

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

**MISC.COMMERCIAL CAUSE NO.5 OF 2020**  
(Originating from Commercial Case No.5 of 2020)

**WELLWORTH HOTELS AND LODGES LTD .....APPLICANT**

**Versus**

**EAST AFRICA CANVANS COMPANY LTD.....1<sup>st</sup> RESPONDENT**  
**STIRLING ARVING HORSELY.....2<sup>nd</sup> RESPONDENT**  
**ROBERT JAMES FLOWERS.....3<sup>rd</sup> RESPONDENT**  
**GARY MCINTYRE.....4<sup>th</sup> RESPONDENT**  
**ECO-STEEL AFRICA LTD.....5<sup>th</sup> RESPONDENT**

*Last Order, 20/08/2020.*

*Ruling, 22/09/2020.*

**RULING**

**NANGELA, J.:**

This ruling arises from preliminary objection filed the learned counsel for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in an application brought under Section 68 (b), Section 95 and Order XXXVI rule 6 (1) (a), rule 6 (2), (3) and rule 7 (1) of the Civil Procedure Code, Cap.33, [R.E.2002] (as amended by Government Notice No. 381 of 2019), together with any other enabling provision of the law. The application itself is linked to a **Commercial case No. 5 of 2020** which is still pending in this Court.

The application from which this ruling of the Court arises, was been filed under a certificate of utmost urgency by way of Chamber Summons, as usual,

supported by an affidavit of one, Zulfikar Ismail, a principal officer of the Applicant.

The grounds of its urgency, as disclosed by the Applicant in the certificate filed in this Court, were that, the Applicant is seeking for *ex-parte* Orders of this Court for maintenance of the *status quo* against the Respondents, because, the Respondents, who are non-Tanzanian residents, intend to dispose their assets and close their business. If that is to happen, it will be prejudicial to the main suit, **Commercial Case No.5 of 2020**, filed by the Applicant in this Court, and will cause the Applicant to suffer irreparable loss.

On 23<sup>rd</sup> January 2020, this Court granted an *ex-parte* interim order to the Applicant, following oral submissions made by the learned counsel for the Applicant, Mr. Yassin Maka. Subsequently, the application was fixed for orders on 20<sup>th</sup> March 2020. On the material date, the parties' representation was as follows: MS Janeth Lema, learned advocate appeared for the Applicant while Mr. Mutongore and Mr. Alfred, Advocates, appeared for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and Mr. Urassa appeared for the 4<sup>th</sup> Respondent, also holding the briefs of Mr. Makundi, for the 5<sup>th</sup> Respondent. The learned counsels for the Respondents applied orally for time to file their counter affidavits and they were given up to 27<sup>th</sup> March 2020 to file the respective counter affidavits. The Applicant was supposed to file its reply to the counter affidavits of the Respondents on or before 2<sup>nd</sup> April 2020.

Due to the outbreak of Covid-19, the matter could not proceed as fast as it was expected and it was fixed for mention on 4<sup>th</sup> June 2020. On the material date, Mr. Maka appeared for the Applicant while Mr. Mutongore and Mr. Alfred appeared for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and Mr. Urassa appeared for the 4<sup>th</sup> Respondent, also holding the briefs of Mr. Makundi, for the 5<sup>th</sup> Respondent. It was apparent to the Court, however, that, although all the pleadings were

complete, the all Respondents had raised a number of preliminary objections against the application. Besides, the Applicant raised a preliminary objection as well against the counter affidavits filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

In view of the multiple preliminary objections, on 10<sup>th</sup> June 2020 I summoned the learned counsel for the parties to chart the way forward. On the material date, the learned advocate for the Applicant was absent but the advocates for the Respondents appeared and addressed the court. In his brief submission, Mr. Mutongore submitted that, based on the available authorities, both of this Court and the Court of Appeal, once a Preliminary Objection has been raised, the other party cannot, at the same time, raise a preliminary objection. Instead, he should wait until the first PO is determined. He argued that, since the Objection filed by the Applicant came late, it should wait until when this Court determines the POs raised by the Respondents.

For his part, Mr. Urassa, who was also holding the briefs of Mr. Makundi, for the 5<sup>th</sup> Respondent, was supportive of the views of Mr. Mutongore. He invited the Court to be guided by the decision of the Court in the case of **Method Kimomongoro v Board of Trustees of TANAPA, Civ. Application NO. 1/2005 (CAT) (Unreported)** in which the position proposed by his colleague was stated. I set the ruling to be issued on 20<sup>th</sup> August 2020 but for some reasons it was fixed for delivery on 22<sup>nd</sup> September 2020. The only issue I am called to decide is whether I should take on board the Respondents' preliminary objections and the Applicant's preliminary objection together in the course of hearing the matter.

In the course of hearing the brief submissions from the parties, I was invited to consider the decisions made by this Court as well as the Court of Appeal. In the case of **Mugeta Torokoko and Ernest Mkuli Kusoya v Ministry of Lands, Housing and Human Settlement and 2Others, Civil**

**Case No. 12 of 2019**, this Court (Kahyoza, J), citing the **Kimomongoro's case** (supra) rejected a prayer to amend the pleadings (Plaint) after a PO had been raised by the Defendant in the Written Statement of Defence. The learned judge held that, the prayer was aimed at defeating or pre-empting the PO. He thus cited, among other cases, the case of **Method Kimomongoro v Board of Trustees of TANAPA** (supra).

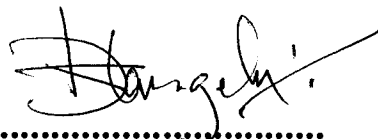
**In the case of Method Kimomongoro v Board of Trustees of TANAPA** (supra), the Court of Appeal of Tanzania stated as follows:

"This Court has said in a number of times that it will not tolerate the practice of an advocate trying to pre-empt a preliminary objection either by raising another preliminary objection or trying to rectify the error complained of".

In principle, therefore, it is no appropriate to pre-empt one preliminary objection by a preliminary objection. In view of the above position, the best course to take is to allow the earlier filed preliminary objection to be determined and if it fails to carry the day, then the Court will afterwards consider the next filed preliminary objection.

In the upshot, the preliminary objection filed by the Applicant will be put on hold until the earlier preliminary objection filed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and those filed by the learned counsel for the 4<sup>th</sup> and 5<sup>th</sup> Respondents are heard and determined. The matter shall, therefore, proceed on that basis.

**It is so ordered.**

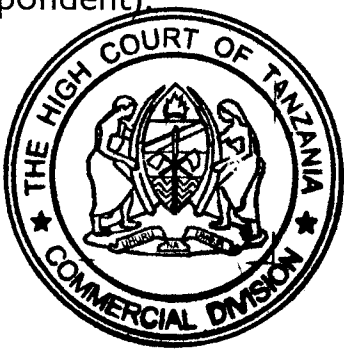


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**DEO JOHN NANGELA**  
**JUDGE,**

**High Court of the United Republic of Tanzania**  
**(Commercial Division)**

**22 / 09 / 2020**

Ruling delivered on this 22<sup>nd</sup> day of September 2020, in the presence of Mr. Yassin Maka and Ms Thabita Maina, Advocates for the Applicant, and Mr. Said Nassoro and Mr. Steven Urassa, Advocates, appearing for the Respondents (Mr. Urassa Advocate held the briefs of Mr. Makundi, Advocate for the 5<sup>th</sup> Respondent)



A handwritten signature in black ink, appearing to read "Deo John Nangela". The signature is written in a cursive style and is positioned above a horizontal dotted line.

**DEO JOHN NANGELA  
JUDGE,**

**High Court of the United Republic of Tanzania  
(Commercial Division)  
22/ 09 /2020**