

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

MISC. LAND APPLICATION NO. 366 OF 2023

(Arising from Land Case No. 195 of 2023)

BUTEMBO TRADING COMPANY LIMITED.....1ST APPLICANT

MARY BEATRIX MUGISHAGWE.....2ND APPLICANT

VERSUS

TIB DEVELOPMENT BANK LIMITED.....1ST RESPONDENT

YONO AUCTION MART AND

COMPANY LIMITED.....2ND RESPONDENT

THE HONORABLE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

18th July, 2023 & 22nd August, 2023

L. HEMED, J.

**BUTEMBO Trading Company Limited and Mary Beatrix
Mugishagwe** the applicants herein, lodged the instant matter in this court
on 20th June 2023 seeking for the following orders: -

*"... **Interpaties***

*2. That this honourable court may be pleased to issue
and order of Mareva injunction restraining the*

respondents or their agents or any one acting on their behalf from disposing of by selling or otherwise or transferring the applicants' properties described as Plot No. 3, Mwaseni village, Rufiji Area in the name of the 1st applicant and plot no. 1106, Mbezi – Kawe comprised over certificate of Title No. 84688 in the name of the 2nd applicant pending hearing and determination of the main suit.

3. Costs of this Application be provided for.

4. Any other order(s) the honourable court may deem fit to grant."

The application had been supported by the affidavit deposed by one Mary Beatrix Mugishagwe.

The 1st and 3rd respondents, **TIB DEVELOPMENT BANK LIMITED**, and **THE HONOURABLE ATTORNEY GENERAL** challenged the application *vide* the Counter Affidavit of one MENSION NGAHA TILWA, principal officer of the 1st Respondent. The 2nd Respondent did not file counter affidavit.

The application was argued by way of written submissions. Mr. Edward Chuwa, learned advocate represented the applicants, while Ms. Tausi Swedi learned state attorney acted for the 1st and 3rd respondents.

It should be noted that, the instant application has been made under Order XXXVII Rule 1 (a) and section 68 (c) of the Civil Procedure Code, [Cap. 33 R.E 2019]. It is thus an application for injunctive orders. I have carefully gone through the rival submissions and the affidavits deponed either to support or to oppose the application. The question is whether the application has merits. In determining the merits of this application, I will be guided by the criteria which were set by Georges, C.J. in **Atilio vs Mbowe** [1969] HCD 284 that before granting the order for injunction, the court must satisfy itself that: -

- "(i) *There is 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 court's intervention before the Applicant's legal right is established;*
- (iii) *That on the balance, 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."*

Let me start with the 1st point on existence of triable issues. I have examined the affidavit that supports the application and found that in

paragraph 5, it has been stated that the 1st applicant has never executed any mortgage Deed over plot No. 3 situated at Mwaseni village, Rufiji and therefore, the 1st respondent has no power to sell the property. In paragraph 9 the applicants challenge the penalty and interest charged by the 1st respondent reaching to the amount of TZS 582,182,991.

On their part the 1st and 3rd respondents argued that the 1st Applicant failed to repay the loan and constituted a default, while the 2nd Applicant failed to liquidate the loan as guaranteed. From the afore arguments it is unequivocally clear that there exists a *prima facie* case serious enough to be tried on the fact alleged. I am of the view that the 1st point on existence of *prima facie* case has been met.

The second condition criteria is for the applicant to demonstrate that he will suffer irreparable loss if the order is not granted. In the affidavit of the applicant, particularly in paragraph 14, the applicants have stated that they will suffer irreparable loss as the respondent will auction the properties which is the centre of the core business of the 1st applicant and is matrimonial home of the 2nd applicant. The 1st and 3rd respondents argued that the applicants have failed to show any damage or injury that is

irreparable on balance of probability. It was contended that the respondents are the ones who are likely to suffer if temporary injunction orders are granted because the applicants have failed to liquidate the loan and neglected to repay the loan.

In the present case, the applicants are the registered owners of the disputed land. If the application is refused, then the suit property will be auctioned to the 3rd parties. Definitely, the applicants are the ones who will lose the property. In **Kibo Match Group Ltd vs H.S. Impex Ltd** (2001) TLR 152 the court had this to say in respect to granting an application for temporary injunction: -

"The court is satisfied that unless immediate action is taken the applicant may suffer irreparable damage, whether quantifiable or not, and further the final decision would be nugatory as consequence of not granting the temporary injunction."

In the matter at hand, the applicants have already instituted Land Case No. 195 of 2023 against the respondents challenging, *enter alia* the intended sale of the suit property. It is my firm view that if the court refrain from

granting the prayer for temporary injunction and the property in dispute gets sold, then, the end result of the main suit will be nugatory.

On the balance of convenience, the applicants' counsel stated that the applicants are likely to suffer more than the respondents if an injunction is not granted. He asserted that the 1st respondent cannot be inconvenienced as she has recourse to the loan agreement against the 1st applicant where she can sue on breach of contract. It was stated that if the suit properties are sold the applicants will not only lose the building but also their business and residential home. On the part of the 1st and 3rd respondents it was stated that if injunction order is granted the respondents will not recover the loan.

I have noted the conflicting interests between the parties over the disputed landed property the applicants' interest is to protect the ownership over the suit land while the respondents' interests is to realized the money advanced to the applicants through disposition of the suit properly by sale. Since in the main suit the applicants are also challenging the intended sale of the disputed property, I am of the opinion that, if temporary injunction will not be granted, and the respondents are left to proceed with the

intended sale of the property, it will inconvenience the disposal of Land Case No. 195 of 2023. In other words, if the application will not be granted, the parties and the court will be inconvenienced in the process of determining the main suit.

From the foregoing, I find merits in the application. I proceed to grant it without costs to the effect that *STATUS QUO* be maintained on the suit landed property pending determination of Land Case No. 195 of 2023. It is so ordered.

DATED at DAR ES SALAAM this 22nd August, 2023.


E. HEMED
JUDGE

