

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC LAND APPLICATION NO. 28652 OF 2023

HAGAI SIMON CHELELE.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

GENERAL SECRETARY MINISTRY OF FINANCE.....2ND RESPONDENT

DEPOSIT INSURANCE BOARD.....3RD RESPONDENT

MORINGE GROUP.....4TH RESPONDENT

BANK OF TANZANIA.....5TH RESPONDENT

TAMBAZA AUCTION MART &

GENERAL BROKERS LIMITED.....6TH RESPONDENT

RULING

4TH January 2024 & 5th March 2024

L. HEMED, J.

HAGAI SIMON CHELELE is the Applicant in the instant application.

He has brought it under section 2(3) of the Judicature and Application of Laws Act [Cap 358 RE 2019] seeking for *mareva* injunctive order to restrain the respondents from auctioning the suit house with residential license No. TMK 027272, Land area No. TMK/MBGK/KCH 36/18, located at Mbagala Kuu



Area Temeke Municipality, Dar es Salaam, pending the lapse of 90 days statutory notice.

The Application has been supported by the affidavit of one Hagai Simon Chelele and countered by the 1st, 2nd, 3rd and 5th respondents through the counter affidavit of **Bibiana K. Banzi**, the principal officer of the 3rd Respondent. The 4th Respondent through the counter affidavit of **Esther Likunda**, supported the application.

According to what I have grasped from the affidavit that supports the application, the Applicant is the owner of the suit property and used the same to guarantee the 4th Respondent to secure the loan of Tshs. 50,000,000/= from Covenant Bank for women Tanzania Ltd borrowed in 2014. The 4th Respondent defaulted payment of the said loan and on 1st December 2023, **TAMBAZA AUCTION MART & GENERAL BROKERS LIMITED**, the 6th Respondent, served the Applicant with the 14 days notice to attach and sale the suit house to recover the loan.

The Applicant has filed this matter as a way to protect his property (the suit landed property) from being auctioned. The question is whether the same is worth of being granted. When the matter was called on 04th



January 2024, I directed parties to argue the application by way of written submissions. All parties save for the 6th respondent complied with the filing schedule.

In arguing the Application, the Applicant was represented by Ms. Martha Mohamed, learned advocate while the 1st, 2nd, 3rd and 5th Respondents enjoyed the service of Ms. Hapiness Nyabunya, learned Principal State Attorney. The 4th Respondent acted through its principal officer, Esther Likuda.

I have gone through all rival affidavits and submissions in respect to this Application. In determining it, I will be guided by the conditions laid down in the famous case of **Atilio vs Mbowe** [1967] HCD n. 284.

- i. that the Applicant must establish a *prima facie* case by showing that there is a serious question to be tried on alleged facts and probability that the applicant will be entitled to relief prayed;
- ii. he must demonstrate the court interference is necessary to protect the applicant from any kind



of injury which may be irreparable before his legal rights are established; and

- iii. balance of convenience whether there will be greater hardship suffered by the Applicant from withholding of the injunction than will be suffered by the Respondents if granted.

Let me start with the 1st condition of *prima facie* case. In his affidavit to support the application, the Applicant, in paragraph 3, has stated that the 4th Respondent borrowed from Covenant Bank, the amount of Tshs. 50,000,000/= where as the suit property was pledged by the Applicant to secure the loan. The Applicant has also confessed in paragraph 6 of his affidavit that the 4th Respondent failed to pay the said loan. The 4th Respondent in the counter affidavit and the submissions thereof, also admitted to have delayed in repaying the loan. The question that arises in whether *prima facie* case has been demonstrated in the circumstance.

It is my firm view that, the admission of the loan by the Applicant and the 4th Respondent, vividly shows that there is no *prima facie* case warranting grant of the Application for injunction. In both affidavit in support of the Application and the submissions made thereof, there are no facts



stated to establish a serious question which may require parties to litigate. In other words, a *prima facie* case is established by facts which, if impleaded in a plaint would constitute a cause of action against the respondents/defendants. In the present case, those facts are missing in the affidavit supporting the application. Form the foregoing, the applicant has failed to establish a *prima facie* case.

Turning to the 2nd condition of irreparable loss, when I was reading documents pertaining to this matter, I found the assertions by the Applicant that, he would suffer irreparable loss if the application is not granted as his house will be auctioned. In his affidavit and submissions, the Applicant however, has not stated what kind of irreparable losses that will result out of the sale of the property in dispute. I am holding so because the court is obliged to grant injunctive order upon having been satisfied that loss which cannot be compensated through monetary means is likely to happen if injunctive order is not issued. The mere allegation that the suit property is likely to be auctioned does not constitute an irreparable loss as the auction of the property is not a loss by itself.

I do subscribe to what my brother at the bench Hon. F.K. Manyanda, J. said in the case of **Trustee of Anglican Church Diocese of Western**



Tanzania vs Bulimanyi Village Council and 2 Others, Misc. Civil

Application No. 1 of 2022, that:

"It is requirement of law that one has to demonstrate the eminent of loss by tangible evidence and not merely statement of remote tear of loss."

In the matter at hand it is straight forward that the possibility of the applicant to suffer irreparable loss in case the suit property is auctioned has not been demonstrated. In that regard, the application has failed to meet the 2nd condition laid down in **Atilio vs Mbowe** (supra).

The 3rd condition for consideration is the balance of convenience on hardship of the parties. The applicant has not stated anything as to the balance of inconvenience if the application is granted and when the same is refused.

On the part of the respondents, it was asserted that, the 3rd Respondent is the one who is likely to continue to suffer hardship in the balance of convenience if orders sought are granted. It was contended that Covenant Bank has irreversibly been liquidated and the 3rd Respondent as liquidator is required to finalize its function within 12 months. The counsel for the 3rd Respondent insisted that if the orders sought are granted the 3rd



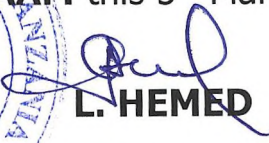
Respondent will not be able to pay salaries to its employees and the creditors of the then Covenant Bank.

Going through the affidavit and the submissions, the Applicant has not demonstrated if he will suffer more hardship than the respondents, the 3rd Respondent in particular, if the application is not granted. It is thus obvious that, the 3rd condition for grant of temporary injunction has not been met.

In the final analysis, I find no merits in the application. It deserves to be dismissed. I do hereby dismiss the entire application with costs. Order accordingly.

DATED at **DAR ES SALAAM** this 5th March 2024.




L. HEMED
JUDGE