

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

**MISC. LAND APPLICATION NO. 493 OF 2023.**

**PETROGAS FIELD SERVICED LTD ..... 1<sup>ST</sup> APPLICANT**

**KILIMANJARO INTERNATIONAL  
CORPORATION LTD ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**THE BOARD OF TRUSTEES OF PUBLIC**

**SERVICES SOCIAL SECURITY FUND ..... 1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**PROLATY CONSULT LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**ADILI AUCTION MART LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

*Date of last Order: 05/9/2023*

*Date of Ruling: 13/9/2023*

**A. MSAFIRI, J.**

This is an Application for interim injunction where the applicant is seeking for orders of this Court to restrain the respondents from evicting the applicant or doing any action on the suit premises described as Apartments No. A2, A4 and B3 PSSF Haile Selasie Apartment located at

*Alls.*

Masaki, Kinondoni, Dar es Salaam, pending the maturity of statutory notice of intention to sue issued to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

The 1<sup>st</sup> & 2<sup>nd</sup> defendants have filed a Notice of preliminary objection on points of law to the effect that;

- 1. The Court is wrongly moved for maintaining status quo instead of Mareva Injunction as no suit is pending before the Court.*
- 2. That the Application is incompetent for being an abuse of Court process.*


The 1<sup>st</sup> & 2<sup>nd</sup> respondents are praying for the Court to strike out the Application with costs. As a rule of procedure, the preliminary objection had to be heard first, and it was heard orally.

Mr. Ayoub Sanga learned State Attorney was representing the 1<sup>st</sup>, and 2<sup>nd</sup> defendants. He submitted in support of the first limb of preliminary objection that this Court was wrongly moved by the applicants. That, as per the chamber summons in this Application, the Court has been moved to issue an interim order of maintenance of status quo. That, it was the respondents view that the order being sought is not Mareva Injunction as per enabling provision but just a prayer for maintenance of status quo. *Alls*

Mr. Sanga argued that, the provisions of the Judicature and Application of Laws Act (JALA) recognize the applications for injunctions which are brought in Court where there is no pending suit.

To cement his point, the counsel cited the case of **Mareva Compania & Riviera SA vs. International Bulk Carriers SA** (1980) All ER. 213, and the case of **Daud Mkwya Mwita vs. Butiama District Council & Another**, Misc. Application No. 69 of 2020. Mr. Sanga insisted that the Application is incompetent before this Court and prayed it be struck out with costs.

On second limb of objection, Mr. Sanga submitted that this Application is an abuse of court process. That the applicants are seeking for the maintenance of status quo on apartments A2, A4, and B3 while knowing that their lease on apartment B3 has already expired. That in paragraphs 20,21,26 and 31 of the affidavits they admit that they have not paid rent, but they still seek for maintenance of status quo. To Mr. Sanga's view, this action is pure abuse of court process.

To cement his points, he cited the case of **Tamal Hotel & Conference Centre Ltd vs. Dar es Salaam Development Corporation**, Civil Appeal No. 33 of 2020, CAT at DSM. 

He prayed for the preliminary objections to be sustained and the Application be struck out with costs.

Mr. Amin Mshana, learned counsel was representing the applicants. He submitted on the first limb of objection that the counsel for the respondents did not put clear on how the Court has been wrongly moved. Was it wrongly moved on the enabling provisions or wrong citations of enabling provisions? Mr. Mshana argued that if the prayer is maintenance of status quo instead of Mareva injunction, then this is not fatal as the applicants has cited correct enabling provisions necessary for Mareva injunction.

In addition, the counsel sought for the Court intervention by invoking a principle of overriding objection as there is no any law which has been contravened by the applicants.

On second limb of objection, Mr. Mshana submitted that, it is not on a pure point of law as the counsel for the respondents based his arguments on the contents of the counter affidavit. He referred to the principle set in the case of **Mukisa Biscuits**. He added that the counsel for the respondents has not even cited any supporting law on the point of abuse of Court process. He pray for the Court to overrule both points of objection. *Alle*

In rejoinder, Mr. Sanga mostly reiterated his submission in chief. He added that the principle of overriding principle cannot be invoked in the current Application as the defectiveness goes to the roots of the case.

After hearing and having analysed both submissions from the parties in support and contention of the preliminary objections, the issue for my determination is whether the preliminary objections which have been raised by the 1<sup>st</sup> and 2<sup>nd</sup> respondents have merit.

Starting with the first limb of objection, it is my finding that it holds no water. This Application is brought under Sections 2(3) of the Judicature and Application of Law Act (JALA) Cap. 358 R.E 2019 which provides powers to High Court to issue interim injunctions and Order XXXVIII Rule 1 (a) and Rule 2(1), and Section 68 (c) of the Civil Procedure Code, Cap. 33 R.E 2019. All these provisions provides for procedures for interim injunctions.

From the words of the chamber summons and the contents of the affidavit, the applicants are seeking for an order of this Court to restrain the respondents from doing anything on the suit property pending the expiry of 90 days' Notice. If that is the case, then is the use of words "*maintenance of status quo*" fatal as to render this Application incompetent before the Court?

*Alle*



The applicants seeks for the interim order of maintenance of status quo. Interim order is defined in **Black's Law Dictionary, 8<sup>th</sup> Edition** at page 1130 to mean "A temporary Court Decree that takes effect until something else occurs" Also, the word status quo is defined in the same **Black's Law Dictionary** to mean, "the situation that currently exists".

Gathering from these meanings, the maintenance of status quo is to preserve the status of the situation temporarily pending the determination of decision on a dispute over that said situation. Hence in my view, maintenance of status quo is also a temporary injunction where both parties to the suit are restrained from doing anything over a suit area which can or might change the current status of the said suit area.

From the foregoing analysis, it is my finding that the use of words "maintenance of status quo" in this Application by the applicants is not fatal as the words still mean the issue of temporary restrain. In addition, the Application is brought under proper/correct enabling provisions hence the use of words cannot render the whole Application defective as to be struck out. For those reasons I overrule the first limb of objection.

The second limb of objection is not going to take much of my time. This is simply because it is clear that this issue of abuse of court process is not a pure point of law but rather it is a mixture of law and facts, and

*Alles.*


those facts needs to be ascertained or to be proved hence this objection is disqualified as pure point of law.

The facts which needs to be ascertained are such as the fact that the lease on suit premises particularly apartment B3 has expired since 31/7/2017 and that the tenancy agreement on apartment B is no longer in force as the said tenancy agreement has expired. Another fact which was stated by counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents is that the applicants has admitted in their affidavit that they have not paid rent.

It is my findings that these facts are not on pure points of law and they need to be ascertained and this cannot be done at this level of preliminary objection. Hence, I also find this second limb of objection to have not been qualified as a preliminary objection on pure point of law and I overrule it.

In upshot, the two preliminary objections raised by the respondents are hereby overruled.

Costs shall follow the events.

  
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**A. MSAFIRI**  
**JUDGE**  
**13/9/2023.**

