

TANZANIA / JUDGMENT

Misc

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LAND DIVISION AT DAR ES
SALAAM MISC. LAND APPLICATION NO. 28634 OF 2024 BETWEEN

1. ARON EMMROD MALISA
2. JACOB MOGENDI²
3. ELIUD JONATHAN
4. SIGE CHINGALAME
5. DEOGRATIOUS KIWALA MASUKI
6. SYLVANI SHAYO
7. JOSEPHAT MSHANA
8. BAHATI MWALUDEDE H A I VEN J E
9. JOSEPH COSIMO LENGALLA 10.WITNESS HUBERT MTUI 11.JOHN MAGANGA MAGAI
12.SUNDAY FAUSTIN NGASA 13.ELISTABIUS THOMAS KAIJAGTE 14.FEISAL MOHAMED
RASHID 15.SAMWELI HARUNA 16.PENINA MANOKO 17.ANANIAS KIMBI 18.MARY JOSEPH
19.GETRUDE SHAYO APPLICANT'S 20.ANNA THADEUS 21.JAFARI MERAJI
22.BATILIDA MSOLU 23.DANFORD MAWA 24.WILSON MNIKO 25.GRACE OMUTI
26.SHARIFU HAMAD SHARIFU 27.VICTORIA LYIMO 28.SAIDI STEPHANO 29.MOHAMED
MOHAMED MWELE 30.SELEMANI OMARI 31.FELISTA SIRA 32.DANIEL MDACHI 33.AZIZA
MAYUNGA 34.JOSEPH COSMAS 35.ROSE FREDY NYANGE 1 36 .USINA HEMEDI 37 .SOPHIA
KI LOMETA 38 .RUKIA HEMEDI 39 .ROBERT MYESHA 40 .RIZIKI MALISA 41 .HAMUDUNI
MANSULI 42 .FATUMA NJOELE 43 .RAYMOND MILANZI APPLICANT'S
44 .SADICK MACHEMBA 45 .AMINA OMARY 46 .MAUA ABUDALA 47 .EMMANUEL
LUNANILO KIHABI 48 .GIFT MOLLEL 49 .MOHAMED (MUOI) LAZIFA 50 . SADICK DEUS
VERSUS
1. KINONDONI MUNICIPAL COUNCIL..... 1st RESPONDENT
2. THE ATTORNEY GENERAL..... 2nd RESPONDENT

RULING

14/11/2024 & 17/12/2024 N.E. MAN DI A, J This application for Mareva injunction is made under section 2(3) of the Judicature and Application of Laws Act, [Cap 358 R.E. 2019] and section 68(c), 68(e) and 95 of the Civil Procedure Code, [Cap 33 R.E. 2019], (the CPC). The application is supported by affidavits of the applicants and is unopposed by the defendants. The applicants are seeking for an order of maintenance of status quo in respect of plots of land located at Mbopo, Kinondo - Mabwepande in Kinondoni Municipality within Dar es Salaam pending the institution of the suit against the respondents 2 to be filed after expiry of 90 days' statutory notice of intention to sue the government i.e. an order in the nature of Mareva injunction to stop the 1st respondent, its agent and whoever acting under the instruction of the 1st respondent from demolishing, destructing, evicting or disturbing by whatever means the applicants from the land in dispute; costs; and any other order the court shall deem fit, just and equitable to grant. Brief background of this application is that, the applicants claim to be legal owners of parcels of land located at Mbopo, Kinondo - Mabwepande in Kinondoni Municipality within Dar es Salaam which they acquired through purchase and or customary tenure even before independence. Some applicants have already built houses and they live with their families a fact well known by the 1st respondent. That on 26th January 2023, the 1st respondent issued a Building Permit No 0024942 to the 9th applicant to erect a SINGLE STOREY RESIDENTIAL BUILDING on his unsurveyed plot. On 27th and 30th September, 2024, the applicants were shocked when persons who introduced themselves as employees of the 1st respondent trespassed into their land and started surveying it and put markings and orders for demolition of the applicants' structures. They reported the matter to the local government office where they were informed that the 3 exercise was conducted by people from the 1st respondent's office. Aggrieved by such actions, the decided to file this application with intention to sue the 1st respondent. This application was heard by way of written submissions. The applicant was represented by Mr. Nashon Nkungu, learned counsel whereas Ms. Lilian Mirumbe, learned state attorney represented the respondents. In support of the application, Mr. Nkungu adopted the contents of the applicants' affidavit to form part of his submission. He then argued that the respondents have not filed their counter affidavit hence, they do not contest and or challenge the application. That they stated categorically that they have no interest with the application and that is why they did not file their counter affidavit. Mr. Nkungu argued further that the 1st respondent has denied any liability and all the actions complained by the applicants. Similarly, Mr. Nkungu submitted that the conditions for granting an order of Mareva injunction are the same as those for granting temporary injunction. On the first condition that there must be serious question to be tried and a probability that the plaintiff will be entitled to the relief prayed, Mr. 4 Nkungu contended that the applicants are alleging a number of legal issues against the 1st respondent including ownership, adverse possession, misrepresentation of facts, trespass and destruction of applicants' properties. That these are serious questions which need to be tried by the court hence, the first condition has been satisfied by the applicants On the second condition, Mr Nkungu submitted that the damage to be suffered by the applicants cannot adequately be compensated by payment of money. As per paragraph 19 of the applicants' affidavit, the applicants have made huge investments on their lands and evicting them and or destroying their properties will lead to irreparable loss of both

financial, social and physical. On the third condition, that is on balance of convenience, Mr. Mkungu contended that there will be greater hardship and mischief suffered by the applicants from the withholding of injunction than will be suffered by the defendant from the granting of it. That the 1st respondent has no interest over the land in dispute hence, she cannot suffer any mischief if the injunctive order is granted. The counsel submitted further that Mareva injunction is different from other kind of injunction as for it to be granted there must be a 5 mandatory statutory notice issued against the respondents. That the applicants have complied by issuing a 90 days' statutory notice to the respondents. He cited three cases of ABDI ALLY SALEH E vs. ASAC CARE UNIT LTD & 2 OTHERS, Civil Revision No. 03 of 2012- HC-DSM; DEUS GRACEWELL SEIF & ANOTHER vs. CHAMA CHA WALIMU TANZANIA (CWT), Misc. Labour Application No. 2 of 2023, H.C-DOM, and DEUS GRACEWELL SEIF & ANOTHER vs. CHAMA CHA WALIMU TANZANIA (CWT), Misc. Labour Application No. 17 of 2022- H.C-DOM to bolster his argument. Mr. Nkundu submitted that the applicants have satisfied the conditions for grant of Mareva Injunction hence, he prayed for the court to grant the order. In rebuttal, Ms. Mirumbe, learned state attorney, submitted that the application is without merit and has been filed as an abuse of the powers of this court. That it is true that the respondents did not file their counter affidavit however, it does not preclude them from defending the case and, the allegation that the application was not contested and challenged is unfounded. She cited the case of FINN VON WURDEN PETERSON & ANOTHER VS ARUSHA DISTRICT COUNCIL, Civil Application No. 562/17 of 2017 CAT Arusha (unreported) to bolster her argument. Ms. 6 Mirumbe submitted further that the respondents wish to object the application on point of law. She contended that the application was filed pursuant to section 2(3) of the Judicature and Application of Laws Act (supra) and section 95 of the Civil Procedure Code(supra). That while this court is empowered to grant a temporary injunction, such an order may only be issued upon the applicant's satisfaction of specific preconditions. She cited the cases of T.A. KAARE V. GENERAL MANAGER MARA COOPERATIVE UNION (1984) LTD (1987) TLR 17 and ATILIO V. MBOWE [1969] H.C.D NO. 284 which outlined the preconditions a litigant must satisfy before the court can exercise its discretion to grant an injunction. She named the preconditions as that: there must be serious questions to be tried on the facts alleged and a probability that the Plaintiff will be entitled to the relief prayed; the court's interference is necessary to protect the applicant from the kind of injury which may be irreparable before his legal right is established; and that, on the balance of convenience there will be greater hardship and mischief suffered by applicant from the withholding of the injunction than will be suffered by the defendants from granting it. 7 With regard to the first and second condition, Ms. Mirumbe submitted that the applicants have failed to meet the necessary preconditions for the granting of a Mareva injunction. That they have not demonstrated a serious issue of law or fact to be tried by the court and, instead they submitted irrelevant information that failed to substantiate their claims. On the second precondition, the counsel submitted that the applicants have not adequately stated the particulars of irreparable loss they would suffer should the court decline to intervene in the matter. That according to GN. No. 470 of 2014, the suit land has been designated as a special planning area under the Urban Planning Act No. 8 of 2007. That the applicants have failed to demonstrate the existence of a serious question to be tried as the suit land has been officially designated as a special planning area. On the third

precondition, Ms. Mirumbe argued that the respondents will suffer more than the applicants as the suit land has been declared as special planning area for the purpose of building offices for serving the community. She cited the case of *ALHAJ MUHIDINI A. NDOLANGA AND ANOTHER VS. THE REGISTRAR OF SPORTS AND SPORTS ASSOCIATION AND OTHERS*, Misc. Civil Case No. 54 of 2000, (unreported) whereby the court considered that the interest of the society overrides the interest of one person. She also referred to the case *TAXAGE (T) LTD VS T.R.A.* Civil Case No. 119 of 1998 (unreported) to bolster her argument on considering public interest or public policy before issuing an injunction order. Ms. Mirumbe submitted that GN. No. 470 was published in 2014, and its general principle indicates that the community was well-informed about this development. That it is on record that the 2nd, 4th, 6th, 7th, 8th, 11th, 12th, 16th, 18th, 19th, 20th, 23rd, and 26th applicants acquired possession of the suit property through sales between 2016 and 2024. That under the legal principle *ignorantia juris non excusat*, applicants cannot claim rights to property already declared by law as being for public use. That their ignorance of the law and failure to conduct due diligence before the transfer of ownership cannot serve as a valid excuse. Ms. Mirumbe contended further that according to Order VII Rule 3 of the Civil Procedure Code (supra) where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property is identified by a title number under the Land Registration Act, the plaint shall specify such title number. She cited the case of *DANIEL DAGALA KANUDA (AS AN 9 ADMINISTRATOR OF THE ESTATE OF THE LATE MBALO LUSHA MBULIDA) VS. MASAKA IBEHO AND 4 OTHERS*, Land Appeal No. 26 of 2015 High Court Tabora (unreported) to bolster her argument that description of the property is crucial for the purpose of identifying it from other pieces of land so as to afford courts of law to make certain and executable decree. She also cited two cases of *JAMES FUNKE NGWANGILO VS. ATTORNEY GENERAL* (2004) TLR 161 and *SAID SULTAN NGALEMA VS. ISACK BOAZ NGIWANISHI AND OTHERS*, Civil Application No. 362/17(2021) to bolster her argument that parties are bound by their pleadings. That the applicant's request for an injunction is without merit as the relief sought does not align with the circumstances of this case. She prayed for the court to dismiss the application with costs. In rejoinder, Mr. Nkungu reiterated his submission in chief. He then submitted that Ms. Mirumbe failed to understand the nature and substance of the application as well as facts in dispute. That the only way one can object an application is by filing a counter affidavit. That because the respondents did not file counter affidavit, the application is unopposed. That the case of *FINN VON WURDEN PETERSON & ANOTHER V. ARUSHA DISTRICT COUNCIL* (supra), is to the effect that since they have not filed a counter affidavit they cannot challenge issues of facts. Mr. Nkungu argued that the respondents have circumvented their way into challenging issues of facts pretending to be point of law. That they have introduced evidence in their submission through the said GN. No. 470 of 2014 which described boundaries of the said areas of Mabwepande and Bunju which are pure matter of facts and should be disregarded by the court. He cited the case of *TANZANIA UNION OF INDUSTRIAL AND COMMERCIAL WORKERS(TUICO) at MBEYA CEMENT COMPANY LTD V. MBEYA CEMENT COMPANY LTD AND NATIONAL INSURANCE CORPORATION(T) LIMITED*, [2005] T.L.R 41, to bolster his argument that a submission is a summary of arguments and is not evidence and cannot be used to introduce evidence. Mr. Nkungu argued further that Order VII Rule 3 of the Civil Procedure Code (supra) is

misplaced because there is no suit before this court in which a subject matter is an immovable property. That it is again misleading to state that description of the property is a statement from the bar and quite wrong for the respondent to read application in isolation as the description of the property have been clearly stated and the area is identifiable as per the applicants' affidavit. That the submission by Ms. Mirumbe is not maintainable before this court for not observing law on written submissions and do not address issues raised on merit. The counsel prayed for the submission by the respondents to be expunged. Having gone through the rival submissions of the parties, the vital question for determination is whether the applicants have met all the conditions for the grant of Mareva injunction. At the outset, I should admit that the respondents did not file their counter affidavit hence, as observed in *FINN VON WURDEN PETERSON & ANOTHER V. ARUSHA DISTRICT COUNCIL*, (supra) they can only challenge the application on issues of law and not facts. On that observation, i will only consider their submission as to point of law if at all there is any. To do that, i will in the same way be guided by the preconditions stipulated in the famous case of *ATILLIO V. MBOWE* (supra) on grant of temporary injunction. On the first precondition, it was submitted by the applicants that there exist a serious question which need intervention of the court on the facts that the applicants are alleging a number of legal issues against the 1st respondent including ownership, adverse possession, misrepresentation of facts, trespass and destruction of applicants' properties. On the other hand, it was contended that the applicants have not demonstrated a 12 serious issue of law or fact to be tried by the court, instead they submitted irrelevant information that failed to substantiate their claims. Having gone through an unopposed affidavit of the applicants, in particular paragraph 2 and 3 of the said affidavit, the applicants are claiming to be legal owners of the land in dispute. This allegation was not contested by the respondents as they have failed to file their counter affidavit. Therefore, it is my settled view that the allegation made by the applicants brings a serious issue which need to be determined by this court. Hence, in the circumstance, I find that there is a prima facie case between the applicants and the respondents to be tried by this court. The first precondition has been met by the applicants. On the second precondition, it was contended by the applicants that they have made huge investments in their land hence, evicting them will lead to irreparable loss and the damage to be suffered by the applicants cannot adequately be compensated by payment of money. On the contrary, it was argued by the respondent that the applicants have not adequately stated the particulars of irreparable loss they would suffer should the court decline to intervene in the matter. It is my considered view and as stated in paragraph 8, 19 and 22 of the applicants' affidavit 13 that some of the applicants have made huge investments in the suit land including building their houses where they live with their families and burying their relatives hence, evicting them or demolishing those houses before determination of their intended suit will indeed cause irreparable loss to them. On the third precondition, balance of convenience, I am of considered view as rightly submitted by Mr. Nkundu that there will be greater hardship and mischief suffered by the applicant from the withholding of injunction than will be suffered by the respondents from the granting of it. The contention that the respondents will suffer more than the applicants as the suit land has been declared as special planning area for the purpose of building offices for serving the community, is in my view unfounded. The applicants are also part of the said community which is intended to be served by the offices to be built in the suit land. I am

therefore, of the considered view that the applicants are likely to suffer more hardship than the respondent incase the order sought is denied. I am aware that for an order of temporary injunction to be issued, all conditions in Atilio's case (supra) must be met commutatively. In the case 14 of Christopher Paul Chale vs. Commercial Bank of Africa, Misc. Civil Application No. 635 of 2017 it was held that: "... it is also trite law that conditions set out must all be met and meeting one or two of the condition will not be sufficient for the purpose of the court exercising its discretion to grant an injunction "[Emphasize added] Consequently, I am satisfied that the applicants have met all the conditions for the grant of Mareva Injunction. I hereby grant the order of Mareva injunction pending expiry of the 90 days' notice to sue the government. Costs to follow events. It is so ordered. N.E. MAN DI A JUDGE 17.12.2024 15

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