IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 290 OF 2023

(Arising from Land Case No. 127 of 2023)

HAMISI OMARY MPUTO T/A SAWASAWA STORE ..... APPLICANT

VERSUS

EQUITY BANK TANZANIA LTD ..... 1ST RESPONDENT

MBUZAX AUCTIONAL MART

& COMPANY LIMITED ..... 2ND RESPONDENT

Date of Last Order: 06/09/2023

Date of Ruling: 20/09/2023

RULING

I. ARUFANI, J

The applicant in the instant application is seeking for an order of temporary injunction and he has made the application under Order XXXVII Rule 1 (a), Sections 3A (1 & 2), 3B (1) and 95 of the Civil Procedure Code Cap 33 [R.E 2019]. The applicant is seeking for an order to restrain the respondents, their agents, employees, assignees, contractors, clients, or any person individual or corporate so related to them in anyway whatsoever from selling, disposing, marketing or advertising for sale or dealing with the landed property on Plot No. 375 Block "L" Mbagala area (herein after referred as a suit property) until the hearing and full determination of the Land Case No. 127 of 2023 pending in this court.

The application is supported by an affidavit affirmed by the applicant, and is opposed by a counter affidavit sworn by Dorothea Lutta, Principal Officer of the 1st respondent and the counter affidavit sworn by Michael Joseph Mbuza, Principal Officer of the second respondent. While the applicant was represented in the matter by Mr. George Kawemba Mwiga, learned advocate, the respondents were represented by Ms. Casta Lufungilo, learned advocate. By consent of the counsel for the parties the application was argued by way of written submissions.

In support of the application the counsel for the applicant submitted that the land mark case which provides for criteria for granting an order of temporary injunction is the case of **Atilio V. Mbowe,** (1969) HCD no. 284 which set out three conditions for temporary injunction to be granted. He stated the first condition laid in the cited case states that, there must be serious question to be tried on the facts alleged, and probability that the plaintiff will be entitled to the reliefs sought.

He argued that, as reflected in paragraphs 9, 10, 11, 12 and 13 of the affidavits supporting the application as well as in paragraphs 16 - 19 of the plaint there is a deliberate non-compliance to procedures set by the Land Regulations GN No. 71 of 2001 which are specifically set in Land Form No. 51. He argued that, the procedures set in the cited Land Form No. 51 are mandatory requirements to be complied with and there is

nowhere the law says they may legally be ignored. He stated that, failure to observe the stated required procedures renders the entire recovery process adopted by the respondents a nullity.

He submitted the default notice do not give mortgagee an automatic right to dispose of the mortgaged property. He stated it simply means to alert the mortgagor that in case he does not settle the outstanding balance procedure for recovery will be taken. He stated that, jumping directly into selling the mortgaged property without complying with the required legal procedures is illegal as it will pre-empty the mortgagor from exercising any available remedies to settle the debt. He submitted that, as the respondents failed to observe the procedures set in the cited law the respondents are required to go back and observe the stated legal procedures.

He argued that, in order to arrive at the conclusion that there is non-compliance of the recovery measure procedures the court must hear the parties as the alleged non-compliance of the stated procedures is the core of the applicant's contention and cause of the applicant to desist to settle the debt at once. He argued the stated contention create a knot that cannot be untied if temporary injunction is not granted, and hence it constitutes a triable issue which need to be determined by the court.

He stated the second condition for granting the order of temporary injunction states that, it must be established the court interference is necessary to protect the applicant from the kind of injury which may be irrepealable before his legal rights are established. In proving existence of the stated condition, he referred the court to paragraph 13 of the affidavit which is reiterated in detail in paragraph 21 of the reply to the counter affidavit and what is averred in paragraphs 16 and 18 of the plaint.

He argued that, as deposed at paragraph 4 (i) of his reply to the counter affidavit of the first respondent the outstanding balance in total is Tshs. 1,570,000,000/= and as appearing in annexure Mputo 5, the intention of the respondents is to sell the suit property. He went on arguing that, the market value of the suit property as per annexure 9 is Tsh 2,256,000,000/= but the 1st respondent instructed the 2nd respondent to sell the suit property at a reserved price of 2,000,000,000 as reflected in annexure Mputo 5 which is below the market value and there is likelihood of going down if no one bid to offer the stated price in the first auction.

He submitted that is a detrimental measure to the applicant as the stated measure are being taken without affording the applicant an opportunity of exercising his right of first refusal which would have

assisted him to settle the debt without affecting his business. He argued that, as stated in paragraphs 5, 6, 7 and 8 of the affidavit and in paragraphs 3, 4, 6 and 7 of the reply to the first respondent's counter affidavit, the recovery measures taken by the first respondent were premeditated ever since and therefore non-compliance to the procedures in taking recovery measures as set out in the above cited law was deliberate attempt to deprive the applicant of his interest in the suit property.

He stated to have come to the said view after seeing the facility was secured by two other mortgages apart from the suit property and added the first respondent's intention is to dispose of all the three mortgaged properties notwithstanding the fact that the suit property alone is capable of settling the entire debt if the proper procedures are followed and observed in disposing of the same. He submitted that, selling the suit property bellow its market value has the effect of extending recovery measures to the other two mortgaged properties which has always being the intention of the first respondent.

He argued that, if the order of temporary injunction will not be granted the court will deny itself of an opportunity to cure the anomalies apparent in the step taken by the respondents and it will automatically bless, legalize and sanctify the respondents' misconduct and their evil

intention towards the applicant. He submitted that will result into grave loss to the applicant as it will totally distort business stability, bring it to a halt and gradually kill it which is irreparable loss in any given circumstances. He argued the above stated reasons shows the second condition for moving the court to grant the order of temporary injunction has been established to the required standard.

As for the last condition of balance of convenient he submits that, the applicant is required to establish there will be greater hardship and mischief to be suffered by him from withholding of the injunction than will be suffered by the respondent from granting of the same. He submitted paragraphs 9 and 13 of the affidavit and paragraph 13 of the plaint shows the applicant will suffer more inconvenience than the respondent if the order of temporary injunction will not be granted. He added that, the respondents stand to suffer nothing or less at all if injunction is granted. He stated the loss the applicant will suffer includes loss of his business and the court will not have a chance to compel the respondents to observe such sound business practices if temporary injunction is not granted.

He finalised his submission by arguing that, his submission suffices to say the court is justified to grant temporary injunction the applicant is looking from the court. He invited the court to read the case of **Sigori Investment (T) Limited & Another V. Equity Bank Tanzania**

Limited & Another Misc. Land Application No.56 of 2019, HC at DSM (unreported) where the court considered the conditions laid in the case of **Attilio V. Mbowe** (supra) and find the grounds which are similar to the grounds stated in the present application justified grant of temporary injunction. At the end he prayed the court to grant the order of temporary injunction the applicant is seeking from the court.

On the other hand, the counsel for the respondent submitted that, the applicant has failed to give this court sufficient materials to enable the court to grant the injunctive order is seeking from the court. He submitted that, granting or refusing temporary injunction is a matter of court discretion which must be exercised judiciously and for the court to exercise its discretion judiciously the applicant must give material facts upon which such discretion can be exercised.

He cited in his submission the case of **Charles D. Msumaru & 83 Others V. The Director of Harbours Authority,** Civil Appeal No.18 of 1997 cited in the case of **Lukolo Company Limited V. Bank of Africa** (Misc. Civil Application No 494 of 2020(unreported) where it was stated inter alia that court cannot grant injunction simply because it thinks it is convenient to do so. Convenience is not our business. Our business is doing justice to the parties. It was stated the court exercises the stated discretion sparingly and only to protect rights or prevent injury according

to the stated principles. He joined hand with the counsel for the applicant in respect of the three principles governing the granting of temporary injunction laid in the famous case of **Atilio V Mbowe** (1969) HCD 284.

He argued the stated three conditions must not exist in isolation. He stated they must all exist conjunctively for the court to grant the sought injunctive order. He referred the court to the case of **Christopher P. Chale V. Commercial Bank of Africa**, Misc. Civil Application No. 635 of 2017 where it was stated the conditions set out for granting temporary injunction must all be met and meeting of one or two will not be sufficient for the purpose of the court to exercise its discretionary power to grant an injunctive order.

He argued in relation to the condition of triable issue that, the applicant is not disputing in his affidavit or submission from being in debt with the first respondent. He stated the applicant admits to have borrowed the money from the first respondent which he later on defaulted to repay hence contravening the terms and conditions of the credit facility letter and the mortgage deed. He stated the applicant admitted in clear terms in paragraphs 3. 7 and 9 of his affidavit and in the whole submission that he defaulted to repay the loan and he was served with sixty days' notice of default to repay the facility by the first respondent.

He referred the court to the case of **Victoria Water Company Limited & Another V. Equity Bank Tanzania Limited & Another,** Misc. Civil Application No.635 of 2018, HC at DSM (unreported) where it was stated that, injunction cannot be granted as a weapon to protect the party who is in breach of the contract as against the lender. It was stated that, if injunction will be granted to the applicant, while the respondent is exercising its right vested on the contractual relationship entered between the parties, that order will be interference of freedom of contract.

He argued the triable issue argued by the applicant is only one that the first respondent did not comply with the procedures set out under the Land Regulations, GN No. 1971 of 2001 as set out in Land Form No. 51. He submitted the counsel for the applicant is trying to introduce a new recovery jurisprudence which is calculated to mislead the court. He stated Land Form No. 51 is a 45 days' notice which is required to be issued to the borrower, Commissioner for Lands, spouse, occupiers, lessee, co-occupier and other lenders when the borrower is at default and at the time when the lender wants to sell the property which is subject to the supervisory power of the commissioner for lands.

He argued the stated Land Form No. 51 refers to section 131 of the Land Act and according to subsection (4) of the referred provision of the law it applies only to the dispositions which are subject to provisions of

section 38 of the Land Act. He argued the cited section 38 of the Land Act provides for supervisory powers of the Commissioner for Lands during disposition of the land. He argued the power includes giving notice once the owner of the land disposing of the land is seeking for the Commissioner's approval at the time of the disposition of the land.

He argued that, although mortgage is one form of disposition but the law only requires the mortgagor to notify the Commissioner for Lands on creation of Mortgage. He stated the only duty of the mortgagee is to issue 60 days' notice of default to the Mortgagor under section 127 of the Land Act and after expiration of the same the mortgagee has the right to dispose of the mortgaged land. He submitted all the requirements stated hereinabove were observed by the first respondent as per annexure EB-4 in the first respondent's counter affidavit. He submitted Land Form No. 51 is not applicable where the mortgage exercises his powers under the mortgage deed.

He argued that, it is true as argued by the counsel for the applicant that notice of default does not confer automatic right to the mortgagee to dispose of the mortgaged property as the mortgagee is required to go further and advertise the intended auction after expiration of the notice period. He submitted the stated legal requirements have been observed by the first respondent as stated at paragraph 4 (ix) and annexure EB-6

to the first respondent's counter affidavit. He submitted the allegation that the first respondent is going to dispose of the suit directly is a mere lie because after expiration of the 60 days' notice the first respondent published the auction notice as required by the law. He submitted that shows there is no triable issue because what the counsel for the applicant tries to introduce as triable issue is not a requirement of the law when the mortgagee wants to recover the outstanding loan.

He supported his submission with the case of **Paul Mtatifikolo & Two Others V. CRDB Bank Ltd & Three Others**, Land Case No. 89 of 2005, HC at DSM (unreported) where it was stated it is very improper for borrower to dictate terms of their contract when the obligation to repay the credit facility is still hanging on his head and it is only proper for the courts to discourage that trend by protecting the lenders. He submitted the applicant's submission that the first respondent violated GN No. 71 of 2001 and Land Form No. 51 cannot serve anything because it is not a requirement of the law. He submitted further that, as the applicant admits to have mortgaged his property for the loan taken and the loan has not been repaid and he was served with the required notices there is no triable issue to warrant this court to grant the sought order of temporary injunction.

He argued in relation to the condition of irreparable loss to be suffered by the applicant if the order of temporary injunction will not be granted that, the facts before this court does not show any irreparable injury which the applicant will suffer for which damages are not sufficient as a remedy. He stated the case at hand involves a bank-customer relationship and where there is a breach by the borrower, then the only remedy available to the first respondent is the very security for which the loan repayment was secured.

He stated the applicant stated at paragraph 13 of his affidavit and it is stated at the third page of his submission that he will suffer irreparable loss because the suit property will be sold below the market value and has the effect of extending recovery measures to the other two mortgaged properties. He stated most of what is stated by the applicant under this part is speculation and stated in other word the applicant has failed to establish how if the order of temporary injunction will not be issued, he will suffer loss which is irreparable.

He submitted that, the forced sale value of the suit property as per page 16 of the valuation report annexed in the affidavit as Mputo-9 is TZS 1,692,000,000/= while the outstanding debt is TZS. 1,570,000,000/=. He argued the difference between the two figures is TZS 122,000,000/= and the interest and penalties accrues on daily basis which shows very soon

the stated balance will be suppressed by the stated interests and penalties. He referred the court to the case of **Mohamed Iqbal Haji & Three Others V. Zedem Investment & Two others,** Misc. Land Application No. 05 of 2020 where the similar circumstances were at stake and the court found the applicant had not managed to establish, he would have suffered irreparable injury which cannot be atoned in damages if injunction is not granted.

He contended that, no loss will be suffered by the applicant because there is no breach of the terms and conditions of the loan agreement committed by the first respondent. He argued all what the first respondent is doing is lawful act arising from the contractual agreement they entered with the applicant. He cited in his submission the case of **Stracom Consumer Healthcare Ltd & Another V. Diamond Trust Bank (DTB) & Three Others,** Misc. Land Application No. 08 of 2023, HC at Morogoro (unreported) where it was stated a person coming to equity for relief must come with clean hands.

He argued the interest of the first respondent must also be taken into account. He stated the first respondent will suffer irreparable loss if the order of temporary injunction will be granted as the first respondent being a financial institution will go bankrupt and the lending business will collapse. He argued in case the applicant will succeed in the main suit,

the first respondent being a financial institution shall be in a position to adequately compensate the applicant for the damages he will suffer as may be ordered by the court. He referred the court to the case of **Paul Mtatifikolo** (supra) where it was stated the respondent being financial institution was in a position to pay any amount of damage in event of the plaintiff winning the action.

He went on arguing that, the money advanced to the borrower does not belong to the first respondent but it is a bank customers' money rotating in banking business. He argued the stated money is required to be timely paid back for others to borrow and enable the first respondent to continue to exist in the banking business. He referred the court to the case of **General Tyre East Africa Ltd V. HSBC Bank PLC**, [2006] TLR 60 where the court stated that, the law is that banks/lenders and their customers/borrowers must fulfil and enforce their respective contractual obligations under the various lending/securities agreements entered into by the parties.

With regards to the condition of balance of inconvenience the counsel for the respondent stated that, the applicant does not dispute that he defaulted to repay the outstanding balance of TZS 1,492,799,691.59 as of 6th February 2023 as stated in the sixty days' notice of default which is annexure EB-4 in the counter affidavit of the first respondent. He argued

the applicant cannot be protected by the order of temporary injunction because the amount owed affects the respondent's lending capacity and so it is the first respondent stand to suffer more hardship if the order of temporary injunction is granted.

He argued the applicant stated at paragraphs 9 and 13 of the affidavit and in the submission supporting the application that, after the applicant being served with the sixty days' notice of default, he opted to exercise his right of refusal and requested for ninety days to dispose of the suit property himself but the first respondent refused the request. He referred the court to the case of **Fatuma Mohamed Salum & Another V. Lugano Angitile Mwakyosi Jengela & Three others**, Misc. Land Application No. 90 of 2015, HC Land Div. at DSM (unreported) where it was stated that, court cannot grant injunction simply because they think it is convenient to do so. He stated convenience is not the business of the court but business of the court is to do justice to the parties.

He submitted the applicant has failed to meet the test established in the case of **Attilio V. Mbowe** (supra) for an order of temporary injunction to be granted. He also cited in his submission the case of **Tambuli Group V. NMB Bank Plc**, Misc. Civil Application No. 143 of 2022 where the court stated that, an order of temporary injunction is

granted upon meeting the threshold established by the case law. At the end he prayed the application be dismissed with costs.

In his rejoinder, the counsel for the applicant reiterated what he argued in his submission in chief that a 60 days default notice is not a leeway of a mortgagee to dispose of the mortgaged property. He stated the law has put forward some other requirements which must be met before the mortgagee exercises his rights under the mortgage instrument. He argued that, the issue of Form No. 51 the counsel for the respondents misinterpreted the said law. He stated that the mentioned form provides clearly in the description clause about its purpose and who should fill it and where should it be served upon.

He stated that, contrary to what is provided under the mentioned form, annexure Mputo-5 was not meant to be served upon the applicant nor the people listed in the said form while the first respondent is aware that the mortgage created on the suit property was registered, as such the Commissioner for Lands must be informed of anything to befall the suit property. As for the issue of irreparable loss he submitted that, the allegation of the first respondent that it is a financial institution and capable of compensating the applicant is misconception. He reiterated his submission in chief that, by advertising sell of the suit property at the price of TZS. 2,000,000,000/= as a reserved price, it is obvious that the

suit property will be disposed of at a forced value thereby rendering it incapable of settling the outstanding balance.

As for the last condition of balance of convenience he submitted that, the reply by the counsel for the respondents is baseless for the reason that the applicant has never denied indebtedness. He stated what has been in controversy is malpractice done by the first respondent in the process led to invocation of the recovery measure which for all purpose presupposed ill intent by the first respondent. He stated it is obvious that any attempt to deny grant of an order of temporary injunction means a perpetual inconvenience to the applicant. He urged the court to be persuaded by the above stated reasons to grant the application.

Having carefully considered the submissions made by the counsel for the parties and after going through the documents filed in this application and in the main suit the court has found the issue to determine in this application is whether the order of temporary injunction sought from this court by the applicant deserve to be granted. The court has found as rightly argued by the counsel for the parties, the conditions governing determination of an application for an order of temporary injunction in our jurisdiction were laid down in the famous case of **Atilio V. Mbowe** cited by the counsel for the parties. The conditions laid in the above cited case are as follows:

(1) *"There must be serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed.*

(2) *That the court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established, and*

(3) *That on the balance of convenience there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it."*

Starting with the first condition of serious question to be tried which sometimes is referred as a prima facie case, the court has found the position of the law as stated in numerous cases is that, the court is not required to examine the material facts before it closely and come to a conclusion that the plaintiff will win the case. The court is required to be satisfied there is a probability that the applicant will be entitled to the reliefs prayed in the suit. To consider the applicant will win the case is to prejudge the case before hearing it on merit.

The foregoing stated position of the law was made clear in the case of the **CPC International Inc V. Zainabu Grain Millers Ltd**, Civil Appeal No. 49 of 1999, (unreported) where it was stated that, it will be premature to dwell in determining the applicant will win the main suit or will obtain a decree at this stage as the parties have not adduced any

evidence to prove or disprove the reliefs the applicant is praying in the suit pending before the court. The same position of the law can be seeing in **Sarkar on Code of Civil Procedure**, 10th Edition, Vol. 2 at p 2011 where it was stated that, in deciding application for interim injunction, the court is required to see there is a prima facie case, and not to record finding on the main controversy involved in the suit which amount to prejudging issue in the main suit.

While being guided by the position of the law stated in the above cited case and commentary the court has found in determine if there is a prima facie or serious question requiring to be determined by the court, the court is required to use the facts as disclosed in the plaint and in the affidavit. That being what the court is required to take into consideration, it has found the applicant stated at paragraphs 9, 10, 11,12 and 13 of the affidavits supporting application and paragraph 13 to 19 of the plaint that the triable issue in the suit he has filed in the court is about deliberate failure of the respondents to comply with the procedure of issuing to the applicant Land Form No. 51 provided in the Land Regulation GN No. 71 of 2001 before going to the last stage of advertising to auction the mortgaged property.

The court has found the counsel for the respondents argued the stated Land Form No. 51 of the GN No. 71 of 2001 is a 45 days' notice

issued to the borrower, commissioner for land, spouse, occupiers and other lenders when the borrower is in default and at the same time the lender wants to sell the property which is subject to supervisory power of the Commissioner for Land. The counsel for the respondent argued the requirement provided in the cited form is not applicable in the applicant's suit and stated the counsel for the applicant is trying to introduce a new recovery jurisprudence which is calculated to mislead the court.

The court has gone through the stated Land Form No. 51 provided under GN No. 71 of 2001 which the counsel for the applicant has submitted was not served to the applicant before the respondents going to the stage of advertising to sale the applicant's mortgaged property. The court has found as rightly argued by the counsel for the respondent the stated form was made under section 131 of the Land Act, Cap 113 which according to the current revised edition of the law is dealing with withdrawal of mortgagee from possession of the mortgaged property and it is not dealing with issuance of notice by the mortgagee to the mortgagor for exercise his remedies after default of repayment of the loan.

The court has found as rightly argued by the counsel for the respondent the provision governing issuance of notice by the mortgagee to the Mortgagor to exercise his remedies after default of repayment of the loan is section 127 of the Land Act, Cap 113. However, the question

as to whether the applicant was entitled to be served with the stated Land Form No. 51 provided under GN No. 2001 or not is the major issue alleged in the main suit. As stated in the case of **Abdi Ally Salehe V. Asac Care Unit Limited & Two Others**, Civil Revision No. 3 of 2012, CAT at DSM (unreported) the stated major issue should not be prejudged in the application for temporary injunction. In other word it is an issue which is supposed to be determined in the main suit after hearing the parties.

The foregoing finding made the court to come to the view that there is a serious issue or prima facie case which need to be considered and determined in the main suit between the parties. The court is required to determine whether the respondents were required to comply with the requirements alleged are prescribed under GN No. 71 of 2001 by serving Land Form No. 51 to the applicant and if the answer is in affirmative whether the stated requirement was complied with by the respondent.

The court has found although it is true as argued by the counsel for the respondent that the counsel for the applicant centred his argument on the non-compliance of the requirement provided in the GN No. 71 of 2001 but there is another issue raised in the affidavit supporting the application. The court has found it is deposed at paragraphs 4 to 7 of the affidavit and averred at paragraphs 8, 9 and 10 of the plaint that payment

of the loan was frustrated by the first defendant for failure to honour the terms and condition of the bank guarantee.

After considering the stated deposition and averments the court has found there are issues need to be considered and determined by the court after receiving evidence from the parties in the main suit. They are not issues which can be determined at this stage of the matter and conclude that there is no triable issue need to be determined in the main suit. In the premises the court has found the applicant has managed to satisfy the first condition that there is a prima facie case between the parties in the main suit which deserve to be considered and determined by the court after receiving the evidence from the parties.

Coming to the second condition of irreparable loss the court has found it is a settled position of law that court is required to consider whether there is a need to protect either of the parties from the species of injuries known as irreparable injury before right of the parties can be established. It was also stated in the book of **Sohoni's Law** of Injunction, Second Edition, 2003 at page 93 that, as the injunction is granted during the pendency of the suit the court will interfere to protect the plaintiff from injuries which are irreparable. The expression "irreparable injury" means that, it must be material one which cannot adequately be remedied by way of payment of compensation.

Under guidance of the foregoing stated position of the law the court has found there is no dispute that the applicant entered into a loan agreement with the 1st respondent which its outstanding unpaid balance is TZS 1,570,000,000/= and the loan was secured with the disputed property described as Plot No.375 Block L Mbagala area, Dar es Salaam (the suit property). The counsel for the applicant has argued in his submission that, the intention of the respondents is only to dispose of the suit property by selling it rather than to sort out measures which will enable the applicant to settle the outstanding balance.

He submitted that, although the outstanding balance of the unpaid loan is TZS 1,570,000,000/= and the value of the suit property is TZS 2,256,000,000/= but the applicant has instructed the 2nd respondent to sell the suit property at a reserved price of TZS 2,000,000,000/= which is below the market value of the suit property. He argued further that, selling of the suit property below the market value has the effect of extending recovery measures to other securities of the loan while the suit property is enough to settle the outstanding loan.

On the other hand, the counsel for the respondents argued that the allegation that the suit property will be sold below the market value is just a speculation. The counsel for the respondent argued that, even if it will be sold at the value of the property the difference is only 122,000,000/=.

He stated the applicant also owes the bank the interest and penalties which accrues on daily bases which shows the debt is continuing to escalate.

After going through the arguments made to the court by the counsel for the parties the court has found it is not in dispute that the suit property has been advertised for sale at a reserved price of TZS 2,000,000,000/= (see annexure Mputo 9) while the value of the suit property is 2,256,000,000/=. If the suit property will be sold at the stated reserved price it will definitely lead to recovery measure to be taken to the other mortgaged properties. This court has found that, the issue of taking recovery measure to other properties of the applicant while the suit property is enough to settle the outstanding debt is showing the applicant will suffer irreparable loss if the order of temporary injunction will not be granted.

The court has arrived to the stated finding after seeing that, as argued by the counsel for the applicant if the suit property will be sold it will result into grave loss to the applicant as it will totally distort the applicant's business stability, it will bring it to a halt and gradually kill it which is irreparable loss. The court has considered the argument by the counsel for the respondent that if the order of temporary injunction will not be granted it will cause the first respondent who is a financial

institution to go bankrupt and the lending business will collapse but with due respect the court has failed to agree with his argument.

The court has come to the stated finding after seeing what is being sought in the present application is just an order of temporary injunction to restrain sale of the suit property pending hearing and determination of the suit filed in the court by the applicant. The court is not called upon to decide the outstanding debt is supposed to be paid or not as that will be determined after hearing the parties in the main suit.

Although the court is in agreement with the counsel for the respondents that bank loans is required to be repaid timely for other people to borrower and enable the bank to continue to exist in the banking business but where there is a dispute in relation to the repayment of the loan, the stated dispute must first be resolved before indulging into remedies of recovery of the loan. In the premises the court has found the applicant has managed to establish the second condition for granting an order of temporary injunction is seeking from this court.

As for the third condition for granting an order of temporary injunction which is balance of convenience, the court has found the question to determine here is who is going to suffer greater hardship and mischief if the order of temporary injunction will be granted or withheld. After considering all what is deposed in the affidavit supporting the

application and in the counter affidavit together with what is stated in the pleadings filed in the Land Case No. 127 of 2023 the court has found the applicant is the one stand to be more inconvenienced than the respondent if the order of temporary injunction will not be granted.

The court has come to the stated finding after seeing that, as the subject matter of the suit touches the business of the applicant, if the order of temporary injunction will not be granted and the applicant's property is sold and the applicant is evicted from the suit premises before his right in the main suit is determined by the court it will cause not only to lose the suit property but also his business will collapse. To the view of this court the stated situation will cause more inconvenience to the applicant than the respondents who will be free to proceed with the recovery measure if the applicant's claim will not succeed.

From the foregoing stated reasons, the court has found all the three conditions set for considering to grant or refuse to grant an order of temporary injunction laid in the case of **Atilio V. Mbowe** (supra) have been established in the application at hand. Consequently, the application is granted and the applicant is granted the order of temporary injunction to restrain the respondent, their assignee, employees, agents or associates from evicting the applicant from the suit property known as Plot No. 375 Block 'L' Mbagala area in Dar es Salaam pending hearing and

determination of Land Case No. 127 of 2023. Costs of the application to be within the main suit. It is so ordered.

Dated at Dar es Salaam this 20th day of September, 2023.

I. Arufani
JUDGE
20/09/2023

Court: Ruling delivered today 20th day of September, 2023 in the presence of Ms. George Mwiga, learned advocate for the applicant and in the absence of the respondents. Right of appeal to the Court of Appeal is fully explained.

I. Arufani
JUDGE
20/09/2023