

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND CASE APPLICATION NO. 27352 OF 2023

(Arising from Misc. Land Applications No. 699 of 2022 and Land Case No. 290 of 2022)

- 1. HAROON HUSSEN HAROON**
- 2. JABEEN IQBAL NORAY**
- 3. MOHAMED IKBAL HAJI MOHAMED**
- 4. SHAMMAH IMAN ABEID**
- 5. HASSANAT MOHAMED IKBAL HAJI MOHAMED**
- 6. PRAVIN SAKARCHAND DHARAMSI CHAVDA**
- 7. ABDULLAH GULAMSHAFI ALIMOHAMED**
- 8. TANZIL GULAMSHAFI ALIMOHAMED**
- 9. TONGSHUN PLASTIC PACKING COLOR
PRINTING CO. LTD**
- 10. YASMIN RAFIK NURMOHAMED**

APPLICANT'S

VERSUS

COSMOS PROPERTIES LIMITED.....1ST RESPONDENT
EXIM BANK (TANZANIA) LIMITED.....2ND RESPONDENT
WALTER BUXTON CHIPETA AS RECEIVER MANAGER...3RD RESPONDENT

RULING

12th December, 2023 & 08th January, 2024

L. HEMED, J.

On 11th December 2023, the applicants herein through the legal service



of **Mr. Alex Mashamba Balomi**, learned counsel, presented the instant application seeking for extension of the temporary injunction order dated 20th April 2023, issued *vide* Misc. Land case Application No. 699 of 2022. The said order was granted by, this court, Hon. I. Arufani,J with directives thus;

" The order of the temporary injunction will be in force for a period of six months from the date of this ruling as provided under XXXVII Rule 3 of the Civil Procedure Code..."

This matter was called for necessary orders on 12th December, 2023.

Mr. Elisa Msuya and Mr. Gaspar Nyika, learned advocates who appeared to represent the 2nd and 3rd respondents registered a preliminary objection on point of law thus:-

"This court does not have jurisdiction to hear and determine the application which his incompetent for want of an injunction to be extended"

I directed parties to argue the preliminary objection by way of written submissions. The 2nd and 3rd respondents were to file their submissions in chief by 19th December 2023, whereas, the applicants ought to have filed reply submissions on or before 28th December 2023. Rejoinder submissions,



if any was to be filed by 4th January 2024. At the time of composing this ruling, I only found the submissions filed by the 2nd and 3rd respondents, that is the submissions in chief. It appears that the applicants did not file their submissions as directed.

I have taken time to read the submissions made by the learned counsel for the 2nd and 3rd respondents. The learned advocates, Mr. Nyika and Mr. Msuya are of the view that since the order sought for extension had already been expired, this court cannot have power to extend a non-existing and invalid order. They placed reliance on the decision of the Court of Appeal of Tanzania in **Trophy Hunting Ltd vs. The Hon. Attorney general and 4 others**, Civil appeal No. 25 of 1997.

It is without dispute that the order sought for extension was made on 20th April 2023 and thus remained valid up to 20th October 2023 when the period of six (6) months lapsed. In other words, by 20th October 2023 the injunctive order which the applicants are seeking to extend, ceased to exist.

As aforesaid, ~~the~~ the instant application was presented for filing on 11th December 2023, that is at least one month from the date the said order became non-existent. The question that arises is whether the court is capable of extending the said order which has ceased to exist.



I am aware that the court upon application, has the power to extend the period of the injunctive order. This is pursuant to the provision Order XXXVII Rule 3 of the Civil Procedure Code [Cap 33 RE 2019] which states thus;

*" Provided that, **the court granting the injunction may, from time to time extend such period for a further period which in the aggregate shall not exceed one year,** upon being satisfied, on the application of the holder of such court injunction that the applicant had diligently been taking steps to settle the matter complained of and such extension sought is in the interest of justice, necessary or desirable" [Emphasis added]*

However, for the order of injunction to be extended it must be in existent or valid. In **John Joseph Magazeti and 3 others vs Gabrieli Mushi @ Gabriel Stephen Masha and 2 others**, Misc. Civil Application No. 43 of 2019, my brother at the bench, Hon. Tiganga, J observed that an order which does not exist cannot be vacated. The same was held by the Court of Appeal of Tanzania in **African Trophy Hunting Ltd vs The Hon. Attorney General and 4 others** (*Supra*) that the temporary injunction that has



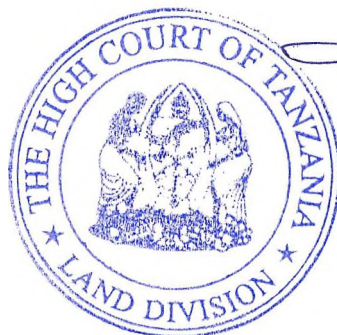
ceased to exist by operation of the law at the expiry of six months cannot be varied.

From the authorities aforecited, it is thus obvious that an order (injunctive order) that has ceased to exist after the lapse of its time to be in force, cannot be vacated, varied or extended. The court is incapable of extending a non-existing order.

In order for the court to have power under Order XXXVII Rule 3 of the Civil Procedure Code, (*Supra*) to extend the period of injunctive order, application to that effect must be preferred before the said order ceases to exist. The present application was lodged at least a month from the date the order became invalid. Therefore, the application is incompetent for it seeks to extend a non-existing order.

In the final analysis, I find merits in the Preliminary Objection. I uphold it and proceed to strike out the entire application with costs. Order accordingly.

DATED at DAR ES SALAAM this 08th January, 2024.




L. HEMED

JUDGE