IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA SUB - REGISTRY)

AT TANGA

MISC. LAND APPLICATION NO. 69 OF 2023

AHMED SUUD HILAL (As an Administrator of the Estate of the Late SUUD HILAL) ..... APPLICANT

VERSUS

1. **INDEPENDENT AGENCIES & COURT BROKER LTD ...1ST RESPONDENT**
2. **HASSANI MOHAMED YUNUS .....2ND RESPONDENT**
3. **AHMED OMARI STAMBULI ..... 3RD RESPONDENT**
4. **SHEKHA SAIDI KHAALIFA ..... 4TH RESPONDENT**
5. **THE ATTORNEY GENERAL ..... 5TH RESPONDENT**
6. **THE COMMISSIONER FOR LANDS .....6TH RESPONDENT**
7. **THE REGISTRAR OF TITLES ..... 7TH RESPONDENT**
8. **THE TANGA CITY COUNCIL ..... 8TH RESPONDENT**

RULING

17th Jan & 7th March, 2024

M.J. CHABA, J.

AHMED SUUD HILAL (As an Administrator of the Estate of the Late SUUD HILAL) is moving this Court under section 2 (1) and 2 (3) of the Judicature and Application of the Laws Act [CAP. 358 R.E. 2019] (the JALA) and Section 95 of the Civil Procedure Code [CAP. 33 R.E. 2019] (the CPC) for grant of an interim injunction order in the form of Mareva Injunction intending to restrain

the 1st, 2nd, 3rd and 4th respondents, their servants and / or agents or any person acting on their behalf from evicting the applicant from his premises pending service of ninety (90) days Statutory Notice to the 5th, 6th, 7th and 8th respondents and instituting the suit against all the respondents jointly and severally thereof or an appeal against the 7th respondent, and any other order (s) or reliefs (s) as this Court may deem fit and just to grant.

It is stated further that, unless restrained by an order of this Court, the 1st, 2nd, 3rd, and 4th respondents will lay waste to the premises which are subject matter of this application, to wit; the unexhausted improvements situate on Plot No. 1, Block "37" - Ngamiani Area, Tanga City and dispose of to the 4th respondent.

The application is by way of chamber summons filed under certificate of urgency supported by an affidavit affirmed by the applicant, AHMED SUUD HILAL and it has been taken out at the instance of Mr. Mwita Waissaka, learned advocate, and it is supported by an affidavit affirmed by the applicant, AHMED SUUD HILAL.

The application was encountered by the 1st respondent's counter affidavit, 2nd and 3rd respondents' joint counter affidavit affirmed by HASSAN MOHAMED YUNUS and AHMED OMARI STAMBULI, 4th respondent counter affidavit affirmed by SHEKHA SAID KHALIFA and 5th, 6th, 7th and 8th respondents' joint counter affidavit affirmed by MWAJUMA KIHIYO. In the meantime, the 2nd and 3rd respondents on 11th January, 2024 through their

learned Counsel, Mr. Atranus Mkago Method filed a Notice of Preliminary Objection (PO) on points of law, to wit: -

1. That, the applicant has no *locus standi* to pray for the orders sought;
2. That, this application is premature for the applicant has not exhausted local remedies pursuant to the provisions of section 102 of the Land Registration Act, [CAP. 334 R.E. 2019];
3. That, this Honorable Court is not properly moved to grant the prayers for Mareva Injunction for non-existence of Notice served to the 4th, 6th, 7th and 8th respondent.
4. That, this Honorable Court is not properly moved for uncertainty of the application and legal redress sought between extension of time to appeal and filing a suit.

Based on the above four points of PO, the 2nd and 3rd respondents prayed the Court to dismiss the entire application with costs. Other respondents also joined their hands with the 2nd and 3rd respondents.

Been confronted with the points of PO, I am obliged to dispose of the same before embarking into the determination of the application on merits.

At the hearing of the points of preliminary objection, by consensus parties agreed to argue and dispose of the same by way of written submissions and all parties adhered to the Court scheduled order. Mr. Atranus Mkago Method, learned advocate from Mkago Law Associates based in Tanga

Region, drew and filed submissions on behalf of the 1st, 2nd and 3rd respondents, Ms. Agnes Gombe, learned State Attorney from the Office of the Solicitor General, drew and filed written submissions on behalf of the 5th, 6th, 7th and 8th respondents whereas the applicant's reply to the respondents' written submissions in chief was drawn and filed by Mr. Mwita Waissaka, also learned advocate. However, for reasons better known by the 4th respondent and/or his learned advocate, the 4th respondent did not submit in respect of the PO raised by Mr. Method.

Commencing with the first point of PO, Mr. Method, learned advocate for the 1st, 2nd and 3rd respondents averred that, the applicant has no *locus standi* to pray for the orders sought. This point is made up in two limbs, to wit; the first being founded on facts that, the applicant in this application is neither the registered owner of the disputed property, nor the immediate former owner of the disputed property; and on the second limb is that, the alleged estate of the late SUUD HILAL is administered by two natural persons.

As regards to the first limb of PO, Mr. Method submitted that this point of objection is guided by the legal position that parties are bound by their own pleadings. He stated that, the applicant's Annexure T2, which resembles to the Annexure OSG-1 on paragraph 3 of the counter affidavit lodged by the 5th, 6th, 7th, and 8th respondents, reveals that right now the current owner of the alleged disputed property is HER EXELLENCY, THE PRESIDENT OF THE UNITED REPUBLIC OF TANZANIA, and that the immediate former owner is

RANJIT ASHER. He said, that being the position, it goes by saying that, the applicant herein, AHMED SUUD HILAL (As an Administrator of Estate of the Late SUUD HILAL) is a person unknown on the list of owners of the allegedly disputed property, hence has no *locus standi.*

On the second limb of the first PO, Mr. Method averred that, Annexure T1 of the applicant's affidavit, shows that, AHMED SUUD HILAL and NASSORO SOUD HILAL were appointed to stand as co-administrators of estate of the late SOUD HILAL. It was Mr. Method's argument that, where two persons are appointed as co-administrators of estate of the deceased, one administrator cannot act in exclusion of the other administrator. He stressed that, this is the spirit of the law relating to co-administration of the estate of the deceased. To buttress his argument, Mr. Method referred this Court to the decision underscored by the Court of Appeal of Tanzania (CAT) in the case of **MAY MGAYA VS. SALIMU SAID (THE ADMINISTRATOR OF THE ESTATE OF THE LATE SAID SALEHE)**, CIVIL APPEAL NO. 264 OF 2017 UNREPORTED) where the Court observed that:

> *"It was, therefore, improper for the judge to find that only the 2nd respondent was not responsible with the delay in exhibiting inventory within time and retain his appointment. Both respondents were supposed to face the same consequences. This brings us to an inescapable conclusion that, legally, the learned judge erred to single*

out the 1st respondent and annul his appointment as administrator and retain the 2nd respondent's appointment. She exhibited double standard in applying the law. That is not legally allowed".

Based on the decision of the CAT, Mr. Method submitted that as the applicant chose not to cooperate with NASSORO SOUD HILAL (His co-administrator), it follows that he has no *locus standi* to institute the instant proceedings. He contended that, since the applicant has no *locus standi*, in similar way, has no legal or equitable right whatsoever. Citing the landmark case of **MAREVA CAMPANIA NAVIERA SA VS. INTERNATIONAL BULK CARRIERS SA THE MAREVA [1980] 1 ALL ER 213, COURT OF APPEAL, CIVIL DIVISION,** Lord Denning observed and elaborated that:

"There is only one qualification to be made. The court will not grant an injunction to protect a person who has no legal or equitable right whatever."

Guided by the above holding of the Court, and taking into account of the nature of the application under consideration, Mr. Method had the view that, the applicant has no legs to stand before this Court seeking refuge under the umbrella of Mareva Injunction. He prayed this first PO be sustained.

In respect of the second PO, the Counsel highlighted that, this application is premature for not exhausting all available remedies pursuant to

the provisions of section 102 of the Land Registration Act, [CAP. 334 R.E. 2019]. He insisted that, the applicant is bound by the available legal regime to redress what is alleged to be the applicant's infringed rights.

Arguing on the third point of PO, Mr. Method asserted that this Court is not properly moved to grant the prayers of Mareva Injunction for non-existence of notice served to the 4th, 6th, 7th, and 8th respondents. He cited the provision of section 6 (2) of the Government Proceedings Act, [CAP. 5 R.E. 2019] to reinforce his contention.

Referring to the applicant's main prayer as shown in the chamber summons, the applicant deponed that, I quote:

> *"this honorable court may be pleased to grant an interim injunction order in the form of Mareva Injunction, restraining the 1st, 2nd, 3rd, and 4th Respondents, their servants and/or agents or any person acting on their behalf from evicting the Applicant from his premises pending service of 90 days statutory Notice to the 5th, 6th, 7th and 8th Respondents jointly and severally thereof or an appeal against the 7th Respondent".*

Again, at paragraph 11 of the applicant's affidavit, it is stated categorically that:

"That the pending suit if any or appeal to be filed will be filed after the issuance of the statutory 90 days or for an extension thereof which will address all issues and the 5th, 6th, 7th and 8th Respondents shall upon being served".

Mr. Method submitted that, the above being the facts constituting the present application, he prayed to reiterate his previous submission that, Mareva Injunction cannot be issued pending service of notice. He said, the same is issued pending expiry of the issued and submitted Notice. He questioned; how can one start counting 90 days from a non-existing notice? Who knows when the notice will be issued and submitted to the Government? To bolster his argument, the Counsel cited the case of **LEOPARD NET LOGISTICS COMPANY LIMITED VS. TANZANIA COMMERCIAL BANK LIMITED & 3 OTHERS,** MISC. CIVIL APPLICATION NO. 585 OF 2021, HCT AT DSM (Unreported) where the Court Observed that:

"Mareva injunction cannot be applied or granted pending a suit. It is an application pending obtaining a legal standing to institute a suit. It may be issued where; the applicant cannot institute a law suit because of an existing legal impediment. Since the instant application is applied pending the expiry of the 90 days' notice to sue the Government which impends the institution of a suit by the applicant, there is no doubt that the application falls

within the realm of mareva injunction and can be issued if the conditions for grant of injunction are demonstrated".

[Underline is mine].

Inspired and guided by the decision of this Court, Mr. Method underlined that, since serving of a 90 days' notice is a mandatory pre-condition before instituting any suit against the Government, application for injunctive orders in the nature of Mareva Injunction have a pre-condition that, a notice must be submitted to the Government before filing the application. He averred that, application for Mareva Injunction is for orders made pending the expiration of 90 days' notice to institute a case. He stressed that, Mareva Injunction cannot be made for orders pending the service of a notice which is not yet in existence. With due respect to the Counsel for the applicant, Mr. Method underlined that, the notice itself ought to have been attached to the application.

On the fourth point of PO, the Counsel stated that this Court is not properly moved, for uncertainty of both the application and the legal redress sought between extension of time to appeal and filing a suit. He asserted that, while Mareva Injunction is an injunctive order granted pending expiration of 90 days' notice to sue the Government, but it is evident that the applicant has not issued the said notice. Worse enough, the applicant is uncertain as to what will be the next step after obtaining the order for Mareva Injunction.

He stressed that, at paragraph 11 of the applicant's affidavit, the applicant is uncertain as to the redress sought, whether it is an Appeal or a Suit. While the law sets procedures for redress if one is aggrieved by the decision of the Registrar, the remedy available to an aggrieved person is to abide by the provision of the law under section 102 (1) and (2) of the Land Registration Act, [CAP. 334 R.E. 2019] as submitted on the second point of PO. It was his argument that, since the instant application was brought in this Court without adhering to the mandatory requirements of the law and with full of uncertainties, he prayed the Court to uphold all the above points of PO and dismiss the application with costs.

To her part, Ms. Agnes Gombe, learned State Attorney for the 5th, 6th, 7th and 8th respondents joined hands with the submissions made by Mr. Method, learned Counsel for the 1st, 2nd and 3rd respondents in all four points of objection. She added that, for an application for Mareva Injunction to be granted by the Court, the applicant must furnish proof to the effect that there is no suit filed in Court due to some impediment preventing the applicant from doing so. To support her contention, she referred this Court to the cited case of **MAREVA CAMPANIA NAVIERA SA VS. INTERNATIONAL BULK CARRIERS SA THE MAREVA** (supra). She insisted that, in this application there is no any impediment(s) that prevented the applicant to effect services to the 5th, 6th, 7th, and 8th respondents with the 90 days Statutory Notice as required by the law under section 6 (2) of the Government proceedings Act

(supra). She said, failure to furnish a 90 days Statutory Notice is fatal, and it is unreasonable and illogical for the applicant to seek refuge under the auspices of Mareva Injunction pending service of 90 days Statutory Notice to the Government entities and the Attorney General.

Submitting on the fourth point of PO, the State Attorney elaborated that, the applicant's prayers for a grant of Mareva Injunction pending the institution of the suit against all respondents or appeal against the 7th respondent is unattainable on the ground that the Court cannot grant the application for Mareva Injunction to the infinite or pending unforeseeable future event because, the institution of the suit or appealing against 7th respondent's decision, it is upon the applicant's discretion which he can also decide not to sue. As submitted by Mr. Method, the State Attorney reiterated that the applicant is uncertain on redress he is anticipating to pursue soon after the sought order for Mareva injunction is granted. She stressed that, it is unreasonable for the Court to grant the Mareva Injunction pending pursuing uncertain redress.

Finally, the State Attorney prayed the Court to strike out the application with costs.

Responding to the respondents' submissions in chief, Mr. Mwita Waissaka, learned advocate for the applicant, onset, began his submission by stating that the points of PO raised by the 1st, 2nd and 3rd respondents are misplaced stunt, for they do not fall within the realm of what is preliminary

objection on points intended to be conveyed. He cited the case of **ALPHONCE BUHATWA VS. JULIETH RHODA ALPHONCE,** CIVIL REFERENCE NO. 9/01 OF 2026 (Unreported), where the CAT sitting at Dar Es Salaam, at pages 5 and 6 of its ruling observed that: -

(i) *"To be considered as a preliminary point of objection, the point concerned must raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct.*

(ii) *It cannot be raised if any fact is to be ascertained or in what entails the exercise of judicial discretion.*

(iii) *It must be a pure point of law which does not require close examination or scrutiny of affidavits and counter affidavit for further, clarity.*

(iv) *It must not require scrutiny of evidence or inquiry or on ascertaining facts.*

Responding to the first limb of point of objection whether the applicant lacks *locus standi* or otherwise, Mr. Waissaka on the first place, sought assistance from Black's Law Dictionary, 6th Edition, By Publishers' Editorial Stuff St. Paul, Minn, West Publishing Co. 1990 wherein the word *Locus Standi* in Court has been defined to mean, *a right of appearance in Court of justice, or before a legislature body on given question*. He asserted that, whether the applicant lacks *locus Standi* or not, these are matters of facts and needs

inquiry or it needs venturing into evidence and ascertained by proof pursuant to the standard required by law on aversions contained in the contents of paragraphs 3 and 4 of the applicant's affidavit and those aversions contained in the respondents' counter affidavits. He stressed that, these matters have to be considered by the Court during hearing of the main application. He said, it would be very premature to decide that, the applicant lacks a right to sue or to bring an action and by so doing it amounts to a denial of the right to be heard. In alternative, the Counsel submitted that, the applicant is having a *Locus Standi* to sue, for the Court to adjudicate on his right(s) so far pleaded in the affidavit.

He contended that, as the nature of the applicant's action or complaint is based on chronological order of events on the extent of the disputed land title to be registered or currently stated to be in the ownership of Her Excellency, the President of the United Republic of Tanzania, thus the gravamen of the complaint needs the Court's redress on rectification of the land register and ownership of the disputed land as he believes that the same is irregular.

On the second limb of PO which is a lame limb according to Mr. Waissaka, he highlighted that, there is no law which bars an action in a Court of law, if it is brought by one of the administrators for the interest of the deceased's estate. He said, the case cited by the respondents does not apply in the circumstance of this application and is far distinguishable or is far oceans apart with the matter at hand, for the matter decided by the CAT was

on filing inventory by a single administrator at the exclusion of the other and that there is no holding in which the CAT bared an action to be brought by a single administrator in the Court of law. As regards to the holding in the English case of **MEREVA CAMPANIA NAVIERA SA** (supra) cited by the respondents that there should be a *locus standi* for an equitable legal right, Mr. Waissaka underlined that, this point has no substance and the same cannot be applied in the circumstance of this case for a reason that, the applicant is vested with a *Locus Standi* to sue, hence the point is not a pure point of law.

In respect of the second point of objection, the Counsel submitted that, at paragraph 3 of the applicant's affidavit it is averred that, the Notice for rectification was served to the deceased's addresses and not the applicant, yet still the land register was rectified without proper Notice legally in place to the applicant to the extent further that, no appeal on rectification could have been preferred by the deceased person. He stressed that, since it was an ineffectual and inept Notice, then the Court is duty bound to inquire and ascertain on service of Notice as averred in the applicant's affidavit and counter affidavits, hence the preliminary objection is falling short of a pure point of law.

Arguing on the third point of PO, Mr. Waissaka accentuated that, on this point, the respondents are crossing the bridge before they have reached it because Mareva Orders of Injunction are granted on temporary injunctions

without a pending suit and these are common law creatures, citing the cases of **ABDALLAH M. MALIK & 545 OTHERS VS. ATTORNEY GENERAL AND ANOTHER,** MISC. LAND APPLICATION NO. 119 OF 2017 and **REGISTERED TRUSTEES OF CALVARY ASSEMBLIES OF GOD (CAG) VS. TANZANIA STEEL PIPES LIMITED & 2 OTHERS,** MISC. LAND CASE APPLICATION NO. 677 OF 2019 (All unreported) to reinforce his contention. For instance, in **ABDALLAH M. MALIK & 545 OTHERS VS. ATTORNEY GENERAL AND ANOTHER** (supra), this Court (Mgonya, J., As she then was) ruled *inter-alia* that, Mareva Orders of Injunction are issued where there is no suit or before institution of the main suit and in our jurisdiction is applied under section 2 (3) of the Judicature of the Application of laws Act.

As regards to the case of **LEOPARD NET LOGISTICS COMPANY LIMITED VS. TANZANIA COMMERCIAL BANK LIMITED & 3 OTHERS** (supra), cited by the respondents, Mr. Waissaka conceded that its decision falls within the realms of the applicant's application for it is an application pending obtaining a legal remedy, and pending institution of a suit which cannot be instituted without expiration of 90 days Statutory Notice based on the depositions contained in the applicant's affidavit on the complained acts of the respondents, which will lead to irreparable loss in case the same won't be granted by the Court. He insisted that, the contents of paragraph 11 of the applicant's affidavit are very clear as its averment indicates that, it is a suit still pending to be filed or to be instituted after issuance of the Statutory 90

days' Notice as required in law. He said, the points of PO should arise clearly or by necessary implications from the pleadings which the parties are bound with, citing the case of **ALPHONCE BUHATWA VS. JULIETH RHODA ALPHONCE** (supra).

He contended that, looking at the 1st, 2nd and 3rd respondents' joint counter affidavit there is no pleading on the Statutory Notice, neither challenging nor disputing the contents of paragraph 11 of the affidavit of the applicant in their joint counter affidavit, as portrayed in their submission. He further submitted that, without pleadings which the parties are bound with, the 1st, 2nd and 3rd respondents have submitted on behalf of the 5th, 6th and 7th respondents, who in their joint counter affidavit pleaded contrary to what is averred in the contents of paragraph 10 of their joint counter affidavit, to wit, of the 5th, 6th, 7th and 8th respondents, hence the same should be disregarded by the Court.

Concerning the fourth point of objection that, this Court is not properly moved for uncertainty of the application for legal redress sought between extension of time to appeal and filing a suit, Mr. Waissaka averred that the matter under consideration is not for extension of time but it is within the two alternatives. He said, it is in the choice or discretion of the applicant to prefer to sue or an action at the High Court of Tanzania, or an Appeal to the High Court of Tanzania, against the decision of the Registrar of Tittles under section 102 (1) and (2) of the Land Registration Act, [CAP. 334 R.E. 2019].

In view of the above submission in opposition to the respondents' submissions in chief in support of their points of objection, Mr. Waissaka concluded and prayed the points of objection raised by the respondents be laid down to rest as the same lacks merits for not being pure points of law and further prayed the Court to order the application to proceed on merits.

By way of rejoinder, Mr. Method, the Counsel for the 1st, 2nd and 3rd respondents basically reiterated what he submitted in chief. However, in respect of the first PO, he rejoined that, to decide whether or not the applicant has *locus standi,* is not a matter to be ascertained by evidence. He accentuated further that, pleadings as they stand with its annexures on records, the same are clear and direct to the point that the applicant is not the registered owner of the disputed property. He said, the law regulating land ownership of registered land, do identify only the registered owner of the property to be the one who has *locus standi* in claims of land ownership.

On the second point of PO, Mr. Method submitted that, the applicant did not give any legal authority condoning his non-compliance with the law in claims of his grievance against the decision of the registrar of title. He echoed his submission in chief and insisted that, this application is premature for not exhausting available remedies pursuant to the provisions of section 102 (1) and 102 (2) of the Land Registration Act (supra). He stressed that, the application has been wrongly made in this Court.

On the third point of objection, Mr. Method conceded the fact that Mareva Injunction can be prayed for and granted before instituting a suit, but his point of departure is that, since issuing and serving a notice to the Government is a pre-condition, and taking into account that such a notice does not exist in the Court records and the fact that there is no proof that, the same was duly served to the 4th, 6th 7th and 8th respondents, the implication is that the application is incompetent before this Court.

Having summarized the submissions made by the Counsel for the parties and upon impassively considered the parties submissions in line with the points of objection raised by the Counsel for the 1st, 2nd and 3rd respondents, the issue for consideration, determination and decision thereon is whether the points of objection have merits or otherwise.

To begin with, I find it apt to highlight the guiding principle in respect of preliminary objections. As noted from the beginning, this is an application for Mareva Injunction. As rightly submitted by the Counsels from both sides, the principle of Mareva Injunction was enunciated in the famous case of **MAREVA CAMPANIA NAVIERA SA VS. INTERNATIONAL BULK CARRIERS SA THE MAREVA [1980] 1 ALL ER 213, COURT OF APPEAL, CIVIL DIVISION**, wherein Lord Denning observed and elaborated that:

> *"There is only one qualification to be made.* ***The Court will not grant an injunction to protect a person who has no legal or equitable right whatever.*** *That*

appears from North London Railway Co. vs. Great Northern Railway Co. But, subject to that qualification, the statute gives a wide general power to the Courts.

[Bold is mine].

It is trite law that, the cardinal principle of Mareva Injunction is a common law doctrine and its applicability in our jurisdiction is vide the provision of section 2 (3) of the Judicature and Application of Laws Act [CAP. 358 R.E. 2019]. For such an injunction to be issued, the Court must satisfy itself that there is no pending suit rather it is an application pending obtaining a legal standing to institute a law suit. Although this is a Mareva Injunction, it is a specie of temporary injunctions. It follows therefore that, the principles in application(s) for temporary injunction are also applicable to Mareva Injunctions. In this regard, the applicant has to establish all three conditions which are mandatory in the applications for injunctions. The criteria as set by Georges, CJ in the landmark case of **Atilio Vs. Mbowe [1969] HCD 284** are that, before granting the order for injunction the Court must be satisfied that:

i. *There is a serious question to be tried on the facts alleged, and the probability that the plaintiff will be entitled to the relief prayed.*

ii. *The Applicant stands to suffer irreparable loss requiring the Courts intervention before the Applicants legal right is established;*

iii. *That, on the balance, there will be greater hardship and mischief suffered by the plaintiff from withholding of the injunction than will be suffered by the defendant from granting of it.*

Now, coming to the matter under consideration, in our jurisdiction is now settled law that a preliminary objection must be on point of law which when argued is capable of disposing of the matter without going into its merit. This is what it was underscored by the defunct East Africa Court of Appeal in the famous case of **MUKISA BISCUIT MANUFACTURING COMPANY LTD VS. WEST END DISTRIBUTORS LTD [1969] EA 696,** where the Court at page 700 held:

> *"... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."*

And further down at page 701 Sir Charles Newbold, President said:

> *"A preliminary objection is in the nature of what used to be a demurrer. It raises as a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be*

ascertained or if what is sought is the exercise of judicial discretion".

From the foregoing authorities on the position of the law pertaining to the preliminary objections on point(s) of law, it is imperative to resort to the points of objection in line with the chamber summons filed by the applicant supported by the affidavit deponed by the applicant himself and its annextures which are forming part of this application and the counter affidavits lodged by the respondents countering the application, to ascertain whether the legal controversy fits in the tests for preliminary objection.

As indicated hereinabove, generally speaking, Mr. Waissaka, Counsel for the applicant, essentially disputed all points of PO raised by Mr. Method, Counsel for the 1st, 2nd and 3rd respondents and acceded to by the State Attorney who entered appearance for the 5th, 6th, 7th and 8th respondents, by stating that, all of them needs proof of evidence and must be considered in full during hearing of the main application to ascertain whether the raised points of objection have merits or not.

On my part, in determining the points of preliminary objection, I propose to commence with the third point of PO, and afterwards, I will deal with the second, fourth and first points of PO. The third point of PO states that, this Court is not properly moved to grant the prayers for Mareva Injunction for non-existence of Notice served to the 4th, 6th, 7th and 8th respondents. At the

outset, I am in agreement with the submissions made by the Counsel for the 1st, 2nd and 3rd respondents and conceded by Ms. Agnes Gombe, learned State Attorney for the 5th, 6th, 7th and 8th respondents and Mr. Waissaka, Counsel for the applicant that Mareva injunction cannot be applied or granted pending a suit as it is an application pending obtaining a legal standing to institute a suit. It may be issued where the applicant cannot institute a law suit because of an existing legal impediment(s). Further, it is a trite law that, an application of this nature is applied pending expiry of the 90 days' notice of intention to sue the Government which impends the institution of a suit.

However, Mr. Waissaka had the view that, since it is common ground that the point(s) of objection should arise clearly or by necessary implications from the pleadings which the parties are bound with as it was held in the case of **ALPHONCE BAHATWA** (supra), and considering the fact that in the joint counter affidavit filed by the Counsel for the 1st, 2nd and 3rd respondents there is no pleading on the statutory notice as submitted and canvassed by the respondents, and that the contents of paragraph 11 of the affidavit of the applicant are neither disputed nor challenged in their joint counter affidavit, this ground is devoid of merits.

With due respect to the Counsel for the applicant and as rightly submitted by Mr. Method, the Court in making conditions for Mareva Injunction, is being cautioned that, the Court process should not be abused. In the circumstance of this case, it is too hard to apply for Mavera Injunction

pending service of the notice which does exist. To be honest, this is where I tend to agree and shake hands as well with the Counsel for the 1st, 2nd and 3rd respondents on his point of departure, which I subscribe to that, issuing and serving a notice to the Government is a pre-condition and its compliance is a must.

I have travelled through the entire application and the supporting affidavit deponed by the applicant but truly I couldn't see any attachment or annexture associated with the said notice of intention to sue the Government as required by the law. My scrutiny revealed further that, the only documents that were attached as annextures are; copies of certificate of occupancy (C.T. No. 8139), a map with a title - Tanga Municipality, Letters of Administration without will granted to AHMED SOUD HILAL and NASSORO SOUD HILAL being Administrators of the Estates of the Late SOUD HILAL (who died on the 23rd day of July, 1998) of P.O. Box 776 TANGA issued by this Court on 3rd July, 2000 via PROBATE AND ADMINISTRATION CAUSE NO. 4 OF 1998 and two copies of the photographs taken at the premises in dispute. As correctly submitted by the Counsel for the 1st, 2nd and 3rd respondents, such a notice does not exist in the Court records and there is no even a single piece of evidence proving that the same was duly served to the 4th, 6th 7th and 8th respondents, as the law requires.

Under section 6 (2) of the Government Proceedings Act, [CAP. 5 R.E. 2019], the law provides that:

"No suit against the Government shall be instituted, and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim against the Government, and he shall send a copy of his claim to the Attorney General and the solicitor General."

My understanding of the law, in as much as the above provision of the law is concerned is that, first; the jurisdiction of the Court is automatically ousted by the provision of the law unless a 90 days-notice of intention to sue the Government is issued as required by the law, and secondly; a person in whatever name is strictly prohibited to institute a suit against the Government and heard by this Court unless he has previously served to the Government Minister, Department or officer concerned; and in this case is, The Commissioner for Lands, The Registrar of Titles and Tanga City Council a notice of not less than ninety (90) days of his intention to sue the Government, specifying the basis of his claim against the Government, and send a copy of his claim to the Attorney General and the Office of the Solicitor General. It is worth noting that, the law has been couched in mandatory terms which under section 53 of THE INTERPRETATION OF LAWS ACT [CAP.1 R.E. 2029] provides that, where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the

function so conferred must be performed. It follows therefore that, failure to comply with the mandatory legal requirements, in law, implies that, this Court was (is) not properly moved to grant the prayers sought for non-existence of the notice to sue the Government, hence not duly served to the 5th, 6th, 7th and 8th respondents. Hence, this point of PO is answered in affirmative.

On the second point of PO, the Counsel for the 1st, 2nd and 3rd respondents submitted that, this application is premature for the applicant has not exhausted local remedies pursuant to the provisions of section 102 of the Land Registration Act, [CAP. 334 R.E. 2019]. I have gone through the applicant's application and the supporting affidavit, and the respondents' counter affidavit plus the annextures attached thereon. Without much ado, I am at one with the submission by the Counsel for the 1st, 2nd and 3rd respondents which were acceded to by Ms. Agnes Gombe, learned State Attorney for 5th, 6th, 7th and 8th respondents. Starting with the allegation indicated at paragraph 3 of the applicant's affidavit that, on 5th January, 2023 the applicant was irked by the act done by the Registrar of Tittle to rectify the Land Register in favour of Her Excellency, the President of the United Republic of Tanzania, hence disentitling the applicant to his possession of land, while the title of the applicant was still existing, and lawfully under his ownership and without proper notice of rectification of the land register, despite the fact that information was given to the effect that the addressees to the notice did belong to the deceased who could not be served and the applicant was not

served as well, in my considered view, this averment is without merit. As the law requires, the applicant ought to have exhausted all available remedies enshrined under the provision of section 102 (1) and (2) of the Land Registration Act, [CAP. 334 R.E. 2019]. The law provides that:

> *"102 (1) Any person aggrieved by a decision, order or act of the Registrar may appeal to the High Court within three months from the date of such decision, order or act:*
>
> *Provided that:*
>
> *(a) no such appeal shall lie unless the appellant or his advocate shall, within one month from the date of such decision, order or act, have given to the Registrar and to the High Court notice of intention of appeals; and*
>
> *(b) (ii) and (iii) NA...*
>
> *And provided further that, the High Court may, for good cause, admit an appeal notwithstanding that the periods of limitation prescribed in this subsection have elapsed.*
>
> *(2) For the purposes of subparagraph (ii) of paragraph (b) of subsection (1), the Government shall be deemed to have given notice of objection under the provisions of section 13, whether or not any such objection was given by or on behalf of the Government".*

As rightly submitted by Mr. Method, since the applicant was distressed by a decision of the Registrar dated 5th January, 2023, as a matter of procedure, had no other choice rather than adhering to the following legal obligations: One; had to issue a thirty (30) days-notice of intention to appeal to the High Court explaining his intention to challenge the decision of the Registrar of Titles, Two; had to appeal to the High Court within three months, equivalent to (90 days) from the date of the decision of the Registrar. That is the law. On this point, I am bold to state that, the applicant ought to have exhausted all remedies available as stipulated by the provision of section 102 (1) and (2) of the Land Registration Act (supra) without rushing direct to this Court seeking refuge under the umbrella of certificate of urgency. In my considered view, acting and / or going contrary to the legal requirements, that is to offend the law and abuse of Court processes. In other words, the applicant crossed the bridge before reached to its end.

As to the question whether the information was given to the effect that the addressees to the notices issued by the Registrar of Titles via P.O. Box 776, Tanga to RANJIT ASHER and SOUD HILAL did belong to the deceased persons, hence were unable to be served with the said notice and the applicant was not served as well, my judicial decision is that, upon examining the contents of paragraph 3 of the applicant's affidavit and the Annexture OSG - 2 attached to the counter affidavit filed by the 5th, 6th, 7th and 8th respondents, it is apparent that this averment is an afterthought and possibly

a statement from the bar. I say so because, it is on record that the applicant and one NASSORO SOUD HILAL were duly appointed as administrators / executors of the Estate of the Late SOUD HILAL. Part XI of the Probate and Administration of Estates Act, [CAP. 352 R.E. 2019] provides for the powers and duties of executors and administrators [See – Sections 99-113). Since the applicant and NASSORO SOUD HILAL were well all informed about their powers and duties by the appointing Court, at this point in time, the applicant cannot raise up and claim that the notices issued by the Registrar of Titles went missing and he was not duly served. In my view, the act done by the applicant to rush before this Court seeking legal redress is a proof that the said notice was duly served to him, as evidenced by a series of events narrated into the affidavit deponed by himself in support of the instant application. Again, the second point of PO is positively answered.

On the fourth point of PO, the Counsel for the 1st, 2nd and 3rd respondents asserts that, this Court is not properly moved for uncertainty of the application and legal redress sought between extension of time to appeal and filing a suit. As it can be gleaned from the chamber summons lodged in this Court under certificate of urgency, the applicant's main prayer is that:

> *"This Honourable Court may be pleased to grant an interim injunction order in the form of Mareva Injunction, restraining the 1st, 2nd, 3rd and 4th respondents, their servants and/or agents or any person acting on their*

behalf from evicting the applicant from his premises pending service of 90 days statutory Notice to the 5th, 6th, 7th and 8th respondents jointly and severally thereof or an appeal against the 7th respondent".

Again, at paragraph 11 of the applicant's affidavit states categorically that:

"That the pending suit if any or appeal to be filed will be filed after the issuance of the statutory 90 days-notice or for an extension thereof which will address all issues and the 5th, 6th, 7th and 8th respondents shall upon being served".

In the light of the above paragraphs, it was Mr. Method contention that, the above paragraphs being the facts constituting the present application, Mareva Injunction cannot be issued pending service of notice. He said, Mareva Injunction is granted by the Court pending expiry of the issued and submitted Notice of intention to sue the Government. I agree. The case of **LEOPARD NET LOGISTICS COMPANY LIMITED VS. TANZANIA COMMERCIAL BANK LIMITED & 3 OTHERS (supra),** cited by Mr. Method is relevant. First of all, the Court observed that, Mareva injunction cannot be applied or granted pending a suit; Secondly, it is an application pending obtaining a legal standing to institute a suit; Thirdly, it may be issued where the applicant cannot institute a law suit because of an existing legal impediment, Fourthly, it must

be in line with the provision of section 6 (2) of the Government Proceedings Act (supra). The fact that, the applicant is urging the Court to grant an interim injunction order in the form of Mareva Injunction, restraining the 1st, 2nd, 3rd, and 4th respondents, their servants and/or agents or any person acting on their behalf from evicting the applicant from his premises pending service of 90 days Statutory Notice to the 5th, 6th, 7th and 8th respondents jointly and severally thereof or an appeal against the 7th respondent, and further that the pending suit if any or appeal to be filed will be filed after the issuance of the statutory 90 days-notice or for an extension thereof which will address all issues and the 5th, 6th, 7th and 8th respondents shall upon being served, is in my opinion, not only against the legal requirements as I have deliberated in details hereinabove when discussing the second point of PO, but also have been misconceived by the Counsel for the applicant.

From the foregoing, it is apparent that the applicant in this application is applying for interim injunction order in the form of Mareva Injunction not pending the expiry of the 90 days' notice to sue the Government which impends the institution of a suit, but pending service of 90 days Statutory Notice to the 5th, 6th, 7th and 8th respondents or to file an appeal against the 7th respondent, and further that the pending suit if any or the appeal which is anticipated to be filed by the applicant, will be filed after the issuance of the Statutory 90 days-Notice or for an extension thereof which will address all issues and the 5th, 6th, 7th, and 8th respondents shall upon being served. In my

view, this is against the provisions of section 6 (2) of the Government Proceedings Act and section 102 (1) and (2) of the Land Registration Act.

For the above reasons, there is no doubt that the present application falls not within the realm of Mareva Injunction, hence cannot be issued if the conditions for grant of injunction are not met as enunciated in the case of **Atilio Vs. Mbowe [1969] HCD 284** (supra).

As for the first point of preliminary objection (PO), Mr. Method, learned advocate for the 1st, 2nd and 3rd respondents claimed that, the applicant has no *locus standi* to pray for the orders sought. Since the point of PO have two limbs, the first limb is founded on the facts that, neither the applicant is the registered owner of the disputed property, nor the immediate former owner of the disputed property, and on the second limb of PO is to the effect that, the alleged estate of the late SOUD HILAL is administered by two natural persons.

In rebuttal, Mr. Waissaka contended that the question whether the applicant lacks *locus Standi* or not, these are matters of facts and needs inquiry and venturing into evidence. He said, the same should be ascertained by proof pursuant to the standard required by law on aversions contained in the contents of paragraphs 3 and 4 of the applicant's affidavit and those aversions contained in the respondents' counter affidavits. He stressed that, these matters have to be considered by the Court during hearing of the main application. According to him, it would be very premature to decide that, the

applicant lacks a right to sue or to bring an action and by so doing it amounts to a denial of the right to be heard.

On the second lame Mr. Waissaka, underlined that there is no law which bars an action in a Court of law, if it is brought by one of the administrators for the interest of the deceased's estate.

I have carefully read and examined the parties' pleadings and the annextures attached thereof. The following are my observations. **First**; there is no dispute that the Title Deed issued by the Government through CT No. 8139 was rectified by the Registrar of Titles (7th respondent) in favour of Her Excellency, the President of the United Republic of Tanzania on 29th September, 2022 as per Annexture OSG-4 of the counter affidavit filed by the 5th, 6th, 7th and 8th respondents, thus from the date of rectification of the Title Deed the applicant was disentitling to his possession of land located at PLOT NO. 1, BLOCK 37 – Ngamiani Area within the Tanga City, as evidenced at paragraph 2 of the applicant's affidavit and Annexure T2 which resembles to paragraph 3 of the counter affidavit lodged by the 5th, 6th, 7th, and 8th respondents and Annexures OSG-1 read together with Annextures OSG-3 and OSG-4 respectively. **Second**; as of now, the records unveils that the immediate former owner of the disputed premises is RANJIT ASHER but the said ownership was perpetrated by fraud. Afterwards, the Title Deed was allocated and registered in the names of STAMBUL OMARY STAMBUL and SALIM OMARY STAMBUL under the certificates of Title No. 130541/29. That

being the position, it is apparent on records that, the applicant, AHMED SUUD HILAL (Suing as an Administrator of Estate of the Late SUUD HILAL) is a person unknown to the list of owners of the allegedly disputed property, as correctly submitted by the learned Counsel for the 1st, 2nd and 3rd respondents the argument which was acceded to by Ms. Agnes Gombe, learned State Attorney for the 5th, 6th, 7th, and 8th respondents. **Third**; As per Annexure T1 of the applicant's affidavit, it is shown that the applicant, AHMED SUUD HILAL and NASSORO SUUD HILAL were appointed by the Primary Court to stand as co-administrators of estate of the late SUUD HILAL. Since it is evident that these two persons were appointed as co-administrators of estate of the deceased, the act done by the applicant to choose not to cooperate with NASSORO SOUD HILAL (His co-administrator), to institute the proceedings against the respondents herein was against the law. As correctly submitted by Mr. Method, this is the spirit of the law relating to co-administration of the estate of the deceased. The decision of the CAT in the case of **MAY MGAYA VS. SALIMU SAID (THE ADMINISTRATOR OF THE ESTATE OF THE LATE SAID SALEHE)** (supra) is relevant on this point of PO.

In the final analysis, I agree with the Counsels for the respondents that, in the circumstance of this case, the applicant has no *locus standi* to sue the respondents and crave for the orders sought by him. This point of PO is also answered in affirmative.

As to the way forward, having found that all points of preliminary objection have been answered in affirmative, this application must crumble on ground of being devoid of merits.

For reasons stated hereinabove, I proceed to sustain all points of preliminary objections raised by the Counsel for the 1st, 2nd and 3rd respondents and conceded by the learned State Attorney for the 5th, 6th, 7th and 8th respondents, save for the 4th respondent who for reasons better known by himself and his learned advocate failed to abide by the Court's scheduled order dated 17th January, 2024. In the event, I proceed to dismiss the application in its entirety for lacking merits. Costs to follow the event.

It is so ordered.

DATED at **TANGA** this 7th day of March, 2024.

M. J. CHABA

JUDGE

7/03/2024

Court:

Ruling delivered under my Hand and the Seal of the Court in Chambers this 7th day of March, 2024 in the presence of Mr. Mafuru Mafuru, Learned Advocate for the Applicant, Mr. Atranus Mkago Method, Learned Advocate for 1st, 2nd, 3rd Respondents also h/b for Mr. Peter Bana, Learned Advocate for the 4th Respondent and Mr. Rashid Mohamed, Learned State Attorney for the 5th, 6th, 7th and 8th Respondents, respectively.

BEDA R. NYAKI

DEPUTY REGISTRAR

7/03/2024

Court:

Rights of the parties to appeal to the Court of Appeal of Tanzania fully explained.

BEDA R. NYAKI

DEPUTY REGISTRAR

7/03/2024