

TANZANIA / JUDGMENT

# Charles Marwa Ruling

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DECIDED  
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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF  
MWANZA AT MWANZA MISC. LAND APPLICATION NO. 24289 OF 2024 (Arising from Misc. Civil  
Application No. 117 of 2022) CHARLES MARWA .....  
APPLICANT VERSUS VIOLENT SISTY CHUWA ..... 1ST  
RESPONDENT BONIPHACE NGILI SAYI ..... 2ND RESPONDENT  
MISUNGWI DISTRICT COUNCIL ..... 3RD RESPONDENT  
COMMISSIONER FOR LANDS ..... 4TH RESPONDENT REGISTRAR  
OF TITLES ..... 5TH RESPONDENT ATTORNEY GENERAL  
..... 6TH RESPONDENT

## RULING

18th November & 16th December, 2024 CHUMA, J. The applicant above preferred this application under certificate of urgency under Order XLIII Rule 2 and section 95 of the Civil Procedure Code, Cap 33 R.E 2019 (the CPC) together with section 2(3) of the Judicature and Application of Laws Act, Cap 358 R.E 2019 (JALA). The court is being moved to declare that the 1st respondent is in contempt of court for disobeying the court order which maintained the status quo pending filling and determination of an application for temporary injunction. The court is further being moved to order attachment of unspecified properties 1 of the 1st respondent for his persistent disobey of the court order and to order him to be detained as a civil prisoner for 6 months. The facts of this matter are easy to narrate. Both the applicant and the 1st respondent are claiming ownership of Plot No. 3 Block ‘B’ Nyanghomango in Misungwi District Mwanza (the disputed land). Following the dispute over the disputed land, the applicant intended to file a suit seeking rectification of the Land Register over the disputed land. However, for want of compliance with section 6 (2) of the Government Proceedings Act [Cap 5 R.E 2019], the applicant served 90 days’ notice to the government. While awaiting the expiry of those 90 days, the applicant preferred Misc. Civil Application No. 117 of 2022 for maintenance of status quo. Pending institution of a suit. This court on 7.11.2022 made an order maintaining status quo pending hearing and determination of an application for temporary injunction. The applicant to date has never applied for a temporary injunction, rather he only filed Civil Case No. 37 of 2023 seeking rectification of registered on the certificate of title No. 87075 RL Mwanza in respect of the disputed land. According to the affidavit supporting this application, the 1st respondent is improving on the disputed land by constructing the fence wall, demolishing the prior house, and constructing two houses despite the 2 pending

order of this court to maintain the status quo. The applicant attached photos and a flash disk containing videos to show the alleged improvements. On their part, the 1st respondent deposed the counter affidavit stating that the alleged improvements were made before the order of this court. That the photos and video were not taken during the pendency of the court order and that the applicant for the reasons best known to him has never applied for temporary injunction. I ordered the application to be argued by way of written submissions, Messrs. Steven Kitale Cleoplace and Amos Gondo both Learned Advocates represented the applicant and the 1st respondent respectively. The rest of the respondents neither filed counter affidavits nor filed written submissions. Mr. Kitale submitted in support of the application that, the 1st respondent has disobeyed a court order that maintained status quo pending temporary injunction. This court orders maintenance of the status quo to preserve the existing conditions of the disputed land. He referred to the case of Zein Mohamed Bahroon Vs. Reli Assets Holdings Co Ltd (RAHCO), Misc. Land Application No. 307 of 2017 the court underscores that enforcement of court orders is crucial until the main suit is determined. That, 3 the court further quoted with approval the case of T.B.L Vs. Edson Dhobe & Others, Misc. Civil Application No. 96 of 2006, which re-emphasized the importance of respecting and complying with court orders. That, contrary to the order, the 1st defendant is making unauthorized constructions, irreversible changes, and alterations on the disputed land as shown by photos and video of 15th March, 2024, attached to the affidavit. That, the application for temporary injunction has not yet been instituted due to the unauthorized construction and alterations that have fundamentally changed the property, rendering any temporary injunction ineffective as no original state remains to preserve. The voice from the videos shows that the 1st respondent has entered into a lease agreement. He submitted further that, a legal consequence for disobeying a court order is for the court to attach the property of that person and to order their detention as a civil prisoner for a term not exceeding six months. Reference was made to the case of Mary Joseph Vs. Rachel Zephania, Misc. Land Application No. 37 of 2020 (unreported). In reply, Mr. Gondo submitted that this application was misconceived. It is not in dispute that, on the 7th day of November, 2022, this court issued a ruling by maintaining the status quo pending hearing and final 4 determination of the application for temporary injunction. The order was made under the doctrine of 'Mareva injunction' pending expiration of 90 days' notice served to government institutions so that the applicant could institute a suit and an application for temporary injunction. That, the applicant neglected to file the application for temporary injunction and it is now twenty-five (25) months. Therefore, that order is no longer valid it became inoperative as soon as 90 days lapsed. He submitted further that, even assuming that the order is valid, still this application does not give sufficient evidence to prove that the 1st respondent violated the court order to convince this court to arrest and detain the 1st Respondent as a civil prisoner. That, the photos and video annexed to the applicant's affidavit, does not tell us as to when the same were taken and it does not tell if the same were taken on the disputed land. I was referred to the case of Trustees of Anglican Church Diocese of Western Tanganyika Vs. Bulimanyi Council & Others, Misc. Civil Application No. 1 of 2022 (unreported). That, the cited cases for the applicant are distinguishable. That, the application is wanting, devoid of merit, and an abuse of the court process as it intends to waste the valuable 5 time of the court, he accordingly prayed for the application to be dismissed with costs. In rejoinder, the submission in

chief was reiterated with an addition that, the order issued on 7.11.2022 expressly directed the maintenance of the status quo pending the hearing and determination of an application for temporary injunction. That, the language of the order indicates that it was not time-bound to 90 days, as claimed by the Respondent. That, according to the case of Zein Mohamed Bahroon Vs. Reli Assets Holdings Co. Ltd (supra), the order remains in effect pending the resolution of the matter it was issued to protect. It does not automatically expire after a statutory period unless explicitly stated. I have considered the submission for and against the application. As I have stated hereinabove, this application was made under Order XLIII Rule 2 and Section 95 of the CPC, together with Section 2(3) of JALA. Order XLIII Rule 2 deals with how the application needs to be brought, that is, by chamber summons supported by an affidavit while section 95 is on the inherent power of the court. Indeed, the applicant had no specific law under the Laws of Tanzania to rely on his application apart from section 2(3) of JALA because, since 7.11.2022 when this court was moved to apply common law principle and equity to cover lacunae for the interim situation, the applicant have relaxed. Surprisingly, the submissions for the applicant are not based on common law but on firm legal standing and sanction imposed on a person who disobeys the court's order for a temporary injunction under Order XXXVII Rule 2 (2) of the CPC which provides that; "(2) 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." Before I delve into determining this application, I saw a need to remind the parties of the rationale for the Mareva injunction in Tanzania. It is a common law remedy derived from the case of Mareva Companies Naviera SA Vs. International Bulkcarrier SA [1980]1 ALL 213 where the court of England issued injunctive orders to protect the ship owners' rights where there was a danger for the defendant to transfer assets out of jurisdiction. Into our jurisdiction, the Mareva injunction has been applied vide section 2(3) of JALA by this court, to order some interim injunctive orders pending anticipatory suits or applications before the court. It has been 7 mostly applicable where the institution of the suit is not automatic, for instance when it is prevented by some legal impediments like issuance of statutory notice to the Government. See the case of Yahya Hamis Mboneye Vs. Tanzania National Roads Agency (TANROAD) and 2 others, Misc. Land Application No. 8 of 2022. Coming to the case at hand, on 7.11.2022 when this court ordered maintenance of status quo pending hearing and determination of an application for a temporary injunction, this court was moved by an affidavit stating that the applicant intends to file the suit after the expiry of 90 days of notice. The submissions by the applicant's counsel Mr. Kitale were well stated by this court on pages 5 and 14 of the ruling that: - "...In that case, Mr. Kitale averred that after the expiry of 90 days' notice issues pursuant to the government Proceedings Act, Cap 5, his client will file a suit for that purpose of rectifying the register...since the year 2020 when Land Application No. 212 of 2020 was instituted in the District Land and Housing Tribunal at Mwanza to sometimes in 2022 when the application was withdrawn, there was an injunctive order with regard to the disputed Plot..." 8 In my view, while the court issued an order maintaining the status quo, it intended the order to last for 90 days or soon after until the applicant filed the suit and application for temporary injunction pending determination of the suit. The Court of Appeal in

the case of Tumaini Massaro Vs. Tanzania Ports Authority, Civil Appeal No. 30 of 2018 (unreported) on page 11 stated that: - “It is a cardinal principle that a reason in a judgment has to be read in as a whole in the context of the issue that was before the court to have its true meaning and logic.” (emphasis added). Having considered the rationale behind the Mareva injunction, the court’s order issued on 7.11.2022 in my view, was not meant to remain forever. By neglecting to file the contemplated temporary injunction after 90 days, the applicant waived his protection. Mr. Kitale was of the view that the order was not time-bound to 90 days while relying on the case of Zein Mohamed Bahroon Vs. Reli Assets Holdings Co. Ltd (supra). I will not subscribe to that standing because that case is distinguishable from the instant case. In that case, a temporary injunction was granted pending hearing and determination of the Land Case No. 235 of 2016, which at the time of the ruling, the main case was at the 9 stage of mediation before Hon. Wambura, J. In our case, the order was issued as a Mareva injunction, if this court had intended for the said order to remain for a longer period than the lifespan of 90 days’ notice, it would have stated specifically that the order is issued pending hearing and determination of the main contemplated suit. But it ordered the same to remain in force pending determination of an application for a temporary injunction which in line with the case of Zein Mohamed Bahroon Vs. Reli Assets Holdings Co. Ltd (supra), would have stay for a longer period until determination of the main filed case. Moreover, to avoid doubt, I will go further in determining this application while assuming that the order of this court dated 7.11.2022 is still valid. The applicant is telling this court that, the respondent has continued to develop the disputed land despite an order maintaining the status quo. Before the court’s order, the fence was at the foundation stage but now it is complete and the original property was demolished. That the applicant has further constructed two houses on the disputed land as shown on the photos and video clips recorded on 15.3.2024 attached to the affidavit. The respondent negates this information and states that the said development was made before the order of this court. 10 Having considered the affidavits of both parties, I am of the view that, the applicant's evidence falls short to prove these allegations. I have reasons, one, neither the videos nor the photos show the exact date on when they were taken, two, there is no proof of how the disputed land was before Misc. Civil Application No. 117 of 2022 and after the court’s order dated 7.11.2022 and three, based on the nature of allegations by the applicant and the applicant’s spirit to protect the court’s order and original nature of the disputed land, it is irrational for the applicant to stay for 6 good months from 15.3.2024 when the photos and videos were taken until on 30.9.2024 when this application was filed. In the upshot, this application is barren of merit. I proceed to dismiss it. The applicant is still at liberty to file an application for temporary injunction pending the hearing and determination of Land Case No. 37 of 2023. The applicant is further ordered to pay the costs of this application. It is so ordered. DATED at MWANZA this 16th day of December, 2024. W. M. CHUMA JUDGE 11 The ruling delivered in court before, Mr. Kitale advocate for applicant, Mr. Gondo advocate and Ms. Subira Mwandambo State Attorney for the respondents this 16th day of December, 2024. J. MUSAROCHE DEPUTY REGISTRAR 12

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