

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

MISC. LAND APPLICATION NO. 400 OF 2023

OSCAR JOHNSON SHOO APPLICANT

VERSUS

FIRDAUS KHAMIS 1ST RESPONDENT

AML FINANCE LIMITED 2ND RESPONDENT

RAISSA COMPANY LIMITED 3RD RESPONDENT

RULING

31/7/2023 & 22/08/2023

A. MSAFIRI, J.

This is a Ruling on Application brought under Order XXXVII Rule 1 (a) (b) and Rule 2(1), read together with Section 68(c) (e) and Section 95 of the Civil Procedure Code, Cap 33 R.E 2019 (the CPC).

The Application was filed under the certificate of urgency whereby the applicant is praying for this Court to be pleased to grant on order of interim injunction to restrain the respondents from selling the applicant's one storey house located at Plot No. 2129 Block "A", Pugu Kajiungeni, Dar es Salaam. The Application was supported by an affidavit of Oscar Johnson Shoo, the applicant.

AMS

The respondents did not file their counter affidavits to contest the Application. On the side of the 1st respondent, one Firdaus Khamis, the efforts of serving him proved futile as it was claimed that his whereabouts is unknown. The Court then ordered service by substitution where the 1st respondent was served through a newspaper and the proof was produced in Court. Following that, the Court entered an ex-parte order against the 1st respondent.

On the date scheduled for hearing of application, the applicant was represented by Mr. Angros Ntahondi, learned advocate, and the 2nd and 3rd respondents by Mr. Robert Kipingili, learned advocate. Mr. Kipingili admitted that the 2nd and 3rd respondents have not filed the counter affidavit on the reason that they are not contesting the Application, hence the same be granted with no order for costs.

As the Application was not contested, Mr. Ntahondi addressed the Court and prayed to adopt the contents of the affidavit by the applicant. He prayed for the Application to be granted as per the orders sought in the chamber summons. He also prayed that the same be granted with no order as to the costs.

According to the contents of the affidavit which supports the Application, the applicant is the owner of the suit property which is a *Alle*.

residential house located at Plot No. 2129 Block "A", Pugu Kajiungeni, Ilala Municipality, Dar es Salaam. That, the estimated value of the suit property is TZS. 600 Million.

The applicant stated in his affidavit that, sometimes in July 2019, he used the property to guarantee the 1st respondent to take loan from the 2nd respondent to the tune of TZS. 75 Million only, and that the loan was supposed to be paid within six (6) months and the purpose for loan was the working capital for business. The applicant stated further that, he has been making follow up to the 1st respondent asking for his Title Deed as she has not brought back the said Title to the applicant since 2019 contrary to what was agreed.

That on 12/6/2023, he was shocked to receive notice from Ilala District Commissioner requiring him to attend a meeting about the suit property. That, he went and the agenda was whether the District Commissioner has to grant leave or not to the sale of suit property by auction for the failure of the 1st respondent to pay the loan and interest amounting to TZS 160 Million. That, later, on 10/5/2023, when the 1st respondent failed to show cooperation, the permission was granted to the 3rd respondent to auction the suit property.

Alle

The applicant averred that, he wrote to the 2nd respondent on 29/5/2023 in which he requested to pay the loan within twelve months ending on 30/6/2024. That, despite his efforts, he was shocked to see a copy of a newspaper advertising the sale by auction of the suit property on 04/7/2023. That, the applicant has never received the mandatory 60 days' Notice and if he could have been served with the said Notice, he could have used the time to find other means to pay the loan and retain the family home.

He stated that, the applicant has raises triable issue which is whether the mandatory notices were served to the applicant and that he has overwhelming chances of success.

On the irreparable loss, the applicant stated that if the Court does not intervene and grant the sought orders, he will suffer irreparably. He added that the applicant stands to suffer unbearable and irreparable losses compared to the respondents who shall not suffer any injury because the applicant is willing to service the loan on behalf of the defaulter.

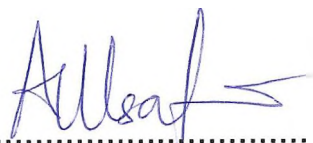
He prayed for the application to be granted in order to serve the interests of the applicant over the suit property. *Alls.*

Having gone through the contents of the affidavit by the applicant, I am satisfied that he have successfully meet the three conditions which is mandatory so as to move this Court to use its discretionary powers to grant temporary injunction. The three conditions were set in the celebrated case of **Attilio vs. Mbowe** (1969) HCD 284 and reiterated in litany of cases by this Court. The three conditions are establishment of existence of prima facie case between contesting parties, applicant's possibility of suffering irreparable loss and balance of convenience.

I have also considered the fact that the Application was not contested by the respondents. Hence, I proceed to grant the temporary injunction on suit property as prayed, pending the hearing of the main case, i.e. land Case No. 206 of 2023.

Each party shall bear its own costs in this Application.

It is so ordered.



.....
A. MSAFIRI
JUDGE
22/8/2023