

TANZANIA / JUDGMENT

charles werongo another versus crdb bank plc 6 others 2023 tzhclandd 16999 29 september 2023

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29 September 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND CASE APPLICATION NO.514 OF 2023 CHARLES WERONGO 1[^] APPLICANT MABIBO CONSTRUCTION COMPANY LIMITED 2^{""}APPLICANT VERSUS CRDB BANK PLC 1[^] RESPONDENT AFRIMAX ENTERPRISES 2^{""} RESPONDENT MR.SALUM ABDALLAH MUHENE 31[^] RESPONDENT MS. JANET AMEDE MASSAWE 4[™] RESPONDENT REGISTRAR OF TITLES 5[™] RESPONDENT COMMISSIONER FOR LANDS 6[™] RESPONDENT THE ATTORNEY GENERAL 7[™] RESPONDENT

RULING

Date of Last Order: 14. 09.2023 Date of Ruling: 29.09.2023 T. N. MWENEGOHA[^]J. The applicants, jointly, sought for an Injunction order, pending the expiry of 90 days' Statutory Notice of intention to sue the government, under Section 2(3) of the Judicature and Application of Laws Act, Cap 384, R. E. 2019 and Sections 95 of the Civil Procedure Code, Cap 33 R. E. 2019. They are seeking to restrain the 1^{=*} - 31[^] respondents and any person working under their instructions from evicting the applicant from a suit property, located at Plot No. 70 Block D716, LO No. 141476. Kigogo Area, and Plot No. 633/1, Block D CT No. 43122, LO 147606, Mabibo, Ubungu Area, illegally sold to the 4[^] respondent. Also Plot No. 36364, LO No. 93898, Kawe Area Kinondoni, Municipality and Dar es Salaam Region, sold to the 3^{""} respondent. Their Application was supported by the joint affidavit of the 1[^] applicant, Charles Werongo and the Principal officer of the 2[^] defendant. The Application was not contested by the counsel for the 5[^] - 7[^] respondents and the same proceeded ex parte against the 2[^] respondents. The 3[^] respondent was represented by Advocate Hosea Chamba and the 4^{*} respondent enjoyed the legal services of Advocate Daudi Mseri. The same proceeded by way of written submissions. Advocate Augustine Mathern Kusaiika, arguing for the Application, was of the view that, the Court has powers to grant Mareva Injunction as stated in Ugumba Igembe & Another versus The Trustees of The Tanzania National Parks & Another, Misc. Civil Application No. 1 of 2021, High Court of Tanzania at Mbeya (unreported). That, the Application is preferred pending the expiry of 90 days' notice to sue the government, not pending a suit like in a normal Injunction, as observed in Daudi Mkwaya Mwita

versus Butlama Municipal Council & Another, Misc. Land Application No. 69 of 2020, High Court of Tanzania at Musoma (unreported). Therefore, based on the said reasons, he insisted that, the instant Application has merits and should be allowed. In reply, Mr. Chamba for the respondent, was of the view that, the Application has been overtaken by event, as the 3rd respondent is in occupation of the suit premises located at Plot No. 36364, LO No. 93898, Kawe Area Kinondoni, Municipality and Dar es Salaam Region for about a year now. The same was stated in his counter-affidavit. He argued that, above all, the applicant has not met the conditions given in Atilio versus Mbowe(1969) HCD 284. That, there is no serious question of fact in need of this Court's attention between the parties. That, if the Application is denied, the applicants will suffer irreparable loss. And lastly on balance of inconveniences, the applicant stands to suffer more harms than the respondents. On his part, Mr. Mzeri for the 4th also insisted that, the Application is overtaken by events. The 4th respondent is the owner of the suit premises suit property, located at Plot No. 70 Block D716, LO No. 141476. Kigogo Area, and Plot No. 633/1, Block D CT No. 43122, LO 147606, Mabibo, Ubungu Area within Dar es Salaam Region. He has Title Deed and has taken possession of the said properties as stated in her counter affidavit. Therefore, allowing the Application at hand will interfere with the peaceful enjoyment of the mentioned properties by the 4th respondent. Having gone through the submissions by parties, the affidavits in support of the Application and the counter affidavits for the respondents, the issue for determination Is whether the Application has merits or not. In a plain meaning. Injunction is a judicial order, restraining a person from beginning or continuing an action, threatening or invading the legal right of another, or compelling a person to carry out a certain act. Going through the applicant's records, it is revealed that the applicants have not yet been evicted and they are still residing In the premises despite the fact that the properties have been sold. Similarly, respondent's records revealed that they have partly taken possession of the premises, as one of the respondents also resides in the property in dispute. As stated in his affidavit as well as the submissions from his counsel, Mr. Salum Abdallah Muhene, the 3rd respondents, is in occupation of the Kawe property located at located at Plot No. 36364, LO No. 93898, for about a year. Same circumstances are surrounding the 4th respondent, who owns has the Title Deed over the other properties located at Plot No. 70 Block D716, LO No. 141476. Kigogo Area, and Plot No. 633/1, Block D CT No. 43122, LO 147606, Mabibo Ubungu Area within Dar es Salaam Region. Evidently, the applicants being aggrieved, as stated in their Affidavit and submissions are requesting this Court to intervene and maintain the status they are in while they are awaiting expiry of 90 days' notice to sue the Government. Hence, praying for Mareva Injunction. In granting such Applications, two conditions must be met as stated in the landmark case of Mareva Companies Naviera SA versus International Bulk carriers SA,(1980)1 All ER 213. These are as follows; Firstly, the applicant must show his intention to institute the case and has taken steps to do so. This requirement has been met and is evidenced in the applicants' affidavit. See annexure GF - 7. Secondly if it is justifiable and convenient, the Court should allow the Application as stated in Abdalialah M. Maiiki & 545 Others versus Attorney General & Another, Misc. Land Application No. 119 of 2017, High Court of Tanzania at Dar es Salaam,(unreported). As the applicant has advanced the reasons why he Is aggrieved, and has already taken steps towards suing the respondents including the government, it is justifiable to render him protection through Mareva Injunction. Therefore, I find this

Application to have merits and the same is allowed accordingly with no order as to costs. The applicant is advised to institute the intended suit immediately after the expiry of the 90 days' notice of intention to sue the government. Also, she should apply Injunction pending the suit to be filed. Ordered accordingly. T. N. ^MWENEGOHA JUDGE o o a: 29/09/2023 o A'. tv /•

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