

TANZANIA / JUDGMENT

ANTONY PAULIN ORDER

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA BUKOBA SUB-REGISTRY AT BUKOBA MISC. LAND APPLICATION NO. 5100 OF 2025 (Arising from Misc Land Application No. 25174/2024 of the High Court Bukoba) ANTONY

PAULIN.....1st APPLICANT DEUSIDELITH

SULUMBU..... 2nd APPLICANT JOSEPH

BENARD.....3 rd APPLICANT CESILIA

SAHANI..... 4th APPLICANT VERSUS JACKSON NJUNGWA

.....1st RESPONDENT VAILETH

AGUSTINO.....2nd RESPONDENT EMMANUEL

KALUMBETE.....3rd RESPONDENT

RULING

12th & 28th March 2025 ITEMBA,J. This is an ex parte application brought under Section 95, Order XXXVII Rule 2(2) and Order XXI Rule 36 and Order XXI Rule 38 of the Civil Procedure Code, Cap 33 R.E. 2019 The Applicants seek interim orders following the Respondents' alleged breach of a court order of injunction granted by this court in application 1 No. 25174 of 2024 which was delivered on 06/12/2024 by Hon. Ngigwana, J. In the chamber summons the applicants prayed for the following orders; "(a) This Honourable Court be pleased to make an order that the Respondents are in disobedience of the terms of this Honourable Court in an injunction order dated 04th December, 2024 and 6th December,2024.

- (b) That, this Honourable Court be pleased to issue a warrant for arrest directing the Respondents to be brought before this Hon. Court with convenient speed.
- (c) That, this Hon. Court be pleased to make an order as it thinks sufficient for the subsistence allowance of the respondents from the time of their arrests until they can be brought before the court.
- (d) That, this Hon. Court be pleased to order for the respondents to be retained as civil prisoners for a time not exceeding 6 months.

- (e) That, this Hon. Court be pleased to Order an attachment of the Respondents Cattle located at Ngenge village in Muleba District, Kagera Region
- (f) That, this Hon. Court to appoint the Court Broker to enforce its Orders.
- (g) Any other order/s this honourable court may deem fit and necessary. 2
- (h) Cost of this application.” As per the records, the subsisting injunction is restraining the 1st Respondent and his agents from “entering and effecting anything in the suit lands located at Kalimalimo Hamlet, Ngenge Village, Ngenge Ward within Muleba District in Kagera pending determination of the main suit to wit; Land Case No.25055 of 2024 and maintain status quo until the hearing and determination of the main suit or until the court orders otherwise”, The applicants contend that the respondents have deliberately violated the said order by invading applicants homes while armed and forcibly evacuated the applicants and burned their houses, food and clothes, also started grazing their cattle in the suit land, feeding them crops planted by the applicants. The Applicants have supported the application with an affidavit sworn by Antony Paulin, Deusidelith Sulumbu, Joseph Benard and Cesilia Sahani, detailing the instances of the breach and the urgency of the matter as stated above. The Respondents, despite being served with the court order, have allegedly continued with the prohibited acts. 3 Moving to the merit or otherwise of the application, in the case of Atieno vs Mbowe [1969] HCD 284, the guiding principles in dealing with temporary injunctions were provided as follows;
- (i) Whether there is a serious issue to be tried, (ii) whether the Court's interference is necessary to protect the Applicant from irreparable loss, and (iii) whether on balance of convenience, there will be greater hardship and mischief that will be suffered by the Applicant from withholding the injunction than will be suffered by the Respondent from granting it. The guideline set forth in the landmark case was met in the said infringed injunction application, namely Application No. 25174/2024. This is why the applicants succeeded, and an injunction order was granted by this court. Likewise, in the present case, this court will consider the same guideline in determining the current application. Also In the case of Morities Corporation Ltd versus Crdb Bank Plc & City Group Tanzania Ltd (Misc. Civil Application No 3352 OF 2024 Morities Corporation Ltd versus Crdb Bank Pl) [2024] TZHC 982 (21 March 2024), this court held that the court has also to consider among other things; one, the danger of refusing the sought interim 4 order, two, whether the applicant has clean hands, three, that the court is not a tool to deny or delay attainment of one's right under the contract of which parties have consented to, and four, Public interest. In the present case, it is sufficient to state that the above conditions and guidelines have been met, as the applicants' lives are at risk if the interim orders sought are not granted. Furthermore, since they have already been granted injunction orders against the 1st respondent, they approach the court with clean hands. Additionally, there is a serious issue to be tried, as the applicants contend that the initial court injunction orders have been breached, their houses have been burnt. Withholding the injunction appears to cause greater hardship to the applicants than the respondent would suffer if it were granted, as the alleged breaches are attributed to the

respondents and further endanger the applicants' livelihood. The Court has carefully considered the submissions made orally ex parte by the Applicants' advocate Miss. Elieth Kagemulo and the supporting affidavit of the applicants. It is evident that prima facie, there has been a violation of the court's injunctive order. The court's authority and dignity must be safeguarded, and it is necessary to prevent further breaches. 5 In a persuasive case of *Cuadrilla Bowland Ltd and others v Persons Unknown and others* [2020] EWCA Civ 9, the England and Wales Court of Appeal (Civil Division) when determining injunction proceeding had this to say; "A court order takes effect when it is made. It remains binding unless and until it is revoked by the court that made it, or on appeal. As long as the order is in effect, it is a contempt of court to disobey it." Emphasis is mine. Order XXXVII Rule 2(2) of the Civil Procedure Code, Cap 33 R.E. 2019 provides as follows; "In case of disobedience or of breach of any such terms, the court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained as a civil prisoner for a term not exceeding six months unless in the meantime the court directs his release." Considering the urgency and the need to prevent irreparable harm, I am satisfied that the Applicant has made a sufficient case for the issuance of interim orders pending further proceedings. 6 In the upshot, the Court hereby orders that the Respondents shall appear before this Court for an inter-party hearing to show cause why the Court should not issue orders against them pursuant to Order XXXVII Rule 2(2), Order XXI Rule 36, and Order XXI Rule 38 of the Civil Procedure Code, Cap 33 R.E. 2019, for their disobedience of the injunctive order issued against them by this Court, as prayed by the Applicants for orders to wit:

1. A declaration that the Respondents are in disobedience of the terms of this Honorable Court's injunction orders dated 4th December 2024 and 6th December 2024.
2. Issuance of warrants for the arrest of the Respondents to be brought before this Court.
3. An order for the subsistence allowance of the Respondents from the time of their arrest until they are brought before the Court.
4. An order for the Respondents to be detained as civil prisoners for a period not exceeding six months.
5. An order for the attachment of the Respondents' cattle located at Ngege Village in Muleba District, Kagera Region.
6. Appointment of a Court Broker to enforce the Orders.
7. Any other order(s) that this Honorable Court may deem fit and necessary. 7
8. Costs of this application. The Applicants shall serve this order upon the Respondents immediately and file a proof of service in this Court. Failure by the Respondents to appear on the subsequent date shall result in the issuance of arrest warrants in due course. The costs of this application shall be in the cause. Order: Respondents shall appear before this Court for an inter-party hearing on 2nd April 2025 to show cause why the Court should not

issue orders against them. Dated at Bukoba this 28th day of March 2025. L.K.J ITEMBA
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