

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**ARUSHA SUB REGISTRY**

**AT ARUSHA**

**MISC. LAND APPLICATION NO. 60 OF 2023**

**ML TOURS AND SAFARIS LIMITED.....APPLICANT**

**VERSUS**

**NATIONAL BANK OF COMMERCE.....1<sup>ST</sup> RESPONDENT**

**DR. ONESMO KYAUKE T/A LOCUS ATTORNEY.....2<sup>ND</sup> RESPONDENT**

**OPULENT PARKS LIMITED.....3<sup>RD</sup> RESPONDENT**

**RULING**

**26/02/2024 & 26/02/2024**

**NDUMBARO, J.**

The applicant has moved this court under the provision of section 2 (1) and (3) of the Judicature and Application of Laws Act, Cap 358 R.E 2019 for orders of ex parte and inter parte seeking for Mareva injunction restraining the respondents, their agents, servant assign or whomsoever will be acting through them or from any other person under any capacity of any kind of disposition of the landed properties CT No. 27192-LR MOSHI, L.O No. 256476, Plot No. 7 Tloma Area in Karatu District in the name of ML TOURS AND SAFARIS LIMITED and property CT No. 23067-LR MOSHI, L.O No. 256356, Plot No. 1 Tloma Area in Karatu District in

the name of ML TOURS AND SAFARIS LIMITED pending the filling and determination of the main suit.

The application is also supported by the sworn affidavit of the applicant's Principal Officer (Director) one LYDIAH FAITH MAKUBO where reasons for this application have been stated. Going by the affidavit, the applicant has stated that in different years she applied for loan from the 1<sup>st</sup> respondent and mortgaged the landed property CT No. 27192-LR MOSHI, L.O No. 256476, Plot No. 7, Tloma Area in Karatu District in the name of ML TOURS AND SAFARIS LIMITED and property CT No. 23067-LR MOSHI, L.O No. 256356, Plot No.1, Tloma Area in Karatu District in the name of ML TOURS AND SAFARIS LIMITED as securities for the loan she secured. The applicant went on to state that in the year 2016, she was served with the default notice and that between the year 2019 and 2022 the applicant came to learn that the 2<sup>nd</sup> respondent was appointed as a receiver by the 1<sup>st</sup> respondent. Moreover, it was also stated by the applicant that in May 2023 she received the notice of transfer under the power of sale by changing ownership into the name of OPULENT PARKS LIMITED of P.O BOX 78744 Dar es Salaam. The applicant went on to state that, having discovered the disposition of the said securities, she appointed

Kilimanjaro Elite Attorneys & Consultants as her advocates who have been making inquiries as to the purchase price and valuation report in vain. According to the applicant the purchase price and the valuation report are very vital information to enable her to institute the claim against the 1<sup>st</sup> and 2<sup>nd</sup> respondents and that since the respondents have decline to reveal such information, she has thus preferred this application pending the filing and determination of the main suit.

The respondents on the other hand did not file their counter affidavit to oppose the application and even when the matter was called on for hearing, the respondents' counsel Mr. Lyaro Edwin informed this court that the respondents are not intending to oppose the application.

Mareva injunction is one of the remedies under the doctrine of equity which allows the grant of an interim injunction to parties even where the main suit has not been filed due to some impediments. This remedy derives its origin from the case of **Mareva Compania Naviera SA vs. International Bulk Carriers SA** [1980] 1 All ER 213 where temporary injunction pending suits filed was interpreted to covered also the grant of interim injunctions in anticipatory suits.

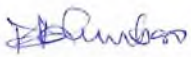
It should also be remembered that in granting applications of this nature, two grounds must be satisfied; one, the applicant must

demonstrate a strong prima facie case or a good and arguable case and second, having all the circumstances of the case, it appears that granting the injunction is just and justifiable.

As stated earlier, Mareva injunction may be issued where the applicant cannot institute a case in a court of law because of an existing legal impediment. The applicant in this case has demonstrated that she is intending to challenge the disposition of the landed properties which were placed as securities to the loan she advanced from the 1<sup>st</sup> respondent. Moreover, the applicant has also established that she is prevented from filing the main suit due to lack of some information which she alleges to be withheld by the respondents who have declined to reveal the same to the applicant.

In that regard, I find the application grantable taking also into account that the respondents have not shown any intention to oppose it. That said, the respondents are hereby restrained from proceeding with any kind of disposition of the landed properties pending the institution of the main suit. Each party to bear his/her own costs.

It is so ordered.

  
**D. D. NDUMBARO**

**JUDGE**

**26/02/2024**

