

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

**MISC. LAND CASE APPLICATION NO. 665 OF 2023**

**JIT TRADING AND INSURANCE**

**BROKERS LIMITED.....APPLICANT**

**VERSUS**

**DEPOSIT INSURANCE BOARD .....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL FOR THE GOVERNMENT**

**OF THE UNITED REPUBLIC OF TANZANIA.....2<sup>ND</sup> RESPONDENT**

**ASCERICS LIMITED.....3<sup>RD</sup> RESPONDENT**

**RULING**

*29<sup>th</sup> November, 2023 & 5<sup>th</sup> December, 2023*

**L. HEMED, J.**

This is an Application for *Mareva* injunction brought under section 2(3) of the Judicature and Application of Laws Act, [Cap. 358 RE 2019]. The Applicant, **JIT TRADING AND INSURANCE BROKERS LIMITED** seeks for an order that ***STATUS QUO*** be maintained in respect of Landed property, Plot No. 1206 Block "E" TEGETA, Dar es Salaam, with certificate of Title Number 48133, registered in the name



of **JOSEPH ABEL MROPE**, pending determination of the main suit to be filed after the expiry of 90 days statutory notice to sue the Government.

The application has been supported by the affidavit of **PETER MAKERE**, the Company Executive Officer of the Applicant. The respondents **DEPOSIT INSURANCE BOARD**, and **THE ATTORNEY GENERAL** challenged the application *vide* the Counter Affidavit which was deponed by **MINESH RATILAL GHELLA**, the Principal Officer of the 1<sup>st</sup> Respondent. The 3<sup>rd</sup> Respondent, **ASCERICS LIMITED** could not appear or file Counter Affidavit despite being duly served.

On 12<sup>th</sup> October 2023, when the matter was called for necessary orders, it was directed that the Application be argued by way of written submissions. The Applicant was to file submissions in chief by 8<sup>th</sup> November 2023. The Respondents were to file their reply submissions on or before 15<sup>th</sup> November 2023, while rejoinder submission, if any, would have been filed on or before 22<sup>nd</sup> November 2023. Parties who were represented by **Mr. Majura Kiboga**, learned advocate and **Mr. Kause K.**

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**Izina**, learned state attorneys promptly filed their submissions as directed by the court.

I have gone through the rival affidavits and submissions in respect of the instant application. As aforesaid, the applicant is seeking for an order to maintain the *status quo* pending determination of the intended suit to be filed after the expiry of 90 days notice to sue the Government. I must state at the outset that, this being an Application for *Mareva* injunction it cannot be granted pending intended suit. I am holding so because granting *mareva* injunctive order pending intended suit is as good as granting perpetual injunctive orders because the intended suit will be filed at the option of the Applicant. It is therefore my firm view that *Mareva* injunction can only be granted pending obtaining legal status to institute a suit. In the instant case, the court cannot grant an injunctive order pending intended suit as I am not prepared to be trapped and make a permanent injunctive order in the name of **pending intended suit**.

Let me turn to determine whether the application at hand has merits. Applications like the instantaneous one, must comply

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with the established conditions in the case of **Atilio vs Mbowe** (1969) HCD, 284. The said conditions are as follows: -

- i. There must be serious questions of facts or issues to be tried.
- ii. The applicant must demonstrate that he may suffer irreparable loss which cannot be adequately remedied or attained by damages.
- iii. On balance of inconvenience, the Applicant must show that will suffer greater loss than the Respondent, if an order for temporary injunction is not granted.

In the affidavit in support of the application, paragraph 1 in particular, the Applicant asserts that the respondents are in breach of the terms of the loan Agreement by wrongful attachment of the disputed land. In view of paragraphs 8 and 9 of the affidavit of Peter Makere, the Applicant is disputing the amount claimed by the 1<sup>st</sup> Respondent of Tshs 97,567,799.54 as defaulted amount. According to the Applicant (paragraph 8), the remain balance payable to the 1<sup>st</sup> Respondent is Tshs.

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61,200,000/=.

In response thereto, the learned State Attorney contended that the applicant's affidavit and submissions do not establish *prima facie* case to warrant grant of the Application. She was of the view that the applicant has stated false facts to mislead the court to grant the Application.

Having examined the affidavit and the rival submissions of the parties, I have noted existence of *prima facie* case on breach of contract. Parties, probably they have to resolve as to the balance which is payable to the 1<sup>st</sup> respondent by the Applicants. I am aware that the counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents has alleged that the facts stated by the applicant to establish a *prima facie* case are false. In my view, the question whether the facts are false, constitute *prima facie* case for determination.

In my firm opinion, it is not proper at this stage to determine whether the facts stated are false or otherwise. I am saying so because, by doing so will amount to be pre-determining the said intended suit prematurely. At this stage, what is important is existence of facts that establish *prima facie* case or triable issue.

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I am aware that the court cannot rely on false evidence to resolve any legal or factual issue. But the falsehood of the alleged facts must be proved so that the court can to disregard the said facts. In the instant case, the 1<sup>st</sup> and 2<sup>nd</sup> respondents have just disputed the facts alleged by the Applicant. In my firm view the antagonistic facts are the ones that form the basis of existence of triable issue or *prima facie* case.

As regard to the irreparable loss which cannot be adequately remedied by damages, my perusal of the affidavit and submissions in support of the application could not find anything stated to establish irreparable loss in case the application is denied. I have also noted from the affidavit of one Peter Makere that the suit property is not registered in the name of the Applicant, rather in the name of one **Joseph Abel Mrope**. In the circumstance thereof, there is no way the Applicant who is not the registered owner to suffer irreparable loss if the property in dispute will be sold.

I have gone through all 13 paragraphs of the affidavit that supports the application but could not find anywhere facts being

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stated to establish loss that the applicant will suffer in case the application is denied. Of course, it is obvious, that, the applicant who is not the owner of the suit property, cannot in any way be said to suffer any loss in case the suit landed property is sold. From the foregoing, I find the 2<sup>nd</sup> condition to have not been met.

The 3<sup>rd</sup> condition is on the balance of inconveniences, that the applicant will suffer greater loss than the respondent if an order for temporary injunction is not granted. Having found that the applicant is not the registered owner of the suit landed property, there is no way the Applicant can suffer greater loss than the respondents. I have also read the affidavit and the submissions made by the counsel for the applicant, there is no facts established to show that the Applicant will suffer greater injury than the respondents if the injunction is refused.

In the final analysis I find no merits in the application as it has not met all the conditions propounded in **Atilio vs Mbowe** (supra). In the upshot, I dismiss the entire application with no orders as to costs. Order accordingly.

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**DATED at DAR ES SALAAM** this 5<sup>th</sup> December, 2023.



  
L. MEMED  
**JUDGE**