

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM  
MISC. LAND APPLICATION NO. 308 OF 2023  
(ARISING FROM LAND CASE NO.132 OF 2023)**

**ILA YOGESH ..... 1<sup>ST</sup> APPLICANT**

**JYOTIKA ARUNKUMAR NARANDAS ..... 2<sup>ND</sup> APPLICANT**

**BHAVINI MOHANLAL DHARSHI ..... 3<sup>RD</sup> APPLICANT**

**VERSUS**

**DIAMOND TRUST BANK**

**TANZANIA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**IGALULA AUCTION MART LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**SUNRISE BEACH RESORT LTD ..... 3<sup>RD</sup> RESPONDENT**

**DILESH KUMAR VITHALDAS BHOVAN SOLANKI**

**(Also otherwise known as Dilesh Solanki) ..... 4<sup>TH</sup> RESPONDENT**

**RAVI VITHALDAS SOLANKI**

**(Also otherwise known as Ravi Salonki) ..... 5<sup>TH</sup> RESPONDENT**

**YOGESH AMRATAL KANJI**

*AKS*

**(Also otherwise known as Yogesh Kanji ..... 6<sup>TH</sup> RESPONDENT**

**RAJESH VITHALDAS BHOVAN SOLANKI**

**( Also otherwise known as Rajen Salonki ..... 7<sup>TH</sup> RESPONDENT**

## **RULING**

*27/7/2023 & 09/8/2023*

**A. MSAFIRI, J.**

By chamber summons, the applicants are seeking for the grant of temporary injunction to prevent the respondents, their agents or any other person working under their instructions from selling, eviction or otherwise doing any act that would jeopardize the interest of the applicants/ plaintiffs in respect of the collateral property registered as Plot No.2: with Certificate of Title No: 54276, located at Mjimwema Area in Kigamboni, Dar es Salaam until hearing and ultimate disposal of this Application.

The Application has been brought under Order XXXVII Rule 1(a) and Section 68(e) of the Civil Procedure Code [Cap 33 R.E 2022] together with any other enabling provisions of the law and is accompanied by the affidavit sworn jointly by the applicants.

*Atts.*

Upon being served with the application, the respondents filed their counter affidavits contesting the same. In addition the 1<sup>st</sup> respondent lodged the preliminary objection to the effect that this Honourable Court has no jurisdiction to hear and determine this Application because the applicants are seeking to injunct a judicial process of enforcement of a decree and this amounts to a misuse of injunctive reliefs.


On 6<sup>th</sup> July, 2023, this Court ordered the preliminary objection to be disposed of by way of written submissions and the same was complied with. During the hearing of this preliminary objection, the applicants were represented by Mr. Goodchance Lyimo, learned advocate and the 1<sup>st</sup> respondent have enlisted the legal service of Mr. Zacharia Daudi, learned advocate. The 2<sup>nd</sup> -7<sup>th</sup> respondents were absent without notice.

Arguing in support of the preliminary objection, Mr. Daudi stated that, this Court has no jurisdiction to hear and determine this application for the reasons that the applicants are seeking to injunct the judicial process of enforcement of a court decree issued in Commercial Case No.129 of 2019 by the High Court. He referred to paragraphs 6 and 7 of the applicants' joint affidavit and submitted that this amounts to the abuse or misuse of injunctive reliefs. *Alls.*

To bolster his point, Mr Daudi cited the case of **National Housing Corporation vs Peter Kassidi and 4 others (Unreported)** CAT, at page 18 and the case of **Nawal Massawe vs International Commercial Bank Tanzania Limited, Misc. Land Application No.576 of 2020** where it was stated that, injunctive relief cannot be granted against a judicial process of enforcement of a decree. He therefore prayed that this application be dismissed with costs.

In his reply, Mr Lyimo submitted that this Court has jurisdiction to grant the sought orders and no abuse of judicial process has been staged as what is before the Court is a land case whose instant application emanates after complying with Order XXI Rule 62 of Cap 33 R.E 2019, gleaning lack of spousal consent in the alluded mortgage transactions against the disputed property.

To bolster his argument, he referred to the book of ***Sohons's Law of Injunctions, 4<sup>th</sup> Edition, Premier Publishing Company Allahabad, India 2013, written by V.S Sohon and S. V. Sohon at Page 737 and 738***

Regarding to the referred cases of **National Housing Corporation vs Peter Kassid & 4 Others** and **Nawal Massawe vs International Commercial Bank (Tanzania) & Others (Supra)**, the counsel stated 

that the said cases are distinguishable to the case at hand and he proceeded to pray that the preliminary objection be dismissed with costs and the application be allowed to proceed inter – parties.

In the rejoinder submissions, Mr. Daudi reiterated his submissions in chief and prayed for the dismissal of the application with costs.

Having gone through the submissions rival by the counsel for both parties, the question for determination is **whether the preliminary objection raised is meritorious.**

I have noted from the pleadings that the applicants are seeking for the grant of temporary injunction to prevent the respondents, their agents or any other person working under their instructions from selling, eviction or otherwise doing any act that would jeopardize the interest of the applicants/ Plaintiffs in respect of the collateral property registered as Plot No.2: with Certificate of Title No: 54276, located at Mjimwema area in Kigamboni, Dar es Salaam until hearing and ultimate disposal of this application.

According to paragraph 9 of the applicants' affidavit, the applicants filed Commercial Application No. 30 of 2022 before this Court, Commercial Division. The Application was an objection proceedings against the execution of the suit property in Commercial Case No.124 of 2019. *Adls*

In the said Application, the Court held that, the applicants have failed to prove the interest in the attached property, which can prevent the mortgagee from exercising his remedies over the legal mortgage and consent decree.

It is obvious that, the applicants are seeking for the grant of an order of temporary injunction against the eviction order, despite the fact that an application for objection proceedings was determined in favour of the respondents.

In the circumstances, I am of the firm view that, the applicants are moving the Court to issue an order to injunct a judicial enforcement of a decree issued in Commercial Case No.124 of 2019, as stated in the case of **National Housing Corporation vs Peter Kassidi ( Civil Application No.243 of 2016)**, at page No.18, where it was held that: -

*“Put differently, the Court is being moved to issue that order to injunct a judicial process of enforcement of a decree. To us, this course amounts to a misapplication or misuse of an injunctive relief”.*

It should also be noted that, the decree of the High Court Commercial Division, in Commercial Case No.124/2019, which is subject of an order for proclamation and attachment of the suit property and the decision of the same court in the Application for objection proceedings No.30/2022

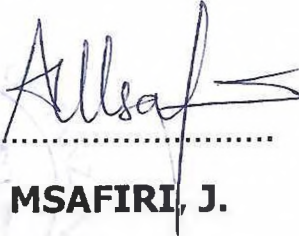
*Allo.*

in favour of the respondents makes this Application unmaintainable for the reason that it cannot order injunction on the execution process resulting from the decree issued by this very same Court (Commercial Division).

For the foregoing reasons, I hereby find that this Court cannot grant the reliefs sought. In the circumstances, I sustain the preliminary objection and find that this application is misconceived and unmaintainable. I proceed to struck out the same with costs.

It is so ordered.

Dated at Dar es Salaam this 09<sup>th</sup> day of August, 2023



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**A. MSAFIRI, J.**  
**JUDGE**  
**09/8/2023**

