IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM

CIVIL CASE NO. 114 OF 2001

1. AYAZ R. TEJA)
2. MRS HUREIN A. TEJA) .....PLAINTIFFS

Versus

CROWN FINANCE AND)
LEASING LIMITED) .....DEFENDANT

R U L I N G

CHIPETA, J.:

The applicants, ***Ayaz R. Teja and Mrs Hūrein A. Teja***, have filed a suit against the respondent, ***Crown Finance and Leasing Limited***, for declaratory orders and discharge of mortgages. Subsequent to the filing of the suit, the applicants filed the instant application for a temporary injunction restraining the respondent, its servants or agents from entering upon and taking possession and/or control or dispose of the properties of the applicants comprised in ***Plot No.6 Flur II, Kisutu area, Dar es Salaam.***

The facts as stated in the supporting affidavit of ***Ayaz R. Teja*** are that the applicants have two bank accounts with the respondent. **Since 1997**, the applicants enjoyed credit facilities from the respondent for which they pledged the properties in question as security, but at no time did such facilities exceed **T.Shs.120,000,000/=.**

By a deed of variation of **22nd July, 1999,** the respondent purported to increase the value of the credit facility to **T.Shs.195,000,000/=**. The applicants misunderstood this variation because the increased amount was not credited to their bank accounts. The applicants further claim that they

owe the respondent nothing and that instead their accounts reflect a credit balance of **T.Shs.6,836,457.01**. So the applicants were surprised when the respondent served them with a **Demand Notice dated 1st December, 2000** demanding from the applicants payment of **T.Shs.76,428,653.24** within seven days from the date of the letter.

The respondent, on the other hand, asserts that on or about **4th April, 2000,** the respondent granted to the applicants credit facilities for **T.Shs.156,000,000/=** as described in a mortgage Deed executed on **17th July, 2000,** and that the amount due to be paid by the applicants now stands at **T.Shs.128,025,948.98.**

I have carefully considered the oral submissions of the learned advocates as well as the affidavits pro and counter the application. It is now well settled that before an application for a temporary injunction can be granted, it is incumbet upon the applicant to show that there is a serious triable issue with a probability of success; that the court's interference is necessary to protect the applicant from the kind of injury which may be irreparable; and that on balance, the applicant will suffer greater hardship and mischief from withholding such an order than will be suffered by the respondent if the application is granted. ***(See Attilio v. Mbowe, (1969) H.C.D. n.284).***

In the instant case, the applicants have asserted that the earlier mortgage was discharged and that they received no money following the variation, and further, that their accounts show a credit balance. The respondent appears to concede that the first mortgage was in fact discharged, but they claim that their claim is based on a mortgage deed executed **in July, 2000**. Quite clearly, the applicants have shown a serious triable issue. It is relevant to note that no agreement has been produced to show how the credit facility was to be paid and over what period. It is also surprising that the mortgage is said to have been executed in July, 2000, but the demand notice was issued less than **six months** later for payment of more that **one hundred million shillings!**

On the question of hardship, I think that is quite apparent: the properties in question are said to be residential premises. If they are sold and it is eventually found that the applicants owe the respondent nothing, the applicants would stand to suffer loss that may be irreparable.

As for balance of convenience, what I have said above applies with equal force. The respondent has the mortgage deed. So it stands to suffer no injury as opposed to the applicants.

For these reasons, I am satisfied that the applicants have made out a case. I accordingly grant this application. The respondent is hereby restrained, by itself, its servants or agents from entering upon, taking possession or control, or disposing of the said properties comprised in ***Plot No.6, Flur II Kisutu, Dar es Salaam*** till the finalization of the main suit or for the next six months, whichever is the earlier. Costs shall be in the cause.

B. D. CHIPETA
JUDGE

28/6/2001
Coram: F.S.K. Mutungi-DR-HC
For the 1st Applicant) Mr. Kadago for
For the 2nd Applicant) Mr. Ngalo
For the Respondent: Mr. Kadago for D.Kesaria
CC: Mr. Maurice

Court:
Ruling read in Court before F.S.K. Mutungi DR in the presence of Mr. Kadago holding briefs of both Mr. Ngalo and Mr. D. Kesaria for the Applicants and Respondents respectively.

Order: Mention in Chambers on 31/8/2001 before the Judge for Setting a Pre-trial Court date.

F.S.K. MUTUNGI
DISTRICT REGISTRAR
28/6/2001