

TANZANIA / JUDGMENT

CHAMA CHA WAFUGAJI TANZANIA

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA MISC. CIVIL APPLICATION NO. 22804 OF 2024 CHAMA CHA WAFUGAJI TANZANIA (CCWT).....1ST APPLICANT NTAGALA JOHN SHADRACK.....2ND APPLICANT JACKSON MASANGU MAYALA.....3RD APPLICANT VERSUS TANZANIA FOREST SERVICES AGENCY.....1ST RESPONDENT MINISTRY OF NATURAL RESOURCES AND TOURISM.....2ND RESPONDENT ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1st & 5th November, 2024 KAMANA, J. This is an application for mareva injunction under section 2(3) of the Judicature and Application of Laws Act, Cap. 358 [RE.2019]. In this application, Chama cha Wafugaji Tanzania (CCWT), Ntagala John Shadrack and Jackson Masangu Mayala, the applicants, are seeking orders to restrain Tanzania Forest Services Agency, the first respondent, from evicting the pastoralists' cattle from Sakaya Natural Forest Reserve. The application is supported by an affidavit deposed by Ntagala John Shadrack and Jackson Masangu Mayala, the second and third 1 applicants. The same is opposed by a counter affidavit whose affiant is Mashaka Mnembuka Mrisho, a Senior Conservator Forest Officer. When the matter was set for a hearing, the applicants were presented by Mr. Chama Matata, learned Counsel. The respondents had the services of Ms. Subira Mwandambo, learned Principal State Attorney and Ms. Salome Lwiza, learned State Attorney. When he took the floor, Mr. Matata prefaced his arguments by stating that the applicants intended to institute a suit against the respondents concerning their cattle's right to graze in what is alleged by the respondents to be a forest reserve. In the process, Mr. Matata averred that the applicants have issued a 90-day notice to the respondents as per the requirement of the Government Proceedings Act, Cap. 5 [RE.2019]. He informed this Court that during the pendency of the notice, the applicants thought it necessary to restrain the first respondent from evicting their cattle from the forest reserve. Arguing for the application, Mr. Matata contended that there is a triable issue involving the parties. He explained that the first respondent had taken some measures that precluded the applicants from grazing their cattle in the forest reserve. Mr. Matata argued further that the applicants stand to suffer irreparable loss unless the application is granted. He amplified that the 2 applicants depend on the cattle for their living and by evicting them from the forest reserve, the cattle are likely to die out of hunger and thirst. On the balance of convenience, Mr. Matata contended that since the applicants have been

grazing their cattle in the disputed area for almost 18 years, the intended injunction will not affect the respondents. He urged this Court to consider the time within which the injunctive order will be operational as negligible compared with the period they grazed in the alleged forest reserve. Countering, Ms. Mwandambo prefaced by opposing the application. Despite opposing the application, Ms. Mwandambo quickly agreed with Mr. Matata's arguments that there is a triable issue involving the parties. As to who will suffer irreparable loss, Ms. Mwandambo contended that the respondents stand to suffer irreparable loss. She amplified that it is crucial to restrain the applicants from grazing in the forest to prevent the destruction of natural vegetation which is necessary to curb soil erosion and flood. The Principal State Attorney went on to argue that the preservation of the forest is necessary for the public interest. On the balance of convenience, Ms. Mwandambo held the view that the forest is likely to be degraded by pastoralists' activities in the 3 forest. She contended that the pastoralists have an option of grazing their cattle away from the forest reserve. I wish to point out that in determining the application, this Court will be guided by the celebrated case of *Atilio v. Mbowe* [1959] HCD 284 which laid down the principles that guide the granting of temporary injunctive orders. In the said case, it was decided that for the temporary injunctive orders to be issued by the court, the following three conditions must cumulatively be met:

- (a) There must be a serious question of fact to be alleged and the probability that the applicant will be entitled to the relief prayed;
- (b) 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
- (c) That on balance, there will be a greater hardship and mischief suffered by the applicant from the withholding of injunction than will be suffered by the respondent from granting it. Guided by the three conditions, the issue that needs this Court's determination is whether the applicants met the conditions. Starting with the first condition, the existence of a serious triable issue entails that 4 there must be a substantial question raised by the applicants which need investigation and decision thereon. In determining whether there is a serious triable issue, the courts are precluded from delving into the merits of the case by requiring proof of the alleged facts. Courts are only required to satisfy themselves that the allegations advanced by the applicants are not frivolous or vexatious. In the instant application, the applicants contended through their affidavit and submission that their cattle had been grazing in the alleged forest reserve for almost 18 years. They contended further that the first respondent has started to evict their cattle from the forest alleging that the forest is a reserved one. In this, I agree with the learned minds that the applicants have demonstrated their interest in the alleged forest reserve which is vehemently questioned by the first respondent who also claims interest in the same land. In such circumstances, it is my holding that there is a serious triable issue that needs investigation by the court before determining the rights of the parties. As to whether the Court's interference is inevitable to prevent the applicants from suffering irreparable injury, I think it is relevant to consider what constitutes irreparable injury. This kind of injury has only 5 one qualification. The

injury must be the one that cannot be adequately redressed by damages. If the court, in the main suit, decides in favour of the applicant, the damages must put the applicant in the same position he was in before the refusal of the temporary injunction. In case the awarded damages are inadequate to restore the applicant to the position he was in, that is a fit case to grant a temporary injunction. See: *Orissa State Commercial Transport Corporation Ltd v. Satyanarayan Singh*

(1974) 40 Cut LT 336. According to the applicants' affidavit, their cattle are likely to die out of hunger and thirst in case the order to restrain temporarily the first respondent from evicting their cattle from the forest is not granted. In their view, eviction from the forest will cause irreparable loss when their cattle which they depend on for a living die. This was countered by the respondents who asserted that the preservation of the forest is of utmost importance for environmental conservation which serves the public interest. In their view, the public stands to suffer irreparable loss when the forest is degraded by pastoralists' activities in the forest. I gave a thorough thought to the averments of both parties. The massive destruction of natural vegetation whether occurred or is about to occur is irreversible. Given that, it is my considered opinion that the respondents will suffer irreparable injury. As to the balance of convenience, trite law is that the applicant for a temporary injunction must establish that the balance of convenience in the event of withholding the relief will exceed that of the respondent in case he is restrained. In the Indian case of *Yogesh Agarwal v. Sri. Rajendra Goyal*, 2014(3) ARC 427, it was held that the court must be satisfied that the hardship or the inconvenience which is likely to be caused to the applicant by refusing injunction will be greater than that which is likely to be caused to the respondent by granting it. That being the position, I hasten to state that the respondents will suffer more if this Court grants the application. I take that position while fortified by the averments of the applicants that they are entitled to graze their cattle in the alleged forest. Given that, I am of the view that the said activity may lead to the destruction of natural vegetation as claimed by the respondents. I hold so while mindful of the cherished principle that when there is a conflicting position as to the irreparability of the damages to the environment and the economy, the former holds precedence over the latter. In this regard, I am persuaded by the case of *T.N. Godavarman v. Union of India* and Ors, I.A. No.1000 of 2003 where the Supreme Court of India had this to state: 'A situation may arise where there may be irreparable damage to the environment after an activity is allowed to go ahead and if it is stopped, there may be irreparable damage to economic interest. This Court held that in case of a doubt, protection of the environment would have precedence over the economic interest. It was further held that the precautionary principle requires anticipatory action to be taken to prevent harm and that harm can be prevented even on a reasonable suspicion. Further, this Court emphasizes in the said judgment that it is not always necessary that there should be direct evidence of harm to the environment.' In the final analysis, the application is not granted. Given the fact that the applicants are good citizens engaging themselves in livestock keeping for their living and have brought this matter to ensure the welfare of their cattle, I

order no costs. Order accordingly. DATED at MWANZA this 5th of November, 2024. KS
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