

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

MISC. LAND APPLICATION No. 2299 OF 2024

MEIYA PROPERTIES.....1st APPLICANT

MULTIMODAL TRANSPORT AFRICA LIMITED.....2nd APPLICANT

VERSUS

CRDB BANK PLC.....1ST RESPONDENT

ACCURATE RECOVERY AND AUCTIONS LTD.....2ND RESPONDENT

LEONARD IGAGA MAHENDA.....3RD RESPONDENT

REGISTRAR OF TITLES4TH RESPONDENT

THE ATTORNEY GENERAL.....5TH RESPONDENT

RULING

07th March 2024 & 3^d May 2024

L. HEMED. J.

The suit property subject of the Application is Plot No.24 Block J, C.T. No.101788 situated at Kariakoo within Ilala District, Dar es Salaam region. The 1st Applicant, **MEIYA PROPERTIES**, the previous registered owner of the suit property, pledged it as a security to guarantee the loan of Tshs. 900,000,000/= advanced by the 1st Respondent (**CRDB BANK PLC**), to the 2nd Applicant, **MULTIMODAL TRANSPORT AFRICA LIMITED**. The



2nd Applicant appears to have defaulted payment of the said loan hence the suit property was auctioned on 30th June 2023 by **ACCURATE RECOVERY & AUCTIONS LIMITED** the 2nd Respondent, under the instruction of the 1st Respondent.

LEONARD IGAGA MAHENDA, the 3rd Respondent emerged the highest bidder in the said public auction and thus certificate of sale dated 05th July 2023 was issued to him. On 20th July 2023, the 1st and 3rd respondents executed a deed of conveyance of the suit property and submitted for registration of the transfer under power of sale to the **REGISTRAR OF TITLES**, 4th Respondent who effected the same in favour of the 3rd Respondent. Being the current registered owner of the suit landed property, the 3rd Respondent, is demanding vacant possession of it. He instructed the 2nd Respondent who issued to the 1st Applicant notice to vacate.

Aggrieved by such notice, the applicants here in presented the instant joint application for *mareva* injunction under section 2(3) of the Judicature and Application of Laws Act [Cap 358 R.E 2019] and section 95, 68(c) and(e) of the Civil Procedure Code, [Cap. 33 R.E 2019]. They are seeking for an interim order to restrain the respondents, from evicting the



1st Applicant and her associates from the suit property, pending expiry of the ninety (90) days' notice of intention to sue the Respondents.

The Application is supported by the affidavits of **MEIYA ABBAS RIZVI** and **SYED NAZRE- ABBAS RIZVI**, the principal officers for the 1st and 2nd Applicants. The same has been opposed *vide* the counter affidavits of **PASCAL MIHAYO, PESSE C. MICHAEL, CHARLES NDALAHWA KENYELA** and **PASTORY CLEMENT MASUA**.

The hearing of the Application proceeded by way of written submissions as per timetable ordered by the Court. **Mr. Ngasa Mboje**, learned advocate represented the applicants while **Mr. Nzaro Kachenje**, advocate acted for the 1st and 2nd respondents. The 3rd Respondent was duly represented by advocate **Charles Kenyela** and the 3rd and 4th respondents enjoyed the service of **Ms. Adelaida Ernest**, learned State Attorney.

It has been averred by the applicants that the ongoing forcibly eviction and intended demolition of the 1st Applicant's suit property will cause a serious legal injury against the Applicants. According to them the 3rd Respondent is not financially fit to remedy the injury to be suffered by the 1st Applicant in case the application is refused. The applicants' learned



advocate asserted further that the Applicants are likely so suffer more than the respondents are because, at material time, the applicants have developed the suit property heavily.

He proceeded to argue further that the sale and transfer of the suit landed was surrounded with fraud, collusion, misrepresentation, and dishonest on the part of 1st, 2nd, 3rd and 4th Respondents. According to the learned counsel for the applicants the said unlawfully sale and transfer of the suit land constitute a *prima facie* case.

In response to the applicant's submission, the counsel for all respondents were of the view that the application has not met the conditions necessary to grant *mareva* injunction which are:- (i) Existence of a *prima facie* case; (ii) irreparable loss that can not be atoned by damages award; and (iii) balance of convenience favoring grant of the orders than denying. The glued their argument with the decision of this Court in **Ladislaus Danford Shasha versus Kasulu District Council Misc. Land Application No. 24 of 2022 High Court of Tanzania at Kigoma by Manyanda J.**

It was their submissions that neither in the affidavits nor in submissions supporting the applicants have made averment on existence of

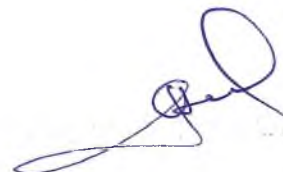


prima facie case. In their opinion, there is no question that serious question to be tried as the suit landed property has already been transferred to the bonafide purchasers.

As regard the 2nd condition of existence of irreparable loss, the learned counsel for the respondents were of the view that the applicants have not stated in their affidavit the injury that cannot be remedied by damages. In their opinion, the application has failed to meet the 2nd condition. On the balance of convenience, the counsel argued that the 3rd respondents is the one to suffer much in case the application will be granted as he is the bonafide purchaser that he will be deprived from using his property.

In rejoinder submissions, the counsel for the applicants reiterated his submissions in chief. He prayed for the Court to grant the application with costs.

Having gone through the submissions made by both learned counsel, it is apt to determine the question as to whether the instantaneous application is meritorious. The court will be guided by the principles laid down in the famous case of **Attilio V. Mbowe (1969) HCD 284** whereby the Court laid down three Conditions to be met before



the decision to grant temporary injunction is made. The said conditions are such that:-

1. The applicant must demonstrate the presence of *prima facie case*;
2. The possibility of the Applicant(s) to suffer an irreparable loss; and
3. Balance of convenience between the Applicant(s) and the Respondent(s) in case the application is granted or refused.

Let me start with the condition of presence of *prima facie case*. I have revisited the affidavit in support of the application and found that the 1st and 2nd Applicant claims for *mareva* injunction to restrain the respondents from evicting the 1st Applicant and her associates and demolishing all buildings and structures on the suit property described as Plot No. 24 Block J, C.T. No. 101788. The applicants are questioning the sale and transfer of the suit landed property to the 3rd Respondent on the ground that the process was tainted with fraud, collusion and dishonest on the part of the 1st, 2nd, 3rd and 4th respondents.

On the other hand, the counsel for the respondents were of the view that there is no *prima facie* case because the sale and transfer of the suit land was done pursuant to the consent Judgment of this Court in **CRDB**



Bank PLC vs. Multimodal Transport Africa Limited, Syed Nazre Abbas Rizvi and Meiya Abbas Rizvi, Commercial Case No. 117 of 2021.

I have managed to access the said Consent Judgment annexed to the Counter Affidavit of one **Pascal Mihayo**, principal officer of the 1st Respondent. The said consent judgment was entered and delivered on 25th February 2022 by this Court (HC- Commercial Division)- Nangela, J. In that case, the 2nd Applicant was the 1st Defendant while **Syed Nazre Abbas Rizvi** and **Meiya Abbas Rizvi** were the 2nd and 3rd defendants, respectively. I have also noted that the persons who have deponed affidavits in support of the instant application were the 2nd and 3rd defendants in Commercial Case No.117 of 2020. Having examined the said consent judgment, I realized that the matter before the Commercial Court, concerned the loan which the 2nd Applicant had defaulted to pay. I have also perused the rival affidavits and found that what the applicants herein are trying to raise in this application was settled in the said consent judgment. Therefore, the fact that there is a Consent Judgment of this Court in Commercial Case No.117 of 2020, there is no valid triable issue or



prima facie worth to warrant this Court grant the prayers sought in the instant application.

The second condition that needs to be demonstrated by the Applicant(s) for injunctive order to be granted is existence of irreparable loss. I have gone through the entire affidavits and the submission made to support the application and found that the applicants have stated in paragraph 9 of the affidavit of **Meiya Abbas Rizvi** thus:

*"9. That the ongoing forcibly eviction as well as the intended demolition of the 1st Applicant's suit property, if **implemented will be a serious legal injury against the Applicants** and thus the Applicants are neither negligent nor have been contributory negligently and so as to the nature and circumstance the **3^d Respondent is not financially fit to remedy the injury to be suffered by the 1st Applicant due to refusal to grant the injunction.**" [Emphasis added]*

The above paragraph does not tell what type(s) of the alleged **legal injury** the applicants will suffer in case the application is refused. But again, in the above said paragraph it has not been stated if those alleged serious legal injury cannot be repaired through damages. In my opinion, the above paragraph makes a sweeping statement as to the injury which



the applicants are likely to suffer in case the application is not granted. In the circumstance where the applicant fails to state categorically the irreparable injury he/she may suffer, or uses sweeping phrases like in the case at hand, the court has the right to consider as if the applicant has failed to demonstrate irreparable loss/injury.

From what I have observed, the Applicants have failed to state in either the affidavits or submission made to support the application the injury they may suffer in case the court opts to refrain from granting the application. They have even failed to state whether the alleged serious legal injury are irreparable one. Having observed so, I find the 2nd condition to have not been met.

I am aware that, it is trite law that in order for the court to grant the application for injunctive order, the conditions stated in **Atilio vs. Mbowe** (*supra*) must be met cumulatively. This was stated in **Christopher Paul Chale vs. Commercial Bank of Africa**, Misc. civil Application no. 635 of 2017, thus:-

"...it is also the law that the conditions set out must all be met and so meeting one or two of the conditions will not be sufficient for the purpose of



the court exercising its discretion to grant an injunction."

I do subscribe to the above position and proceed to state that, since the applicants have failed to establish a ***prima facie*** case and irreparable loss, the application is not among those qualifying to be granted. Therefore, I cannot labour to make an assessment if the 3rd condition has been met.

In the upshot, the entire application is dismissed with costs. Order accordingly.

DATED at **DAR ES SALAAM** this 3rd day of May, 2024.




L. HEMED
JUDGE