

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM
CIVIL CASE NO. 467 OF 2002
JOSHUA INTERNATIONAL LTD.....PLAINTIFF
VERSUS
MPALE KABA MPOKI.....DEFENDANT

R U L I N G

MUSHI, J.

The applicant, Joshua International Ltd. Is making an application for an order to make the respondent Mpaie Kaba Mpoke, to reopen the Applicant's two shops, one at DSM and the other at Arusha. The shops have been attached and closed down by the Respondent who purport to be the appointed receivers by the CRDB. According to the oral submissions given by Mr. Makata, advocate of the Applicant, the Applicant was advanced a credit facility of about T. Shs 45,000,000/= by the CRDB., for the purpose of financing and running a petrol station at Arusha. Unfortunately, the business did not materialise, hence the applicant remains indebted to the CRDB. It is upon this claim that the CRDB appointed the Respondent to act as their receiver/manager of all the assets of the Applicant. Upon this appointment therefore, the Respondent invited Bids from interested parties for the purchase of the stocks and assets of the Applicant's company. The company is composed of two large shops and shop equipment. The respondent has, of course, attached and closed down the said shops.

In this application the applicant is desirous to make an application, interparties for an order to re-open the shops. However, at this juncture, the applicant prays an interim order to restrain the Respondent from opening the bids or disposing of the stocks in the said two shops pending the determination of the application interparties. Mr Makata's main argument in support of the interim order is that the overdraft facility advanced to the applicant was secured by a floating charge over the stocks in the petrol station, therefore, the CRDB has no claim over the stocks in the said two shops. He further contends that the shops are stocked with ordinary shop items,

including ladies and gents wear. That it is not quite easy to assess the value of these items if the intended sale is let to proceed the way it has been advertised, ^{i.e} by way of tender. Mr Makata has also informed the court that the applicant stands to suffer irreparable loss and injury if the shops are sold as planned.

In considering this application for an interim injunction to restrain the respondent from opening the invited bids or disposing of stock of the said shops pending the determination of the main application, I have taken into consideration the cases cited to me by Mr Makata. I have also been guided by the main principles which ~~the~~ courts in considering application/of this nature, namely:-

- (A) That there must be a serious issue or question to be ^{tried} in the suit on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed.
- (b) 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
- (c) That on the balance there will be greater hardship and mischief suffered by the plaintiff from with holding of the ~~injunction~~ than will be suffered by the defendant from granting of it.


The Applicant's affidavit (item 8), raises an interesting legal issue whether the CRDE (the respondent) is entitled to attach and the sale the stocks of the said two shops for which no charge was secured over it. Mr Makata has clarified on this issue that the C.R.D.B'S overdraft facility to the applicant was secured by a floating charge over the stock in the petrol station, for which the loan was advanced. The determination of this issue will affect the legality of the intended sale of the said two shops. This issue will be resolved after the hearing of the parties in the main application. Until that is done, it is only fair for this court to intervene by way of stopping the intended sale. Accordingly, this application is granted. It is hereby ordered that:

1. The respondents are ~~restrained~~ from opening the bids or disposing of in any ~~other~~ the stock in the said two shops,

one at DSM and the other at Arusha, until the hearing and the determination of the main application to be heard Interparties.

2. Hearing of the main application to be on 28/2/2003. The necessary chamber summons to be served upon the Respondent.
3. Counter Affidavit by 21/2/2002. Reply, if any, by 26/2/2003.

Ruling delivered in chambers, on 31st, Dec. 2002 in the presence of MR. Makata, advocate for the Applicant.



E.M.E. MUSHI

JUDGE

31/12/2002