the suit properties from the first respondent. The court has found the applicants have deposed at paragraph 17 how they discovered the first respondent had mortgaged the suit properties in favour of the second respondent to secure the loan without their knowledge or consent. It is also deposed at paragraph 20 that the second respondent has appointed the third respondent to be the receiver manager of the suit properties.

The court has also found the applicants are challenging in the main suit the exercise of the first respondent to use the suit properties to secure the loan facility from the second respondent without involving them in the loan transaction which led into mortgaging the suit properties as security for the loan advanced to the first respondent by the second respondent. The court has found the counter affidavits filed in the court by the second and third respondents shows that, although they have noted some of the facts deposed in the joint affidavits of the applicants but they are vehemently disputing the claims of the applicants.

One of the grounds for disputing the claims of the applicants as raised in the submission of the second and third respondents is that the sale agreements alleged were entered by the applicants and the first

respondent in respect of the suit properties did not comply with section 37 of the Land Act and Regulation 3 of the GN No. 74 of 2001. To the view of this court and as rightly argued by the counsel for the applicants that is an issue which requires evidence to determine the same. It cannot be determined without receiving evidence from the parties to show the consent of the Commissioner for Lands was procured before the alleged disposition of the suit properties was made or not.

The court has considered another argument by the counsel for the second and third respondents that, mortgages are contractual transaction which must be upheld and the further argument that the second respondent had power under section 128 (1) of the Land Act to appoint a receiver manager who has power to sale a mortgaged property where there is a default in repayment of the loan. The court has failed to see any merit in the stated arguments because there is nowhere the applicants have stated mortgage is not a contractual transaction and there is nowhere stated the second respondent has no power under the cited provision of the law to appoint receiver manager.

As the applicants are challenging the act of the first respondent to enter into the mortgage agreement with the second respondent over the suit properties without involving them in the stated agreement it cannot be said the applicants have no right of challenging what they have seeing

is affecting their rights in the suit properties on the ground that the sanctity of the mortgage agreement must be upheld. That makes the court to find the position of the law stated in the cases of **Mboje Jilala** and **Harold Sekiete Levera** (supra) is distinguishable to the application before the court.

The court has considered the further argument by the counsel for the second and third respondents that as the second respondent is a secured creditor and the applicants are not, then the applicants cannot have superior title over the suit properties than the second respondent but find as rightly argued by the counsel for the applicants all these are issues which are supposed to be determined after receiving evidence from the parties in the main suit.

Since the position of the law as stated in the case of **Surya Kant D. Ramji** (supra) is very clear that it is not the conclusive evidence which is required to find a triable issue has been established for the purpose of granting an order of temporary injunction, but the facts showing there is serious question requiring determination of the court, then the court has found there is no justifiable reason to find the first condition for grant the order of temporary injunction which is existence of triable issue in a case has not been established in the matter at hand.

Coming to the second condition for granting an order of temporary injunction which is irreparable loss to be suffered by the plaintiff if the order of temporary objection is not granted the court has found that, as stated in the case of **T. A. Kaare V. General Manager Mara Cooperative Union**, [1987] TLR 17, the court is required to consider whether there is a need to protect either of the parties from the species of injuries known as irreparable injury before right of the parties is determined. It was also stated in the book of **Sohoni's Law of Injunction**, Second Edition, 2003 at page 93 that: -

"As the injunction is granted during the pendency of the suit the court will interfere to protect the plaintiff from injuries which are irreparable. The expression "irreparable injury" means that, it must be material one which cannot be adequately compensated for in damages. The injury need not be actual but may be apprehended."

While being guided by the position of the law stated hereinabove the court has found it is deposed at paragraph 15 of the applicants joint affidavit that, the applicants, their families and tenants are occupying and residing in the suit properties. It is also stated at paragraph 23 of the applicants' joint affidavit that the third respondent has issued a notice for the applicants and or their assignee to vacate from the suit properties or

in alternative to execute lease agreements with the third respondent so that they can pay rent for continuing to use the suit property.

That being the position of the matter and after considering all what have been stated in the submissions of the counsel for the parties the court has found there is no way it can be said the applicants will not suffer irreparable loss if the order of temporary injunction will not be granted and they will be evicted from the suit properties before determination of their claims in the main suit. The court has considered the argument by the counsel for the respondents that, the applicants have not deposed anywhere in their affidavit or rejoinder that they will suffer irreparable loss but find as right argued by the counsel for the applicants in his rejoinder that is deposed at paragraph 28 of the applicants' joint affidavit that the applicants will encounter unreasonable hardship and agony.

Therefore, what is contained in the submission of the counsel for the applicants is not a new matter which was not raised in the affidavit filed in the court by the applicants to support the application. In the premises the court has found the position of the law stated in the case of **Tanzania Union of Industries and Commercial Workers (TUICO) at Mbeya Cement Company Limited** (supra) is not applicable in the present suit. Therefore, the court has found if the applicants and their families together with their tenants will be evicted from the suit properties before fate of

their rights is determined they will be rendered homeless and they will suffer irreparable injuries.

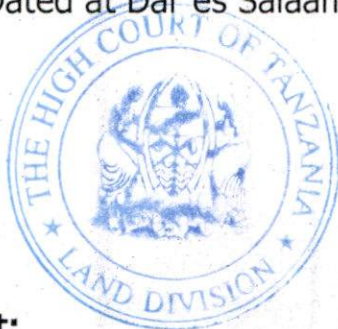
Going to the third condition for granting the order of temporary injunction the court has found the law as stated in the book of **Solonis Law of Injunction** (supra) requires the court to balance and weigh the mischief or inconvenience to either side before issuing or withholding the sought order of temporary injunction. The court has found the counsel for the applicants has argued if the order of temporary injunction will not be granted the applicants will be more inconvenienced as the applicants, their families and tenants will be rendered homeless and they will encounter unreasonable hardship and agony.

The court has considered the argument by the counsel for the second and third respondents that the applicants will not be inconvenienced as the suit pending in the court is void because the applicants were required to sue the first respondent and they have no cause of action against the second and third respondents. The court has found as alluded when the court was dealing with the first condition for granting the order of temporary injunction the applicants have cause of action against the respondents. That being the position of the matter the court has found there is no way it can be said the applicants will not be inconvenienced

more than the respondents if the order of temporary injunction will be withheld.

It is because of the above stated reasons the court has found all the three conditions for granting an order of temporary injunction laid in the case of **Attilio V. Mbowe** (supra) have been established in the application at hand to the required standard. Consequently, the application is granted and the order of temporary injunction to restrain the respondents, their servants, agents or other persons deriving titles from them from entering, selling and or exercising any legal action against the suit properties. The order of temporary injunction will be in force for a period of six months from the date of this ruling as provided under XXXVII Rule 3 of the Civil Procedure Code and no order as to costs. It is so ordered.

Dated at Dar es Salaam this 20th day of April, 2023



I. Arufani
I. Arufani

JUDGE

20/04/2023

Court:

Ruling delivered today 20th day of April, 2023 in the presence of Mr. Fredrick Mpanju, learned advocate for the applicants and in the presence of Mr. Simon Barlow Lyimo and Ms. Ndehurio Ndesamburo, learned

advocates for the second and third respondents. The ruling has been delivered in the absence of the first respondent. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

I. Arufani

JUDGE

20/04/2023