

**IN THE HIGH COURT OF ZANZIBAR
HELD AT TUNGUU
ZANZIBAR
MISC.CIVIL APPLICATION NO. 01 OF 2024**

(Emanating from Civil Case No. 01 of 2024)

**MWANANCHI ENGINEERING CONTRACTING COMPANY APPLICANT
VS**

PROPAV INFRASTRUCTURE LIMITED

(PROPAV-UK/PROPAV) 1ST RESPONDENT

PROPAV INFRAESTRUCTURAS S.L

(PROPAV-SPAIN) 2ND RESPONDENT

PROPAV MECCO ZANZIBAR ROAD

CONSTRUCTION LTD (PMZRC/COMPANY) 3RD RESPONDENT

PEMBA AIRPORT CONSORTIUM

(PACC/COMPANY) 4TH RESPONDENT

SILVIO COSTA ANDRADE 5TH RESPONDENT

BRUNO FILIPE DE OLIVEIRA CARVALHO 6TH RESPONDENT

10/01/2024 & 10/01/2024

RULING OF THE COURT

KAZI, J.

The Applicant has filed this application under the certificate of urgency. The Chamber Application which commenced this application was made under section 70 (1) (c) and (e), Section 129 of **the Civil Procedure Decree**, Cap 8 of the Laws of Zanzibar, and Order XLIV Rule 1 (a) and Rule 2 (1) of **the Civil Procedure Rules** of the Cap 8 of the Laws of Zanzibar.

The Applicant, at this stage, seeks for the following ex parte orders;

- i. That the honourable Court be pleased to find that sufficient grounds exist for dispensing with the requirement of notice to the Respondents in respect of this application, only at the ad interim stage to preserve the status quo, pending the hearing of the matter inter partes.
- ii. The Court to issue an interim restraint order against the Respondents, their agents, officers or any person acting on their behalf, restraining them and each of them from doing, executing or carrying out any operational activity under the project known as Tunguu-Makunduchi Road, Fumba-Kisauni Road and Mkoani-Chake Chake Road, and, Upgrading of Pemba Airport, pending the hearing of this application inter partes.
- iii. An order that the Respondents, their officers, representatives, agents or any person acting on their behalf be restrained from calling, convening or attending, undertaking any meeting (whether Shareholders meeting, authorized representatives meeting, or Directors Meeting or similar) save only

for purposes of negotiation of the dispute under the mechanism provided under shareholders agreement or the law, pending hearing of this application inter partes.

iv. Costs be provided for, and

v. Further orders as the Court may deem fit.

The affidavit of Nasser Sheikh, the Applicant's principal officer, supports the application.

The genesis of the application is the Applicant's main suit, where it claimed against the Respondents jointly and severally for what it alleged to be the Respondent's refusal, neglect and or failure to comply with the terms of the agreements with the Applicant, including usurping powers and mandate to be exercised by the joint venture parties, enlisting external parties to exert undue pressure and give ultimatums on the Applicant to heed to its unlawful, through misinformation - enlisting undue political power/interferences on the operations of the joint venture companies and acting in a manner that jeopardizes the objective and execution of the projects under the joint venture agreements. Moreover, the Respondent's claim against the 2nd Respondent directly or acting in conjunction with the 1st Respondent, 5th Respondent and the

6th Respondent for interference and imposing itself on the agreements to which it is not a party.

Based on the abovementioned claim, the Applicant seeks reliefs, including permanent restraint orders against the Respondents, their officers or agents or any other person acting under them, from discharging any act under or purported to be under the Joint Venture Agreements or in relation to the Joint Venture Projects, including any act constituting usurpation of power or abuse of majority shareholder's position in the Joint venture companies, including passing or executing of any resolutions or decisions in the absence of the Applicant as required or at all.

At the hearing of this matter *ex parte*, the Applicant who Ms. Elizabeth Mayala, advocate, represents, begin by adopting the affidavit sworn by Nasser Sheikh. She then submitted that the Applicant decided to file an immediate application seeking Courts intervention to restrain the Respondents or any person acting on their behalf from doing, executing or carrying out any operational activity under the project known as Tunguu-Makunduchi Road, Fumba-Kisauni Road and Mkoani-Chake Chake Road, and upgrading of Pemba Airport, pending hearing of this application *inter parte*. Ms Mayala argued further that

the basis of this application falls under the legal principles for the Court to grant an injunction, which is well elucidated in the case of **Atilio vs Mbowe** (1969) HCD 284.

Therefore, it was Ms Mayala's submission that without interim orders, the ongoing dispute threatens the successful completion of these crucial projects; thus, issuing temporary orders is essential to uphold justice and ensure that the project funds are managed according to the established agreements. She added that this matter involves third parties, who are the employer (Government of Zanzibar) and the Public, who stand to suffer if the approved terms do not undertake the project implementation as it is one party, the Applicant has sworn that it is not being implemented as required, thus risking overseeing of the project's funds from the employer. She maintained that the Respondents are continuing with the project execution processes, including passing decisions and resolutions, despite the anomalies mentioned by the Applicant.

In conclusion, Ms Mayala pleaded for the Court's interference. She prayed that the Court should peruse the pleadings and the supporting affidavit, which establish that there are ongoing activities, especially about the execution of the project, which is currently ongoing in isolation of the Applicant, and that the

Applicant has been put under undue pressure to immediately withdraw from the project whereas, this withdrawn from the project is not provided under any agreement or law.

After hearing the learned advocate submission, I spare my time to thoroughly review the founding affidavit and the plaint subject to this application. From what was submitted by the learned advocate and from the contents of the founding affidavit and the plaint, I am satisfied that sufficient grounds exist for the intervention of the Court at the *ad interim* stage to maintain the *status quo* of the matter pending the hearing of this application *inter partes*.

The Applicant's prayer for an interim order is therefore granted; thus, I am pleased to make the following temporary orders;

1. The Respondents, their agents, officers or any person acting on their behalf are hereby restrained from doing, executing or carrying out any operational activity under the project known as Tunguu-Makunduchi Road, Fumba-Kisauni Road and Mkoani-Chake Chake Road, and, upgrading of Pemba Airport, pending hearing of this application *inter partes*.

2. The Respondents, their officers, representatives, agents or any person acting on their behalf are hereby restrained from calling, convening or attending, undertaking any meeting, be it a shareholders meeting, authorized representatives meeting, Directors Meeting or any other similar meetings, save only for purposes of negotiation of the dispute under the mechanism provided under shareholders agreement or the law, pending hearing of this application inter partes.

3. Costs shall follow the event.

It is so ordered.

Dated at Tuguu, Zanzibar this 10th January 2024



G. J. KAZI
JUDGE
10/01/2024