

**IN THE HIGH COURT OF ZANZIBAR**

**HELD AT TUNGUU**

**CIVIL APPLICATION No. 20 OF 2023**

**(Application for temporary Injunction pending the Civil Case No. 08 of 2023)**

**1. IZMIR PHARMACY LIMITED**

**2. NIZAR ABOU MACHANO.....APPLICANTS**

**VERSUS**

**1. NATIONAL MICROFINANCE BANK (NMB) LTD**

**2. ADIL AUCTION MART LIMITED.....RESPONDENTS**

**RULING**

19<sup>th</sup> June & 25<sup>th</sup> July, 2023

**A. I. S. Suwedi, J**

The applicants, **Izmir Pharmacy Limited** and **Nizar Abou Machano Mohammed** are requesting for a temporary injunction order against the above named respondents to maintain status quo in relation to the applicants' properties located in various areas of Zanzibar as announced in the Zanzibar Leo Newspaper dated 16/02/2023. The properties are: **one**, residential property located on plot No. 619, 623 and

624 at Chukwani, Unguja; **two**, residential property located at plot no. 1 and 2 at Fuoni, Unguja and **three**, commercial property located at Nungwi, North "A" District, all in the name of **Nizar Abou Machano**. Besides, the respondents, their workmen and agents be restrained temporarily from selling, damaging, alienating, or disposing the stated applicants' properties pending the hearing and final determination of the main suit before this Court. The application made under section 70 (1); section 126; Order XLIV, Rule 1, Order XVIII, Rule 3 of the Civil Procedure Decree, Cap 8 of the Laws of Zanzibar and been supported by affidavit sworn by the 2<sup>nd</sup> applicant which have been adopted to form part of submission to this application.

The application combined both ex-parte and inter-partes prayers and this Court decided to entertain both parties which subsequently they were served to appear. The respondents opted not to enter appearance and consequently the matter adjourned under Order XI, Rule 7 of the Civil Procedure (supra) to notify the respondents who also did not appear. Henceforth, the Court proceeded to determine inter-partes prayers under Order 6 (1) (a) and section 129 (supra).

Before me, the applicants were represented by the learned counsel Slim S. Abdallah and he submitted that respondents announced to sell the applicant's property illegally and their thinking is that the respondents intended to lower the applicants' reputation within the society. He also asserted that the action will cause irreparable loss to the applicant if the order will not be granted. He prayed for the relief sought to be granted as the circumstances stated under Order XLIV, Rule 1 of Cap 8 are found within this application.

Order XLIV, Rule 1 allows the issuance of temporary injunction for the purpose of staying and preventing the waste, damage, alienation, sale, removal or disposition of the property as the court thinks fit, until the disposal of the suit or until further orders. This signifies that injunction is an emergency remedy and it is a matter of discretion. Being a matter of discretion, it is not enough for the applicant just to make an application but applicant must be able to satisfy the Court that he is entitled to 'injunctive relief'. The landmark case of **Attilio vs Mbowe [1969]** HCD 284

- a) There must be serious question to be tried on the fact alleged, and a probability that the plaintiff will be entitled to the relief prayed.
- b) That the court interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established, and

- c) That on the balance 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 granting of it.

From the above three principles, I have noted that injunction is not granted as a matter of course that there is only a case before Court. The law requires the applicant firstly to make out a strong case in support of the right claimed.

I have started to examine the affidavit supporting the application which contains 5 paragraphs and I am reproducing it as:

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2. That, I have filed a claim against the respondents for unlawfully advertising/issuing the notices on the newspaper the selling by auction, my personal properties located in various areas of Zanzibar without observing laid down procedure.

3. That, the respondents have circulated the advertisement/notice via newspaper (s) that aiming at attracting the public attention that the applicant is heading to bankruptcy and his assets are being auctioned publicly. (Copy of the said newspaper are hereby annexed and marked "Annexure G-4", leave of this Honourable Court is craved for the same to form part of this affidavit)

4. That, the acts of the respondents are illegal, unacceptable and are infringing the right of ownership of the applicant and its wastage of hard earned properties.

5. That, the applicant will suffer irreparable loss if the interim order will not be issued and the respondents be allowed to

continue with their illegal auction which aimed at dispossess of the valid, legally and hard eared of the applicant.

.....

What I have noted is that there is a case between the parties pending before this Court, Civil Case No. 08/2023. However, the 1<sup>st</sup> principle requires that applicant to show the probability that he will be entitled to the relief prayed. The applicant must establish a prima facie case against the claim which implies the probability of the plaintiff obtaining a relief on the material placed before the court – see **Shiv Shanker Goyal v Municipal Council** (1997) AIR Raj 176.

Instantly, the applicant failed to establish a prima facie case and he failed to show the probability that he will be entitled to the relief claimed. The affidavit and the submission done before me are silent on the point. Counsel Slim just said that the respondent announced to sell the applicants' properties illegally without showing this Court those illegalities occurred. Again counsel Slim said that the respondents intended to lower reputation of the applicants without showing how. I am of the view that the missing part would help the Court to weigh and determine whether there will be a likelihood of success in the main suit.

The fact that the applicant failed to establish the prima facie case and show the chance of success, it seem there is no violation of right done by the respondent. The law is clear on the point that where no violation of the rights of the plaintiff/applicant is involved, the interim injunction should not be granted – please see the case of **CJ International Hotels Ltd v. NDMC** (2001) AIR Del 435. Henceforth, the applicant failed to satisfy the 1<sup>st</sup> principle and since the 3 principles must go concurrently, I see no reason to proceed with the 2<sup>nd</sup> and the 3<sup>rd</sup> principle.

From the reason given, I see the application not fit for a temporary injunction order and the same is hereby dismissed without costs as the respondents did not appear.

**DATED at TUNGUU ZANZIBAR this 25<sup>th</sup> day of July, 2023**

A handwritten signature in blue ink, appearing to read 'A. I. S. Suwedi', is written over a faint circular stamp.

**A. I. S. Suwedi**

**JUDGE**