IN THE HIGH COURT OF TANZANIA

DAR ES SALAAM SUB-REGISTRY

AT DAR ES SALAAM

MISCELLANEOUS CAUSE NO. 8960 OF 2025

(Arising from Petition No. 8323 of 2025)

SAID ISSA MOHAMMED..... 1ST APPLICANT

AHMED RASHID KHAMIS..... 2ND APPLICANT

MAULIDAH ANNA KOMU.....3RD APPLICANT

VERSUS

THE REGISTERED TRUSTEES OF CHAMA CHA DEMOKRASIA NA MAENDELEO (CHADEMA).....1ST RESPONDENT

GENERAL SECRETARY- CHAMA CHA DEMOKRASIA NA MAENDELEO

(CHADEMA).....2ND RESPONDENT

RULING

10th & 10th June 2025

MWANGA, J.

This is an application for an interim order of injunction against **The Registered Trustees of Chama Cha Demokrasia na Maendeleo (Chadema)** and **the General Secretary of Chama Cha Demokrasia na Maendeleo (CHADEMA)**. The same is filed under Orders **XXXVII Rule 1 (a), Rule 2 (1), Rule 4** and **XLIII Rule 2, Section 68 (e),**

Section 95 of the Civil Procedure Code, Cap 33 R.E 2019 and **Sections 2(1) and 2(2) of The Judicature and Application of Laws Act**, Cap. 358 R.E. 2019 and supported by affidavits of **Said Issa Mohammed, Ahmed Rashid Khamis, and Maulidah Anna Komu.** The sought prayers in the chamber summons are as follows;

i. This Honourable Court be pleased to grant an ex parte interim Order of injunction to restrain the Respondents from organizing and/or participating in any and all political activities pending determination of the Petition.

ii. The Honorable Court may be pleased to grant an interim Order of injunction to restrain the Respondents, their servants, workmen, agents, and or whosoever purporting to act on the Respondents' behalf from utilizing the properties and assets of the party pending determination of the Petition.

iii. Costs of the Application,

The said application is strenuously opposed by the respondent who filed a counter-affidavit and raised seven *pleas in limini litis,* to the effect that;

1. The application is bad in law for being supported by affidavits of all applicants, which is defective in that paragraphs 6,7,8,9,10,11,12,13,14,15, and 16 of the same

contain averments which are argumentative, opinions, and conclusions contrary to the law governing affidavits;

2. The application is bad in law for containing a prayer for interim orders instead of a temporary injunction pending the determination of the main suit contrary to law;
3. The application is bad in law on the pretext that the two applicants, who are part of the Registered Trustees of Chama cha Demokrasia na Maendeleo (CHADEMA), are in error in law for acting in two capacities as the Applicants and also the 1st Respondent;
4. That the applicants do not have a locus standi to institute this case;
5. The first prayer in the inter-party application is unclear and confusing;
6. That the applicants do not have a cause of action against the 2nd Respondent;
7. That the 2nd Respondent does not have legal personality capable of suing and being sued;

On 12th May, 2025, this court scheduled the hearing of both the POs and the application. The applicants were represented by Mlamuzi Patrick, Gido Simfukwe, Shabani Marijani, and Alvan Fidelis, all learned counsels.

In contrast, the respondents were ably represented by advocate Gebra Kambole.

As per the practice of the court, where there is preliminary objection raised before the court, the court is required to first determine the objection before going into the substance of the case. Therefore the Court ordered parties to submit for the said preliminary objections. Given this, Mr. Gebra Kambole informed the court that they had brought seven points of preliminary objection in the application; however, four of these points were also raised in the main petition and had been resolved by the court in its ruling. Thus, he prayed to drop POs Nos. 3, 4, 6, and 7; and proceeded to argue POs Nos. 1, 2, and 5.

Submitting on the 1st Preliminary objection, it was the counsel's submission that, the applicants application is supported by the defective affidavit containing arguments, conclusions, and opinions. According to him, paragraphs 6,7,8,9,10,11,12,13,14,15, and 16 are argumentative and conclusive contrary to Order XIX Rule 3 (2) of the CPC, which prohibits stating hearsay and argumentative averments in the affidavit. He argued that the words used in paragraph 6 are a conclusion; paragraphs 7, 10, 12, 13, 14, and 15 contain arguments; paragraphs 8, 9, and 16 include both arguments and a conclusion. His argument centered on the fact that the said paragraphs the use the words, specifically 'therefore,' as well as,

where, generally, " and " legally, but and prudently detects so. He argued further that an affidavit, being a substitute for evidence, is not required to contain arguments, opinions, or conclusions.

To support his stance, Mr. Gebra cited the case of **Uganda vs Commissioner of Prison exparte Matovu, (1966) EA 514,** where the East African Court of Appeal stated that, as a general rule, affidavits used in courts should only contain statements of facts which are known to the deponent and should eschew referring to non-factual issues or objectionory assertions bereft of factual underpinnings. The counsel also cited the case of **Jacqueline Ntuyabaliwe Mengi and Others vs Abdiel Regnald Mengi and Others,** Civil Application No. 332/01 of 2021. It was his prayer that the said defective paragraphs be expunged, and to him, if those paragraphs are expunged, the application will not survive.

On the 2nd and 5th points of objection, Mr. Gebra argued that Order XXVII Rule 1(a) 2(1) explains temporary injunctions. However, the applicant prays for an interim order of injunction. He clarified that interim orders are given pending application, while temporary injunctions are granted pending the main suit. He went on to submit that in the first prayer, the applicants are praying for an ex parte order, which the court cannot entertain at this stage. It was his prayer that the first prayer should

not be entertained, and if the court is to continue with the application, then the first prayer should not be granted; rather, the court should entertain the 2nd prayer only.

In rebuttal, Mr. Mlamuzi submitted that Mr. Gebra had missed a point for not considering Order XIX, Rule 3(1) of the CPC. According to him, the applicant had to state the statements based on their knowledge and the statements based on their own beliefs. He said that Paragraphs 6–16 fall within the parameters of what constitutes an affidavit and are not contrary to what is stated in the **Matovus case.**

He contended further that the words mentioned by Mr. Gebra, like, likely, as well as, therefore, where, generally, " and " legally, " do not necessarily mean that they are argumentative or conclusory assertions with no factual predicate and out of the knowledge of the deponent. He referred the Court to page 13 of the case of **Jacqueline Ntuyabaliwe Mengi and Others vs Abdiel Reginald Mengi (Supra**), stating that the deponent is supposed to state statements within their knowledge or statements of belief. It was his view that the counsel had misdirected himself. He further submitted that, upon reviewing paragraphs 1-12 of the applicant's affidavit, it contains information that is best known to the applicants, as stated in the verification clause, in compliance with Order XIX, Rule 3(1) of the CPC.

Mr. Mlamuzi cited the case of **Steven Kitale Cleophace vs Tanganyika Law Society and Others,** Misc. Cause No 16018/2024 page 6, where Mr. Mwasipu counsel raised similar arguments, and this court rejected them. He also said that the counsel did not provide a yardstick to indicate where the argument starts and where it ends. He therefore prays the court to overrule this PO.

Regarding the 2nd point of the preliminary objection, he stated that it has been overtaken by events, as it was in the ex parte application. Since the respondents have filed a counter-affidavit, the prayer does not exist.

On the 5th point, he submitted that the applicant's prayer is under Order XXVII Rule (1) (a). He also cited the case of **African Trophy Hunting Limited vs Attorney General,** TLR 1999 at page 407, where Mr. Kambole's argument is addressed, specifically on page 408, where the court stated that an interim order and a temporary order of injunction are the same. The counsel further cited the case of **Azoli William Kazimoto & Another vs African Bank Cooperation Tanzania Limited**, Mis. Application No. 26517 of 2023 where a prayer for an interim order of injunction, was entertained by this court. It was his prayer, therefore, that the objection be dismissed.

In a short rejoinder, Mr. Gebra maintained his earlier submission that the paragraphs alluded to earlier contained arguments, opinions, and conclusions. He further submitted that they have elaborated adequately the suspect nature of the assertions contained in the affidavit undergirding the application. He was insistent that each case should be decided on its own facts. Therefore, the fact that the affidavit in Steven Kitale had no arguments does not afford the Applicants an escape hatch from the suspect nature of the assertions in their affidavit in this case.

Concerning the case of **Jacqueline Mengi(Supra),** he stated that the court reviewed the affidavit and found that some paragraphs contained arguments, opinions, and conclusions. Thus, the applicants had to state facts in the affidavit. It was his prayer that the first point of the Preliminary objection is meritorious and that the abjured paragraphs of the Affidavit underpinning the Application warrant their expungement, and that should the Court be minded to expunge the same, the Application will be without any mooring and falls to be dismissed.

On the second limb, it was his submission that, in the case of **African Trophy Limited(supra),** there is no distinction between interim orders and a Temporary injunction; it basically discusses the elements of an injunction. He was insistent that these are different orders and have various stages. He went on to submit that the applicant's counsel has

admitted that the application has passed the ex parte stages, so events have indeed overtaken it. He maintained that with an inter-party hearing, the court cannot grant exparte prayers, hence it remains in confusion. To buttress his point, he cited the case of **Jitesh Ladwa vs House and Homes Ltd and Others,** Mis—Civil Application No. 97 of 2022(HCT), where Mruma, J., distinguished between interim orders and temporary injunctions.

Having heard the submission by both parties on the preliminary objections, my view is that Preliminary Objections Nos. 2 and 5 are not pure points of law and thus do not amount to preliminary objections within the import of the relevant jurisprudence; and I am impeller to reject them forthwith.

Concerning the first point of objection, after scrutinizing the affidavit, I find that only paragraph 16 contains what may be considered to be an argument and a conclusion. Having so found, it is apparent that the remedy as held in the case of **Jamal S. Mkumba & Another vs Attorney General**, Civil Application No. 240/01 of 2019, is to expunge the offending paragraph from the record. In that case, it was held that,

> *"It is now settled that an offensive paragraph can be expunged or disregarded and the Court can continue to*

determine the application based on the remaining paragraphs if the expunged paragraph is inconsequential".

The same stance was expressed in the case of **Phantom Modern Transport (1985) Limited(supra),** Civil References Nos. 15 of 2001 and 3 of 2002, *the Court held:-*

"Where the offensive paragraphs are inconsequential, they can be expunged, leaving the substantive parts of the affidavit remaining intact so that the court can proceed to act on it."

Given the suspect tenor of paragraph 16 of the affidavit, the same is expunged from the record. It follows inexorably from the foregoing that the remainder of the paragraphs are held to be shorn of defects and survive the Respondents' preliminary objection.

Next in consideration are the preliminary objections against the counter-affidavit. In this, the petitioners raised two preliminary objections**: first,** the jurat of attestation was neither sworn nor affirmed, and **second,** the verification clause is defective for failing to distinguish between facts within the personal knowledge of the respondents and information received from other persons. Having considered the submission by both parties, and the cases relied upon, especially the case of **Jacqueline Donath Kweka Abrahamsson vs Exim Bank Limited and Others**, Misc. Land Application No. 853 of 2018, at pages 3 and 4,

the court is of the view that the jurat of attestation of the respondents' counter affidavit is defective, as it was not affirmed. In the cited case, this court held that;

> *for a document to be considered an affidavit, it is not the mere narration of facts or evidence that matters; those narrations must be sworn to or affirmed by the deponents before a person duly authorized by law to do so.*
> *The essence of the affidavit lies in the swearing or affirmation part, because a document without an oath or affirmation administered before a person duly authorized is merely another document, not an affidavit, in the eyes of the law*.

Further in the case of **Samwel Kimaro vs Hidaya Didas,** Civil Application No. 20 of 2012 at Page 6, the Court of Appeal of Tanzania defined the jurat by quoting the **Black's Law Dictionary as** follows;

> *"Jurat is the clause written at the foot of the affidavit stating when, where, and before whom such affidavit **was sworn**."*

Therefore, the jurat of attestation on the respondent's counter affidavit was defective, and the effect is to strike out the counter affidavit, the cause which I hereby take. So, it is as if there is no respondent's counter affidavit before the court, and also does not object to the application. In such instances, respondents are permitted to argue only matters of law, not matters of fact. See **Finn-Von-Wurden Petersen**

and Another VS Arusha District Council, Civil Application No. 62/17 of 2017. (CAT).

Regrettably, soon after the decision to strike out the counter affidavit, Respondents' counsel, Mr. Gebra Kambole, who was present throughout the hearing of the POs, decided to abandon his representation of his clients without proffering any plausible explanation for his volte-face! His conduct is unbecoming of an officer of the Court and evinces a cavalier disregard for the proceedings of the Court. The Court cannot countenance any plausible justification for his egregiously derelict and lackadaisical approach to his duties as an officer of the Court.

It is clear that his abandonment of the representation of his clients at the tertiary stage of the proceedings is designed to scupper the smooth progress of the case.

For the reasons adumbrated in the foregoing and the need not to throw the hearing of the Application into needless abeyance based on the baseless and contrived absence of a party's lawyer, and also based on the application of the applicant's counsel, Mr. Mlamuzi, the Court proceeded to hear the matter ex parte against the respondents as they have decided to absent themselves from the proceedings.

Turning to the main application, it was Mr. Mlamuzi's submission that there is a serious question for determination, as stated in paragraphs 4, 5, 6, 7, 8, 9, 12, and 14 of the applicant's affidavit and annexures thereto. He also referred to the case of **Azoli William Kazimoto & Another vs African Banking Corporation Tanzania Limited,** Misc— Civil Application No. 26517 of 2023.

On the second point, the counsel referred to paragraphs 5, 6, and 7 of the applicants' affidavit, which indicate that the applicants would suffer irreparable loss if the application is not granted. And also to suffer additional loss if the respondents continue to maintain the status quo on the distribution and utilization of parties' assets or properties. Furthermore, if the breach is allowed to continue while awaiting the trial period, it cannot be atoned for by monetary compensation. The counsel referred to the case of **TA Kaare vs General Manager Mara Cooperative Union (1984) Ltd,** 1987 TLR at page 17, which presupposes that irreparable loss should be material and not merely physical.

On the third requirement, the counsel asserted that the applicant will suffer great hardship and mischief if the application is not granted, than what will be sustained by the respondents. According to him, on balance, it is the applicants who will suffer more. He cited the case of

Jonathan Omary Mbwambo (The Administrator of the Estate of the Late Jonathan **Mbwambo Vs Said Shabani Mtonga**, **and Others**, Misc. Land case No 774 of 2016, at page 5 of the ruling. He argued that, given the dispute centers on the parties' properties and their utilization, and the dissatisfaction thereof will prejudice Tanzania Zanzibar as a party to the union of the United Republic of Tanzania.

In the totality of all the pleadings, the counsel asserted, it is crystal clear that the law regarding political parties being a union matter has been violated at the expense of one part of Tanzania, Zanzibar. He referred the case of **Mek One Industry Limited vs Rungwe District Council**, Misc Civil Appl. No. 8 of 2020 stating that the balance should be in favour of the one who is in jeopardy.

In winding up, he submitted that the applicant had met all the conditions required by the court for the grant of a temporary injunction. He reiterated his prayers made under Roman (i) and (ii) of the chamber summons pleaded at inter-parties, and insisted that if the order is not granted, the continued use of the said properties will render the said petition nugatory.

I have considered the affidavits of the applicants and the submissions of the learned counsel. The issue to be determined is whether the applicants have demonstrated and satisfied the necessary conditions

or prerequisites for the grant of a temporary injunction. Notably this court is seized with jurisdiction to entertain and grant prayers sought in this application upon the applicant establishing to the court's satisfaction that the three principles or tests, as stated in the cases of **Atilio vs Mbowe** (1969) HCD 284, **The Registered Trustees of the Mount Meru University and Another vs The Development Bank Limited and 4 Others**, Misc. Civil Application No. 99 of 2022 (HC-Unreported) **Christopher P. Chale vs Commercial Bank of Africa**, Misc. Civil Application No. 136 of 2017 [2018] TZHC 11 are met. For ease of follow up, I shall state them in elbeit; **First,** there must be a serious question to be tried by the court and Probability that the applicant will be entitled to the reliefs prayed for (in the petition), **Second,** the temporary injunction is necessary in order to prevent some irreparable injury befalling while the petition is still pending and **third,** that on the balance of convenience greater hardship and mischief is likely to be suffered by the defendant if the order is not granted.

It is worth noting that, the object of granting temporary injunctive order as equitable remedy is to preserve the pre-dispute state until the trial or until a named day or further order, hence it is imperative for the applicant to supply the court with materials sufficient to be tested and enable the Court to exercise its discretion judiciously before the same is

granted. The necessity of the party in establishing these imperative requirements has been further elaborated upon and refined in subsequent decisions, such as the case of **Abdi Ally Salehe vs. Asac Care Unit Ltd & 2 Others,** Civil Revision No. 3 of 2012, the Court of Appeal of Tanzania held as follows:

> *"The object of this equitable remedy is to* ***preserve the pre-dispute state until the trial or until a named*** *day or further order. In deciding such applications, the Court is only to see a prima facie case, which is one where it should appear on the record that there is a bona fide contest between the parties and serious questions to be tried. So, at this stage the court cannot prejudice the case of either party. It cannot record a finding on the main controversy involved in the suit; nor can genuineness of a document be gone into at this stage. Once the court finds that there is a prima facie case,* ***it should then go on to investigate whether the applicant stands to suffer irreparable loss, not capable of being atoned for by way of damages. There, the applicant is expected to show that, unless the court intervenes by way of injunction, his position will in some way be changed for worse; that he will suffer damage as a consequence of the plaintiff's action or omission, provided that the threatened damage is serious, not trivial, minor, illusory, insignificant or technical only.***

The risk must be in respect of a future damage"

*(*Emphasis supplied).

Therefore, an injunction, be it interim or permanent, is an equitable remedy, the purpose of which may be varied, as it may be to restrain specific actions from being taken, or interference of some kind, to furnish preventive relief against irreparable injury, or to maintain the *status quo.*

On scrutiny of paragraphs 4, 5, 6, 7, 8, 9, 12, and 14, which the counsel, Mr. Mlamuzi, pointed out, I am satisfied that there is a triable legal issue to be tried. Upon reviewing those paragraphs, it is evident that the applicants are long-standing members of **Chama cha Demokrasia na Maendeleo (CHADEMA).** They contend that the Party, under the guidance and management of the 1st and 2nd Respondents, has invested in acquiring landed properties and motor vehicles, among other assets, to fulfill the Party's objectives in Mainland Tanzania. However, they have not made a similar or comparative level of investment in acquiring assets and properties to fulfill the Party's objectives in Tanzania and Zanzibar. Hence, there has been a significant imbalance in the distribution of assets, property, and investment in favour of Mainland Tanzania, to the detriment of Tanzania Zanzibar. Similarly, they have uttered and espoused views, statements, and policies that are fundamentally discriminatory based on religion, gender, and residency within Tanzania. According to them, these

actions are calculated to weaken and erode the Union of the United Republic of Tanzania, and, in particular, to lower the status of Tanzania-Zanzibar within the union. Such assertions, in my view, are sufficiently established that there are triable issues to be tried.

On the second condition, Mr. Mlamuzi pointed out that in paragraphs 5,6, and 7 of the affidavit, applicants demonstrated that since the Party under the guidance and management of the 1st and 2nd Respondents have not made a similar or comparative level of investment in acquiring assets and properties to fulfil the party objectives in Tanzania Zanzibar, such acts have created a situation where there has been a heavy imbalance in the distribution of assets, property, investment in favour of Mainland Tanzania and to the detriment of Tanzania Zanzibar. Thus, if the orders sought are not granted, the applicants will suffer irreparable loss that cannot be compensated by monetary compensation. Similarly, he has demonstrated that acts of law violation, discrimination, and espousing certain views cannot be compensated by monetary value. I entirely agree with the applicant's observations.

I further add that, since the contentions touch the very existence of registration of any political party in the country, and those matters

cannot be compensated by monetary value, to me, those facts sufficiently prove the second condition.

Notwithstanding this, it proves the third condition that the applicant would suffer greater hardship than the Respondents if the order for a temporary injunction is not granted. Therefore, as rightly submitted by the applicant's counsel, the applicants have met the three conditions required by the case of **Atilio v. Mbowe (Supra)**.

In the event and for the reasons above, the interim order of injunction is hereby granted pending the hearing of the petition. For the avoidance of doubt and contradictions, this order is granted against both the respondents as XZfollows: -

1. That the respondents, **THE REGISTERED TRUSTEES OF CHAMA CHA DEMOKRASIA NA MAENDELEO (CHADEMA)** and **THE GENERAL SECRETARY—CHAMA CHA DEMOKRASIA NA MAENDELEO (CHADEMA),** are restrained or prevented from organising and/or participating in any and/or all political activities pending the determination of the petition.
2. That the respondents, **THE REGISTERED TRUSTEES OF CHAMA CHA DEMOKRASIA NA MAENDELEO (CHADEMA) and** THE **GENERAL SECRETARY- CHAMA CHA DEMOKRASIA NA MAENDELEO** (CHADEMA), their servants, workmen, agents, and

or whosoever purporting to act on the Respondents' behalf, are restrained from utilizing the properties and assets of the party pending determination of the petition.

3. Each party shall bear its costs.

It is so ordered accordingly.

Dated at **Dar es Salaam** today on 10th June 2025

H. R. MWANGA

JUDGE

10/06/2025

COURT: Ruling delivered in the presence of Advocate Mlamuzi Patrick, Gido Simfukwe, Shabani Marijani, and Alvan Fidelis, all learned counsels for the applicants, and in the absence of the respondents.

H. R. MWANGA

JUDGE

10/06/2025