IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM DISTRICT REGISTRY

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 612 OF 2023

MS. CONTRACT INTERNATIONAL (T) LTD ..... 1ST APPLICANT

ROBERT WILFREM MWAKITWANGE ..... 2ND APPLICANT

VERSUS

THE PERMANENT SECRETARY OF THE MINISTRY FOR LANDS

HOUSING AND HUMAN SETTLEMENT DEVELOPMENT..... 1ST RESPONDENT

THE ATTORNEY GENERAL ..... 2ND RESPONDENT

DEPOSIT INSURANCE BOARD ..... 3RD RESPONDENT

TAMBAZA AUCTION MART & GENERAL BROKERS ..... 4TH RESPONDENT

R U L I N G

Date of last order: 10/11/2023

Date of Ruling: 14/11/2023

MWAIPOPO, J:

The Applicants, MS. Contract International (T) Ltd and another, have filed an Application for Mareva injuction against the Permanent Secretary, the Ministry of Lands, Housing and Human Settlement Development and three others, seeking for the following orders: -

(i) That this Honourable court be pleased to grant an order restraining the 3rd and 4th Respondents or their assignee from attaching, entering into possession and sale by public auction plot No. 34 with certificate of title No. 200084 registered in the name of the 2nd Applicant pending expiration of ninety (90) days statutory notice served to the 1st and 2nd Respondent until filing of the main case.

Mwaipopo

(ii)Any other relief this court may deem fit and just to grant.

The Application is made under section 2(1) and (3) of the Judicature and Application of Laws Act Cap. 358 R. E. 2019 and it is supported by an Affidavit of Robert Wilfrem Mwakitwange, which contains factual grounds in support thereof. The Application is opposed by the Counter Affidavit sworn by Minesh R. Gella, Principal Officer of the 3rd Respondent and Dickson Peter, Principal Officer of the 4th Respondent.

When this matter came up for hearing on the 2nd of November 2023, both parties prayed for the matter to proceed by way of written submissions and the prayer was granted. Both parties complied with the schedule set by the Court. The 1st and 2nd Applicants were represented by Advocate Masi Bondo while the 1st, 2nd and 3rd Respondents were represented by Ms. Narindwa Sekimanga, State Attorney from the Office of the Solicitor General, and the 4th Respondent, Mr. Dickson Peter, Principal Officer of the 4th Respondent.

In their written submissions, the counsel for the Applicants took off by ignore praying for the court, to adopt their Affidavit with Annextures blt1, blt2, blt3 and blt4 to form part of their submissions. He went on to submit that, they filed an Application under certificate of urgency on the ground that, the third and fourth respondents herein issued them with a 14 days' notice to attach and sale by public auction Plot no. 34 with certificate of title number 20084 located at Kinondoni which is fully owned by the 2nd Applicant if **TZS 2,378, 668,026.15** is not paid. They are thus seeking an order of mareva for purposes of restraining the respondents from selling the said plot by public auction pending expiration of 90 days statutory notice dated 14th September, 2023. They have asserted that, the matter at hand has met conditions for mareva injuction to be granted and that the affidavit of the Applicants has demonstrated a prima facie case against the respondents.

Mwaipopo

They have submitted further, that, while they were under obligation to repay the loan to FBME Bank, they struck out the final deal with the Bank in 2013 that they would sell Plot No. 34 with certificate of title No. 20084 in order to clear their debt and to benefit also with the remaining balance. (Refer to annexture OSG 2 and OSG 3 collectively of the counter affidavit. That in the year 2013, the Applicants entered an agreement with 1st Applicant Board for the sale of the said mortgage security with FBME Bank in order for the Bank to recover, the outstanding balance which by then was the amount of **TZS 400,000,000** only inclusive of accrued interest. The valuation was conducted by the Bank and the Applicant whereby the mortgage security was valued at **TZS 1,600,000,000.00**. That it was within the period of Agreement that the Government through the 1st Respondent disrupted the sequence by showing its intention to acquire the said plot for public interest for the purpose of construction of Dar es Salaam Bagamoyo ferry otherwise known as Dar es salaam Marine Transport Project, following the letter of intention to acquire the said plot for public interest, the Applicants had reached the stage of signing the compensation form (See annexture blt1 and blt2). Further, relying on the case of **Decent Investment Limited vs Tanzania Railway Corporation and 3 Others unreported**, the Applicants have cited the following conditions for the grant of mareva injunction:

> ***"First, the Applicant must demonstrate a strong prima facie case or a good and arguable case and secondly, having the circumstances of the case, it appears that granting the injunction is just and justifiable".***

The counsel concluded his submissions by emphasizing about the failure of the 1st Respondent to discharge her obligation, despite repetitious letters, sent to it by the Applicants.

In rebuttal, the counsel for the 1st, 2nd and 3rd Respondents filed their joint counter affidavit and prayed for it to be adopted to form part of the submissions. In their submissions, the 1st, 2nd and 3rd Respondents began by providing brief facts about the issue, as far as the 1st and 3rd Respondents are concerned. They stated that on 28th November 2007, the 1st Applicant was granted with a loan facility by FBME Bank to the tune **of TZS 420,000,000** as term loan and **TZS. 75,000,000 as overdraft.** The purpose of the term loan was to acquire equipment for executing contract worth USD 550,000 whereby an overdraft provided working capital limit for day to day running of the Applicant's business. In order to secure the said loan, plot No. 105, Kinondoni, plot No. 287 Kinondoni and plot No. 34 Kunduchi were pledged as first ranking legal mortgages besides personal guarantee of all Directors of the 1st Applicant.

Following the default to service the loan by the Applicant, on 10th April, 2014, FBME Bank agreed settlement of the loan against the 1st Applicant of which a total of **USD 465,000** was to be paid within 16 months. The said amount was agreed as full and final payment of the outstanding debt. In 2014, the 1st Respondent through a letter dated 21st March, 2014 directed Kinondoni Municipal Council to conduct valuation of Plot No. 34 Kinondoni Beach in order to pave way for acquisition of the disputed property for purposes of contracting construction of the berths for Dar es Salaam Marine Transport Project. That, according to the letter, FBME Bank was to be contacted since the disputed property was mortgaged as security for the loan, that was advanced to the 1st Applicant by the Bank. However, the said valuation was never conducted for the reason that FBME Bank did not consent to discharge the security until the loan was fully paid as per the letter dated 8th October, 2014, from FBME Bank to the 1st Respondent. [See annex OSG 3 in the 1st,2nd 3rd Respondents joint counter Affidavit]. That until that time, the 1st Respondent had never issued a statement of commitment to acquire the

mortgaged property. Following the agreed settlement and failure to repay the loan, FBME Bank issued a Demand Notice dated 17th March, 2015 from which the 1st Applicant was informed that; the Bank declined the settlement of USD 465,000 and demanded full outstanding loan owed by the 1st Applicant, to the tune of **USD 1,050,326.47.** Regardless of the demand which availed the 1st Applicant time to remedy the default, the 1st Applicant failed to make loan repayment as agreed. As at 6th August 2023, the outstanding loan accrued to **USD 2,378,668,026.15.** This prompted the 4th Respondent under the instructions of the 3rd Respondent to issue a demand notice to the 1st Applicant to settle the outstanding loan, hence this case. Further, with regard to the DIB coming in the case, the 1st 2nd and 3rd Respondents have stated that on 5th May, the BOT discontinued all banking operations of FBME Bank, revoked its Banking Licence and placed it under liquidation whereby DIB was appointed as a liquidator effective from 8th May, 2017, therefore this matter has been brought against DIB as a liquidator of FBME Bank.

With regard to the criteria for the grant of Mareva injunction, the 1st, 2nd and 3rd Respondents have submitted that; granting of injunction is a discretional power of the court, which has to be exercised judiciously. [**See the case of Alhaji A. Ndolanga and Another vs. The Registrar of Sports and Sports Association and Others, Misc. Civil Cause No. 54 of 2000 HCT pg. 3.** In this case the court defined injunction to mean an order of the court restraining the defendant from continuing in the course of wrongful conduct. For the court to exercise its discretion the Applicants have to establish and prove three conditions as they were established in the case of **Atilio vs Mbowe [1969] NCB 284,** which are; **Presence of a prima facie case, irreparable injury and the balance of convenience.** These conditions must be met **cumulatively.**

Mwaipopo

With regard to the first condition, the 1st, to 3rd Respondents have submitted that, the Applicants have not established any prima facie case against the 1st to 3rd Respondents. This is on the ground that there has never been an agreement between the 1st Applicant, FBME Bank and the 1st Respondent in terms of the conditions that FBME has to release to the 1st Respondent the mortgaged property for the so-called Dar es Salaam Marine Project. There is no any agreement that the 1st Respondent has to pay some amount to FBME Bank and in turn the Bank to deduct and settle the outstanding loan amount and remit the balance to the Applicants. There is currently no valuation on the said property to establish its value so as to know the required amount to compensate the Applicants.

The Applicants have not provided any proof to substantiate the same. Therefore, the claims are not bonafide. The Applicants are requesting for an equitable order after failing to honor their obligation. The 1st to 3rd Respondents submit that, the equitable order cannot be used to deny one's right entitled under the contract. [**See the case of Fulgence Pantaleo Kavishe T/A. Double way Auto Parts vs Tanzania Postal Bank, Misc. Land Application No. 890 of 2017 HCT (unreported) page 6.**

With regard to the second condition, that is presence or proof of irreparable loss, the 1st to 3rd Respondents submitted that, the Applicants have failed to meet the requirement. [See Sakar on code of Civil Procedure, Nighty Edition, 2000, at page 1997]. Looking at their Affidavit, the Applicants have failed to demonstrate what kind of injury they would suffer in the event the order is denied by the court. They have not given any explanation to show that they will suffer loss that cannot be atoned by damages. [**see the case of Abdi Ally Salehe vs. Care Unit Ltd and 2 Others, Civil Revision No. 3 of 2012, Mwankenja Investment Ltd vs Access Bank Tanzania Ltd, Misc. Land Application No. 654 of 2016, Gwabu Mwansasu and 10**

Kwaipopo

Others Vs Tanzania National Road Agency and Another, Mis. Land Application no. 72/2020 HCT Mbeya. The 1st to 3rd Respondents concluded in this ground that the Applicants have failed to state in their affidavit and Reply to Counter Affidavit on how they will suffer and how such damages could never be adequately remedied or atoned for by damages or injury which cannot be possibly repaired. The applicants have failed to prove that in their Affidavit. [See the case of **Christopher Chale vs. Commercial Bank of Africa, Misc. Application No. 635 of 2017 HCT Dsm.**

The 4th Respondent on its part, submitted generally that it is an agent of the Bank of Tanzania through the Deposit Insurance Board (DIB) with instructions to recover outstanding TZS 2,378,668,026.15. That the Applicants were served with a 14 days' notice to settle the outstanding balance and the same has already elapsed and the property pledged as collateral for the loan has been advertised for sale by public auction. The 4th Respondent further contended that the applicants are playing delaying tactics, they have to pay the outstanding debt, otherwise the 4th Respondent would be obliged to go ahead and sell by public auction the property pledged as collateral security. they thus prayed for the court to dismiss the application and allow them to sell the property and in order to recover debt.

With regard to these conditions for the grant of mareva injuction, it should also be noted that, 4th Respondent gave general submissions as indicated herein above, that the applicants have defaulted and that they being appointed agents of BOT through DIB be allowed to proceed with sale to recover the outstanding sum.

Having heard the submissions from both parties, I proceed to analyze as to whether this court should grant an order for Mareva injunction to restrain the 3rd and 4th respondents or their assignee from attaching, entering into possession and sale by public auction plot No. 34 with certificate of title No.

Awaipopo

20084 registered in the name of the 2nd applicant pending expiration of 90 days statutory notice served to the 1st, 2nd and 3rd Respondent until filing of the main case. Secondly to determine as to whether the Applicants are entitled to any relief.

With regard to the criteria for granting mareva injunction, the counsel for the applicants has submitted that there are two conditions for granting mareva injunction, which are; a strong prima facie case or a good and arguable case and secondly if the granting of the injunction is just and justifiable. The Counsel for the respondents on her part has stated three elements as propounded in the case of **Atilio Mbowe (supra)** being; prima facie case, irreparable injury and the balance of convenience.

With regard to the presence of the prima facie case; the counsel for the Applicant has stated in their submissions that; the Respondents issued them with a 14 days' notice to attach and sale by public auction Plot no. 34 with certificate of title number 20084 located at Kinondoni which is fully owned by the 2nd Applicant if **TZS 2,378, 668,026.15** is not paid. They are thus seeking for an order of Mareva injuction to restrain the respondents from selling the said plot by public auction pending expiration of 90 days statutory notice dated 14th September, 2023, served to the 1st to 3rd Respondents.

They have asserted that, the matter at hand has met the condition for Mareva injuction to be granted since the affidavit of the Applicants has demonstrated prima facie case against the 1st to 3rd respondents. He submitted further, that; while the Applicants were under obligation to repay the loan to FBME Bank, they struck out the final deal with the FBME Bank in 2013 that they would sell Plot No. 34 with certificate of title No. 20084 in order to clear their debt and to benefit also with the remaining balance. (They referred the court to annexture OSG 2 and OSG 3 collectively of the counter affidavit). That it was within the period of Agreement that; the Government through the 1st

Kwaipopo

Respondent disrupted the sequence by showing its intention to acquire the said plot for public interest for the purpose of construction of Dar es Salaam Bagamoyo ferry otherwise known as Dar es Salaam Marine Transport Project, following the letter of intention to acquire the said plot for public interest, the Applicants had reached the stage of signing the compensation form. (See annexture blt1 and blt2).

The respondent on their part have objected to the submissions by the Applicant on this ground stating that they have not established any prima facie case against the 1st to 3rd Respondents. This is on the ground that there has never been an agreement between the 1st Applicant, FBME Bank and the 1st Respondent in terms of the conditions that FBME Bank has to release to the 1st Respondent the mortgaged property for the so-called Dar es Salaam Marine Project. There is no any agreement that 1st Respondent has to pay some amount to FBME Bank and in turn the Bank to deduct and settle the outstanding loan amount and remit the balance to the Applicants. There is currently no valuation on the said property to establish its value so as to know the required amount to compensate the Applicants.

Following my perusal of the records and annextures contained in the file, I have noted that; indeed it is true that the Respondents have issued the Applicants with a 14 days' Notice to repay the outstanding Loan amount after it had accumulated to **TZS 2,378,668,026.15** and in turn the Applicants also served a 90 days' Notice to the Government to institute a suit against it based on the cited intended cause of action therein. While the Respondents are arguing about the outstanding amount which has to be paid, the Applicant is also contending about the alleged interruption of the 1st Respondent in the settlement deal between the Applicants and the then FBME Bank, stating that, had it not been for the actions and omissions of the 1st Respondent, the said outstanding amount would have been a thing of the past by now.

I have also at this stage noted the letter with Ref. LD/64061/97 (annex BLT2) from the 1st respondent to the Director, Kinondoni Municipal Council informing them about valuation of Plot no. 34 located at Kunduchi Beach, which was earmarked for acquisition for public interest in order to pave way for Dar es salaam Marine Project. While it is not the right time to discuss about substantive issues contained therein, there is no gain saying that deducing from the documents there is an arguable case between the parties to cast some light on the presence of a prima facie case between the Applicants and the 1st to 3rd Respondents herein. The 90 days Notice served to the respondents is a testament to this fact;

I am aware that, at this stage it is only incumbent upon me to consider if there is a demonstrated bonafide claim in the intended suit. I am not expected, at this stage, to resolve complicated issues of facts and law as that would be prejudicial to the pending suit. In the case of **Colgate Palmolive vs zakaria provision store and others, civil case no i/1977 referred at page 158 in Kibo match group ltd Impex ltd ,2001, TLR 152,** while discussing the concept of a prima facie case, the court stated that;

> *"In principle the prima facie case rule does not require that the court should examine the material before it closely and come to a conclusion that the plaintiff has a case in which he is likely to succeed, for to do so, would amount to prejudging the case on its merit. All that the court has to be satisfied of is that on the face of it, the plaintiff has a case which needs consideration and that there is likelihood of the suit succeeding".*

In view of the above analysis, I am satisfied that the affidavit, reply to counter Affidavit, 90 days notice and submissions of the applicants demonstrate bonafide contentions between the parties in the intended suit. Among such

contentions are whether or not there was an agreement between the Applicants, FBME and the 1st Respondent to release to the 1st Respondent, the mortgaged property for the so called Dar es salaam Marine Project, whether there was any interference/interruption by the 1st Respondent in the settlement deal struck between the applicants and FBME Bank to repay the loan by way of 16 instalments that frustrated the trend of loan repayment, whether or not the 1st respondent intended to acquire the suit property and compensate the applicants, whether there were any valuations done to that effect, etc.

In my opinion therefore the first condition has been satisfied. I thus find that the applicant has managed to cast light on the presence of the prima facie case vide the 90 days Notice, Affidavit and the annextures as well as their submissions.

Moving to the element of irreparable injury; the Applicants in their submissions did not submit anything with regard to this ground. They however submitted generally that; *mareva* injunction is different from temporary injunction and its conditions as propounded in the case of **Atilio Mbowe**. He argued that the case of Atilio provides for interim orders in the nature of injunction which are governed under civil procedure code Cap. 33 while *mareva* injunction is governed under the Judicature and Application of Laws Act Cap. 355 as adopted under common law. He further stated that there are only two conditions that must be fulfilled for the grant of *mareva* injunction to succeed. These are prima facie case and proof that the grant of the injunction is just and justifiable given all the circumstances of the case.

With regard to this ground of irreparable injury, the 1st and 3rd Respondents on their part have submitted that the applicants have failed to meet this requirement. They submitted that Courts would only grant injunction if there is evidence that there would be irreparable loss that cannot be adequately

compensated by award of the general damages. (See Sakar on Code of CPC, 9th Edition, 2000 at page 1997). The counsel for the 1st to 3rd respondents has also submitted that neither the Affidavit nor the counter affidavit of the applicants has demonstrated what kind of injury they would suffer if the suit property is attached and sold by way of auction apart from stating mere words that the second Applicant will suffer irreparable injury under the criteria of balance of convenience. They have not demonstrated any proof of injury immediate or anything else to prove that they would suffer and how the same would not be atoned by way of damages. To emphasize their position, they cited the case of **Abdi Ally Salehe vs Care Unit and 2 Others Civil Revision No. 3 of 2012.**

I am on all fours with the counsel for the Respondent that the Applicants, in an application like this one, must demonstrate that they will suffer damage as a consequence of the respondent's action or omission and that the threatened damage is serious.

In the case of **CHARLES D. MSUMARI AND 83 OTHERS VS. THE DIRECTOR GENERAL OF TANZANIA HARBOURS AUTHORITY**, Civil Appeal no. 18 of 1997 (unreported) where the Court said:

> *"Courts cannot grant injunctions simply because they think it is convenient to do so. Convenience is not our business. Our business is doing justice to the parties. They only exercise this discretion sparingly and only protect rights or prevent injury according to the above stated principles. The courts should not be overwhelmed by sentiments, however lofty or mere high driving allegations of Applicants without substantiating the same. They have to show that they have a right in the main suit which out to be protected or there is an injury (real or threatened) which ought to be prevented by interring injunction and that if that was, not than*

they would suffer irreparable injury and not one which can possible be repaired".

Therefore, based on the above arguments, the Applicants have failed to discharge their burden of proof in this second criteria. Further, considering the fact that the question of mortgage security is a central theme in the intended suit and in so far as there is an express evidence of outstanding amount of loan as indicated in the Applicants application and supporting document filed by both parties, (save for the reservations expressed by the Applicants on the trend of payment), the irreparable injury sought to be protected cannot be said to be of immediate effect and the grant of the order shall be prejudicial to the intended suit.

This now takes me to the second condition; it requires the Applicant to establish the necessity of the grant in preventing the irreparable loss. I find it important to consider the nature of the orders sought;

The order reads;

"This honourable court be pleased to grant an order restraining the 3rd and 4th respondent or their assignee from attaching, enter (sic) into possession and sale by public auction plot no. 34 with certificate of title No. 20084 registered in the name of the 2nd applicant pending the expiration of 90 days statutory notice served to the 1st and 2nd respondent until filing of the main case".

In determining this prayer, I am guided by Hon. Maige, J. as he then was, in the case **Automech Ltd versus TIB Development Bank Ltd and others, Misc. Civil Land Application No. 73 of 2020, Dsm**, that one must determine what the current situation is of the status quo. Whether the Applicant or respondent is in possession of the suit property.

Buayopu

From the foregoing examination of the affidavit and the documents contained in the file, it cannot be said that the status quo is such that the Applicant is or was in possession of the property at the time of filing this application so as to be entitled to a restraint order from attachment, entrance and sale of the property by public auction. If anything, to go by, the 90 days notice and the annextures filed by both parties show that; the title is in possession of the DIB as the liquidator of FBME Bank and the Applicants cannot currently access the suit property to do any development or productive work. Refer to the last paragraph of the 90 days Notice where the Applicants under (item (a); are demanding from the 1st Respondent in liaison with the Commissioner for Lands and 2nd Respondent **to discharge Plot No. 34 with C.T 20084** from FBME Bank liability and relocate it to the Applicants so that **they may proceed with the development and other productive activities.**

I have perused the Affidavit, counter affidavit and submissions by the Applicants, and I am inclined to agree with the 1st, 2nd and 3rd Respondents that the Applicants have not demonstrated any proof or analysis of irreparable injury that they will suffer that cannot be adequately remedied by way of remedies, if *Mareva* injuction is not granted. (See the cases cited by the Respondent such as **Mwakeye Investment Ltd, Gwabo Mwansasu (supra)**. In the case of **Christopher Chale Vs. Commercial Bank of Africa, Misc. Application No. 635/2017, HCT DSM pg 6** stated that;

Irreparable loss must not only be mentioned **but also adequately proved (emphasis mine).**

I am thus of the position that the Applicant have also failed to prove this ground of irreparable loss or injury to enable the court to exercise its judicial discretion in their favour.

Lastly, I will examine the issue of balance of convenience. What amounts to balance of convenience was examined by the CAT in the case of **Salehe vs Asac care unit Ltd, Ayoub Salehe Chamshama and Kenya Commercial Bank Civil Revision no. 3 of 2012 DSM CAT DSM** Unreported pg 9, where it was stated that;

> **"And on the question of balance of convenience, what it means is that before granting or refusing the injuction, the court may have to decide whether the plaintiff will suffer greater injury if the injunction is refused than the defendant will suffer if it is granted".**

Regarding proof of the criteria of balance of convenience, the Applicants have stated in their rejoinder that, if the application is not granted the Applicants will stand to suffer irreparable loss as the second Applicant is an old man suffering from blood pressure and his health could greatly deteriorate if the order is not granted and that the first Applicant will suffer irreparable loss because they have been reminding the first Respondent to discharge his obligation to compensate but to date he has stood mute.

On their part, the 1st, 2nd and 3rd Respondents have stated that, the Applicants have failed to state in the Affidavit how the criteria of balance of convenience lies in their favour. There is nowhere they have pleaded that they will suffer greater loss than the Respondents if an order for temporary injunction is not granted. The Respondents on their part have demonstrated that currently the 2nd Respondent is collecting debts owed to FBME Bank so as to distribute the same to beneficiaries and the agent for that purposes, the 4th Respondent, has already been appointed with instructions to recover, the outstanding sum. Therefore, the outstanding money owed to FBME Bank by the Applicants is money that has to be enjoyed by the section of the community who either offered services to FBME Bank or deposited their money with the Bank.

Therefore, the Respondents stand to suffer more than the Applicants hence they call upon this court to consider the public interest involved in the matter as it was held in the case of **Alhaji Muhidin A. Ndolanga**. (supra). In the said case the Court held that;

> ***"In granting or not granting injunction, public interest or public policy has to be considered so that the court makes sure that it is not used as an instrument or tool to cause injury to the society or loss to community. Thus, in the courts exercise of its equitable jurisdiction to give benefit to somebody, the large interest of the community cannot be sacrificed".***

I have perused the records in the file and I tend to agree with the Counsel for the Respondent that, the Applicants have not stated and substantiated anything on the balance of convenience criteria. They have merely stated that the second Applicant will stand to suffer irreparable loss as a result of age and blood pressure and also that the first applicant will suffer irreparable loss because they have been reminding the first respondent to discharge his obligation to compensate but to date, he has stood mute. However, no any proof has been attached regarding the second Applicant' s status and that due regard or notice has also been taken to the fact that the issue of payment of compensation on the security attached to a pending loan is subject to determination of its merit by the court at an appropriate time, should the applicants succeed in filing a suit against the respondents.

It is the submission by Ms Sekimanga learned State Attorney that currently the 2nd Respondent is collecting debts owed to FBME Bank so as to distribute the same to beneficiaries. Therefore, the outstanding money owed to FBME Bank by the Applicants is money that has to be enjoyed by the section of the community who either offered services to FBME Bank or deposited their

Awaipopo

money with the Bank. It is my firm position that the interests of the public or community always prevail than those of the individual. (See Ndolanga's case cited supra) .The Applicants cannot be protected by an order for mareva injuction, since the applicants outstanding debt owed to the 2nd Respondent is no doubt not small and involves the beneficiaries of the FBME Bank and so it is the respondents rather than the Applicants who stand to suffer more hardship if the order is granted as prayed. I am prepared to agree with Ms Sekimanga, SA, because I have already held that the applicant has not satisfied the second two conditions particularly the irreparable loss test. To borrow the words and wisdom from Hon. Justice Mwandambo in **Gwabo Mwansansu's** case (supra);

The argument by the learned advocate for the applicant reproduced above sounds attractive but it falls away in light of the **Agency Cargo International Vs. Eurafrican Bank (T) Ltd HC(DSM** Civil case no. 44/1998 unreported, wherein the balance of convenience test was adumbrated in an application for injunction against the Bank's move to enforce recovery measures as it was in this application. This Court (speaking through Nsekela, J,) as he then was stated;

> **"The object of security is to provide a source of satisfaction of the debt covered by it. The Respondent to continue being in banking business must have funds to lend and which as to be repaid by its debtors. If a bank does not recover its loans it will seriously be an obvious candidate for bankruptcy.... It is only fair that banks and their customers should enforce their respective obligations under the banking system. (pp 5 and 6)".**

Narrowing it down to the situation at hand, and as contended by the Counsel for the Respondents, the DIB, the second Respondent is currently collecting debts of the FBME Bank in order to pay its former beneficiaries .It will therefore be just and equitable if the decision is granted in favour of the Respondents to enable the 2nd Respondent to discharge its obligations as a liquidator. I entirely subscribe to the above statement.

In the case of **Automech Ltd versus TIB Development Bank Ltd and Others, Misc Civil Land Application No. 73 of 2020, Dsm, Hon. Maige** J, as he then was stated that;

> **"Temporary injunctive orders are equitable and the trial court enjoys a wide discretion to grant or not provided that the discretion is exercised reasonably, judiciously and on sound legal principles".**

I hold that in this application, the balance of convenience has tilted in favour of the Respondents based on their solid arguments supported by various authorities to the satisfaction of the Court. The Applicants have failed to meet two conditions out of three. The formular is threefold. Nevertheless, the Applicants have even failed to meet the two conditions which they, themselves propounded. The have failed to place before the Court material on the conditions necessary for the grant of mareva injunction which could have moved it to exercise its judicial discretion. It need not be overemphasized that, the requirement to demonstrate all the three criteria is a mandatory requirement. Failure or omission to demonstrate any of them is fatal and attract dire consequences on the outcome of the application. (**See the case of LEOPARD NET LOGISTRICTS COMPANY LIMITED VS TANZANIA COMMERCIAL BANK LIMITED & OTHERS Misc. Land Application No. 585 of 2021 (**DSM).

That bearing in mind all the circumstances of the case, it appears to the Court that, the withholding of mareva injunction is just and justifiable. This application is bound to fail on those grounds.

In the event I find no merit in the application which is accordingly dismissed. Each party to bear its own costs.

It is so ordered.

DATED at **DAR ES SALAAM** this 14th day of November, 2023.

S.D. MWAIPOPO

JUDGE

14/11/2023

The ruling delivered this 14th day of November, 2023 in the presence of Karoli Chami and Mkamba Msuda, State Attorneys for the 1st, 2nd, and 3rd Respondents and Evodius Alexander, Officer for the Applicants is hereby certified as a true copy of the original.

S. D. MWAIPOPO

JUDGE

06/11/2023