

TANZANIA / JUDGMENT

ARUSHA CITY SCHOOL LTD

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5 November 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA [ARUSHA SUB REGISTRY] AT
ARUSHA MISC. CIVIL APPLICATION NO. 6082 OF 2024 (Arising from Civil Case No. 6004 of 2024)
BETWEEN ARUSHA CITY SCHOOL LIMITED..... APPLICANT VERSUS
EQUITY BANK (TANZANIA) LIMITED..... 1st RESPONDENT DEV RECOVERY
LIMITED..... 2nd RESPONDENT

RULING

05/11/2024 & 29/11/2024 MWENDA, J.: Under the services of the learned counsel Mr. BENSON MHANGO from Sturdy & Gourd Attorneys the applicant herein above has moved this court under Order XXXVII Rule 1 (a) and (b) and 2 together with Section 68 (c) & (e) and Section 95 of the Civil Procedure Code, Cap 33 R.E 2019 to issue an interim order to maintain status quo by restraining the 1st and 2nd respondents, their agents, servants, assignees, employees, contributories, assistants, or any other person acting on their behalves, jointly or severally from interfering with the Applicant's property, Plot No. 167, Certificate of 1 | Page Title No. 370000, Land Office No. 312992 pending hearing and determination of Civil Case No. 6004 of 2024. This application is supported by an Affidavit sworn by Mr. Daniel Josiah Amani, the applicant's Principal Officer, while the 1st respondent's Counter Affidavit is sworn Mr. Erick Gerald Akyoo, also the 1st Respondent's Principal officer who admitted and contested to some of the contents of the applicant's averments. On her part, the 2nd respondent also filed a counter affidavit affirmed by Ahmed Said El-Maamry, the 2nd respondent's Principal officer. Before the court, the applicant was represented by Mr. BENSON MHANGO, learned counsel whereas the 1st and 2nd respondents enjoyed the legal services from Mr. HAMIDU MUSHI, Learned counsel. By the agreement of the parties, the court ordered this application to be disposed by way of written submissions. In the cause, the learned counsel for the applicant complied to the scheduling order dated 5th day of November 2024 whilst the learned counsel for the respondents, for reasons best known to him, did not file his reply. Submitting in support of this application, the learned counsel for the applicant prayed the court to grant the orders prayed based on three 2 | Page reasons; One, that there is a serious issue triable by this court on the alleged facts and there is a probability that the applicant will be entitled to the relief prayed as the 1st respondent breached the loan agreement between the parties for his intention to auction the property which was put forth as security despite while the loan tenure has not yet expired. Two, that if this application is not granted the applicant will suffer irreparable loss which may not be able to be recovered by

way of damages as the property is question is a central to the applicant's business providing education services and if sold, it will disrupt operation causing immediate loss of education facilities and halt its services to students, thereby causing damage to the institution's reputation and stability. Three, that on the balance of convenience, if this application is not granted the applicant is in a greater risk to suffer more than the respondent. Having submitted as such, the learned counsel opined that if the status quo will not be maintained and the suit property be sold, the applicant's claim in the main Case No. 6004/2024 will be rendered nugatory. In conclusions he prayed for this application to be granted and costs to follow the events. 3 | Page Based on the summary of the submissions in support of the present application, the issue for determination is whether it is appropriate, in the circumstances of this matter, to grant the injunctive reliefs sought by the Applicant. Principally, granting an injunction is the discretion of the court which may be exercised if the applicant has established the existence of three conditions stipulated in the case of ATILIO V. MBOWE, HCD [1969]. In the said case the three conditions were stated, that;

1. A serious question to be tried on the facts alleged and a probability that the plaintiff will be entitled to the reliefs claimed.
2. That court's interference is necessary to protect the plaintiff for the kind of injury which may be irreparable before his legal right is established.
3. That on balance of convenience, there would be a greater hardship suffered by the applicant from the withholding of the injunction than would be suffered by the respondent for granting it. 4 | Page Again, the grant of the orders in applications such as the present one is meant to protect the subject matter pending the outcome of the main suit. This position was held in the case of ABDI ALLY SALEHE Versus ASCA CARE UNIT LTD, AYOUB SALEHE CHAM SHAMA AND KENYA COMMERCIAL BANK, Civil Application No.3 of 2012, where the CAT held as follows, that: - "An interlocutory injunction is meant to preserve the subject in controversy or maintain the status quo until the questions of rights involved in another suit (main suit) is finally Determined." Now, reverting to the matter at hand, what is gathered from the Petitioner's application and the submission in support thereof is that the applicant has filed a suit against the 1st respondent for breach of contract. The same is Land Case No. 6004 of 2024. Moreover, the record reveals that the respondents are intending to dispose of the property which was assigned as a collateral to the loan issued to the applicant. There are adverts in Mwananchi Newspaper dated 07/3/2024 which supports that fact. On the face of it, it is apparent that this matter falls in purview of the decision of the court of appeal in the case of ATILIO V. MBOWE [supra] as the 51P a ge conditions stated thereon are all met thus on the balance of convenience, this court is of the view that if this application is not granted the applicant will be gravely inconvenienced. In the upshot, this Court hereby allows this application and orders that the status quo be maintained on the following conditions that:

1. The 1st and 2nd respondents, together with their agents, servants, assignees, employees, contributories, assistants, or any other person(s) acting on their behalf, jointly or severally are restrained from interfering with the Applicant's property, Plot No. 167, Certificate of Title No. 370000, Land Office No. 312992 pending hearing and determination of Civil Case No. 6004 of 2024.
2. Costs to follow the event. It is so ordered. DATED at ARUSHA this 29th day of November 2024. A.Y. MWENDA JUDGE 6 | Page

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