

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

**MISC LAND APPLICATION NO. 826 OF 2022**  
(Arising from Land Case No. 264/2022 before Hon. Masoud)

**MARGARET JIM LEMA.....1<sup>ST</sup> APPLICANT**  
**CLICKPESA FOREX BUREAU LIMITED.....2<sup>ND</sup> APPLICANT**

***VERSUS***

**MKOMBOZI COMMERCIAL BANK PLC.....1<sup>ST</sup> RESPONDENT**  
**MUDU CO. LTD.....2<sup>ND</sup> RESPONDENT**  
**MAKAZI INVESTMENT LIMITED.....3<sup>RD</sup> RESPONDENT**

**RULING**

17<sup>th</sup>-19<sup>th</sup> July, 2023

**E.B. LUVANDA, J**

In this application, the Applicant named above is praying for a temporary injunction to restrain the Respondents and their agents from selling and transferring the suit property Farm No. 1605 Title 48684 located at Misugusugu Kibaha Coastal Region. In the affidavit in support, the Applicant grounded that the First Respondent being aware that the Applicant had no money to service the loan, still went on to sell the disputed property to the Third Respondent at a throw away price of 130,000,000 instead of the current government land rates of 900,000,000/=, and below the outstanding arrears of loan. That the

Third Respondent is currently portioning the suit and selling to different buyers which have caused inconveniences, psychological torture, suffering to the Applicant which in turn will cause the Applicant to suffer total irreparable loss.

The First Respondent countered that she was entitled to proceed with recovery measures, under the law in respect of the outstanding amount, after Applicant's default, including disposition of the suit premises to recover the loan balance secured by the suit premises. That the Applicant has never suffered any loss, inconvenience and psychological torture from the acts of the First Respondent of exercising recovery measures under the law.

The Third Respondent in her counter affidavit stated that the disputed land was lawfully auctioned on 10/06/2022 as per a copy of certificate of sale annexure MCB – 4 to a counter affidavit.

Ms. Miriam Ndesarua learned Counsel for the Applicant submitted that on 04/12/2015 the Applicant secured a sum of Tshs 100,000,000/= for the purpose of expanding Forex Bureau Business, that the loan was secured by the suit property of the First Applicant, valued Tshs 411,000,000/=. She submitted that in the course of taking off the Forex Bureau Business, so as to start operations, the law increased the amount of capital up to 300,000,000 which caused the Applicant not to proceed

with the business as the capital was Tshs 100,000,000 below the required amount. She submitted that the Applicant struggled to seek for money from other sources and were able to service the loan up to 87,737,400. That surprisingly the Applicant unprocedurally or illegally proceeded to dispose the suit property, auctioned by the Second Respondent to the Third Respondent at Tshs 130,000,000/=. She submitted that the suit property was under valued as the market and forced price was not considered, which at the time of taking the loan was 411,000,000/=. She submitted that this huge difference from Tshs 411,000,000 to 130,000,000/= is shocking depreciation value of the suit property, and totally unfair, as has left the Applicant with big debts for the remained loan balance. The learned Counsel submitted that it is unprofessional and illegal for the Second Respondent under the instructions of the First Respondent to proceed to dispose below the price while being aware of the financial incapability of the Applicants. She submitted that the Third Respondent is still portioning and disposing the suit property to different people at the market price while this matter is not even determined by the Court. The learned Counsel submitted that disposing the suit property below the market price has caused and will proceed to cause loss and psychological or mental torture, as the Applicants are currently held accountable by the First

- Respondent for the remained loan accrued interest at bank rate while they are still financially incapable.

Mr. Malik Khatib Hamza learned Counsel for First Respondent submitted that there are three principles governing granting of temporary injunction as were promulgated in the famous case of **Atilio vs. Mbowe** (1969) HCD 284. He submitted that the three conditions must all exist conjunctively for the court to granting injunction, citing **Christopher P. Charles vs. Commercial Bank of Africa**, HC Misc. Civil Application No. 635 of 2017. He submitted that the Applicant failed to meet all the conditions for granting injunctions. He submitted that nowhere in the Applicants submission shown if there is any triable issue to be addressed. He cited the case of **Abdi Ali Salehe vs. Asas Care Unit Limited & 3 Others** (2011) HC, Land Case No. 71/2011. He submitted that upon default by the Applicant in loan payment, the First Respondent has a right to sale the suit property under the mortgaged deed and section 126(1)(d) of the Land Act. He submitted that the Applicant admit that the collateral is already sold, meaning that injunctive orders sought herein are purely admittedly overtaken by events. He cited the case of **SJ3 Iwawas Co. Ltd vs. Access Bank (T) Ltd**, Misc. Civil Application No. 387/2019, **Paul Mtatifikolo vs. CRDB Bank Ltd & Others** (2005) HC Land Case No. 89 of 2005; **Jane**

**Samson vs. Samson Mtawala Kuja & Others**, (2015) Misc. Land Application No. 585/2015; to support his proposition that the Applicant failed to satisfy the first condition for a genuine triable issue. He submitted that the loss worth granting an injunction must be irreparable one. He cited the case of **Abdi Ally Salehe (supra); Oryx Oil Co. Ltd vs. MPS Oil (T) Limited & Another**, Misc. Land Application No. 843 of 2017 HC Land Division. He submitted that the Applicants have not substantiated how is such a loss irreparable, apart from merely stating that the suit premises were disposed below the market price, has caused and will cause loss and psychological mental torture. He submitted that those facts do not indicate any irreparable loss that cannot be compensated by damages. He cited **Jane Paul Mwikwabe vs. Paul Mwikwabe & 6 Others**, HC Land Division Land Case No. 82/2011; **Strabag International (gmbh) vs. Adinani Sabuni**, Civil Appeal No. 241/2018; **Sodha vs. Vora & Others** (2004) 1 EA 313 (CCK). He submitted that it is a settled law that courts of law should not grant injunction merely on convenience rather on justice, cited **National Furnishers Limited & Another vs. Exim Bank (T) Limited & 2 Others**, Misc. Application No. 1002/2016 HC Land Division; **Fatuma Mohamed Salum & Another vs. Lugano Angetile Mwakyosi Jengela & 3 Others**, HC Land Division.

Adelaide Solomon Lufingo learned Counsel for the Third Respondent submitted in line with the argument of the learned Counsel for First Respondent regarding conditions for granting temporary injunction, also cited the same cases which were cited by the First Respondent, he argued that the Applicant failed to prove all three conditions.

On rejoinder, the learned Counsel for Applicant submitted that the Respondents are misleading as the Applicant has met all conditions as set out in the land mark case of **Atilio** (supra). She submitted to the effect that she have explained clearly that there is a triable and prima facie case, as the suit property was sold at a throw away price of 130,000,00 instead of 411,000,000/=. She submitted that currently the First Respondent has already disposed a suit property to the Third Respondent who is portioning and disposing to different people.

It is common knowledge that in the celebrated case of **Atilio vs. Mbowe** (supra) set the conditions precedent for granting temporary injunction, to be:-

- i. That there is a serious question to be tried on the facts alleged and a probability that the plaintiff will be entitled to relief prayed.

- ii. 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
- iii. That on the balance there will be greater 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.

As alluded by the learned Counsel for First Third Respondent that neither in the affidavit nor in the submission in chief of the Applicants made reference to the conditions precedent above or to any law governing grant of temporary injunction. In the affidavit, the Applicants made a complaint that the suit property was auctioned at 130,000,000 being throw away price and below the current government land sale rate of 900,000,000/=. However, in her submission, the learned Counsel for Applicants submitted that the suit property was under valued as the market and forced price was not considered, it was sold against the valuation report where the suit property was valued Tshs 411,000,000/=. This pose a contradiction as to which report the Applicants were relying and based upon to raise her complaint.

It is to be noted also that in the affidavit, the Applicants stated that they borrowed a loan to increase capital to the ongoing Bureau Dechange styled Click Pesa halted by BOT change of regulation

increased capital to 250,000,000/=. But in her submission in chief the learned Counsel for Applicants submitted that they secured a loan to expand Forex Bureau Business, where in the course of taking off and to start the operation, the plan was unsuccessful, due to the fact that the laws of the land increased the amount of capital to all Forex Bureau Business up to 300,000,000/=. These discrepancies draw an adverse inference against the Applicant's application and in fact the condition of serious questions to be tried on likely hood of success, become at stake. In the affidavit and submissions, the Applicant failed to show any irreparable injury which will suffer if injunction is withheld, neither shown any loss which will suffer and which cannot be remedied by way of monetary compensation. In the case of **National Furnishers** (supra), this court had this to say, I quote,

*"If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the Plaintiff's claim appeared to be at that stage"*

In the affidavit, the Applicant pleaded that deposition of the suit property caused inconveniences, psychological torture and suffering which in turn will cause the Applicant to suffer irreparable loss.



- However, the learned Counsel for the applicant did not say if a mere sell of the suit property on the alleged on going portioning and disposition by the Third Respondent to third parties alleged at the market price, if at all is loss which is unrecoverable by monetary value.

For reasons above, along with a concession by the learned Counsel for Applicant that the suit property has already been disposed, I am constrained to disallow this application.

The application is dismissed with costs.



E.B. LUVANDA  
**JUDGE**  
19/07/2023

