

TANZANIA / JUDGMENT

dalangu gidabulgalda 4 others vs dilala digabulgalda 2022 tzhc 17231 23 december 2022

COURT
TZHCDECIDED
23 December 2022

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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF
MANYARA AT BABATI MISCELLENEOUS LAND APPLICATION No. 05 of 2022 (Originating from
Land Appeal No. 4 of 2022 pending before High Court of Manyara Sub- Registry of Babati)
DALANGU G1DABULGALD Ist APPLICANT ELIAS GUNDANGA
DEREMA..... ..2nd APPLICANT OMARI MKASA..... 3rd APPLICANT EMANUEL
GICHENOKA..... ..4th APPLICANT GUMBA SUHOSU..... 5th
APPLICANT VERSUS DILALA DIGABULGALDA..... RESPONDENT

RULING

Date: 23/12/2022 BARTHY, J. The application is brought under certificate of urgency jointly by the applicants. The applicants moved this court under section 95 and Order XLIII, Rule 2 of the Civil Procedure Code [Cap 33 R.E. 2019] (the PCP) on ex-parte prayer and inter-parte as follows; Ex-parte prayer

1. That, this Honourable Court be pleased to grant an order of maintenance of status quo in respect of the use of the suit property's. That the respondents should continue using the suit property's as they were before the commencement of legal Page 1 of 9 proceedings before the court of law pending the hearing of this application inter-parties. Inter-parties prayers.
2. That, this Honourable Court be pleased to grant an order of maintenance of status quo in respect of the use of the suit property's. That the respondents should continue using the suit property's as they were before the commencement of legal proceedings before the court of law pending the hearing of this appeal into its finality.
3. Costs be provided for;
4. Any other order(s) as this Court may deem it fit and just to grant. The application was supported by joint affidavit of the applicants. The respondent contested the application with counter affidavit. With the nature of the application and for the interest of justice the court sought the same be heard inter-partes. For better appreciation of this matter, it is best to

state facts giving rise to this application in the outset; the parties had the land dispute before the District Land and Housing Tribunal (the tribunal) of Babati vide Land Application No. 25 of 2022. The said matter was dismissed by the tribunal as the respondent was precluded to refile another application without the leave of the court. The respondent aggrieved with the said decision lodged an appeal before this court through Land Appeal No. 4 of 2022 which is set for hearing. Before the appeal was determined, the respondent has cultivated in the said land forceful or had leased the suit property to the stranger who Page 2 of 9 tilled and cultivated it by force and leaving the applicants without a land for farming which they have been cultivating it ever since. The applicants are now before this court seeking for an order for maintenance of status quo to let the respondents continue using the suit property as before the commencement of the suit. The application was heard orally, Mr. Raymond Joakim Kim, learned counsel appeared for the fourth applicant, Mr. Abdallah Kilogwa, appeared for the first, second, third and fifth applicants learned counsel while the respondent was represented by Mr. Kalori Chami, learned advocate. On the applicants' submission in support of the application, Mr. Kim had submitted that, the application intended to seek for order of this court for the applicants to maintain the status quo of the suit property as it was before this matter. He went further to state that, the respondent knowing that before the district land and housing tribunal on Application No. 25 of 2022 he did not get any title over the suit property. The respondent went ahead on his own will to lease the same to Ezekiel Marco Dalega who had cultivated on the said land and left all the applicants without the land to cultivate. Mr. Kim fiercely argued that, the conduct of the respondent is the abuse of the court process, knowing there is the pending appeal and the decision of the tribunal was not on his favour; still he went ahead to lease the said land which was cultivated by the applicants. Page 3 of 9 He went on to argue that, due to that conduct the applicants sought to seek the redress to this court under s. 95 of the CPC Cap 33 R.E. 2019 to use its inherent power to prohibit the miscarriage of justice and abuse of court process. Making reference to Black's Law dictionary 6th Edition of 1990 on page 25 the word abuse has been defined to be 'the malicious abuse of legal process which occurs where the party employs it for unlawful object not the purpose it intended by the law to reflect'. For those reasons, Mr. Kim prayed to this court to give order for status quo of the said land so the applicants can continue cultivating on the said land as they always did. Again, Mr. Kilogwa was in agreement with the submission made by Mr. Kim, but he further submitted that it was malicious for the respondent to lease the said land to the person who is not the party to this appeal or before the tribunal. He contended that the conduct of the respondent will cause more dispute. Thus, he prayed to the court to grant the application. Responding to the applicants' counsel submission, Mr. Chami counter argued that with respect to application before the tribunal he was in agreement that the application was brought without the leave to refile and the court therefore dismissed it for that reason. On the said ruling of the court did not state who is the owner of the suit property. That is neither the applicant nor the respondent who were declared the lawful owners. He therefore stated that, whoever could use the said land. He added that the respondent was not the stranger to Page 4 of 9 that land as he is the sibling with the first applicant whom they used to own the

land together. Mr. Chami went further to deny the claim that the respondent has that there was no lease agreement made. He contended that the said lease agreement was forged and the complaint has already been filed to the police. With respect to the prayer made in this application, Mr. Chami argued that the court should grant it in favour of the respondent considering that he had already cultivated it and there are maize crops growing. On this point he cited the case of Sultan Bin Ally Bin Hilala Esrel v. Mohamed Hilal and 2 others Misc. Commercial Case No. 64 of 2014, HC Commercial Division at Dar es salaam at page 10 it was held that, the status quo is to maintain the position as from the date of order, however the copy was not made available to this court. To further add up, Mr. Chami submitted that the court should consider granting the application to the respondent as prayed in the chamber summons by the applicants. He added that, the prayer in the chamber summons is not supported with facts deposed in the affidavit. He argued the application is therefore defective and it should be disregarded. The learned counsels for the applicants rejoined from the reply submission. Mr. Kim stated that the claim that the lease agreement was forged is not unsupported as the same shows it was witnessed in court. Also, he contended that there was no any complaint made to the police on the alleged forgery. Page 5 of 9 With respect to the application before this court, Mr. Kim argued that it was properly made under s. 95 of the CPC as it is referred when there are lacunae in the law to prevent the abuse of court process. As the respondent has leased the suit property for three years which amounts to disposition and curtailed the applicant their right. On the difference of prayers in the chamber summons and what has been deposed in the affidavit, Mr. Kim argued it was the slip of the pen which can happen to anyone. He concluded by maintaining his arguments made in his submission in chief that the court should grant the application in favour of the applicants. Mr. Kilogwa on his brief rejoinder he disputed the claim that the lease agreement was forged as there was the proof of the existed hand writing on the said agreement that it was not forged. Having heard the contending submissions, I appreciate the contributions made by the learned advocates for both sides. The main issue which this court has to determine is; Whether this application has the merit I have also noted that there is real an impending appeal before this court which has been fixed for hearing. The respondent being the appellant on the said matter, where the decision of the tribunal did not amuse him as the issue of suit property was not resolved on merit. Considering the application before this court is for maintenance of 'status quo' which means they wish for the current status to be maintained as they are now pending determination of the main suit. The provisions of section 68(e) of the Civil Procedure Code [Cap 33 R.E. 2022], allows the court to make interlocutory order to prevent the end of justice to be defeated, but not determining the matter to its finality. With respect to this matter, the issue of ownership of suit property is yet to be determined by any tribunal or court. However, it followed that the respondent initiated to take things on his hands by proceeding to repossess the said land regardless of the decision of the tribunal. Moved by the decision of the the Court of Appeal in the case of Clara Kimoka

- v. Xavery [2002] TLR 255 where it held that, where there are claims of rights in ownership, the determination of the same will be dealt within the main case. The applicants are seeking for an order from this court to have the land they were cultivating to be returned to them for farming after the respondent had taken it forcibly and leased it to another person. However, in their chamber summons the applicants have prayed for respondents to continue using the suit property as they were before the commencement of legal proceedings before the court. The state of affairs as of present is that, the suit property has been cultivated by the respondent or leased to the third party who is not the party to this matter. To maintain the "status quo" is to keep things the way they presently are. The applicants did not seek for order of status quo ante which means "the status before", which refers to the state of affairs that existed previously. Page 7 of 9 Even if this court would have been properly moved with the prayer to grant the application in favour of the applicants, the court to order the farm to be handed to the applicants to continue to do the farming will be determining the ownership of the suit property before the appeal is heard on merit. A similar stance has been determined by this court in the case of Car Truck Distributors Limited v. MKB Company Ltd & Another (Misc. Application 688 of 2021) [2022] TZHC Land 198, High Court of Tanzania, Land Division at Dar es Salaam, where the court held; By this application in my opinion, the intention of the applicant is to re-occupy the suit property which the same is under the respondents as we speak. Therefore, she wants to use this court to legalise her reoccupation of the suit property. As argued by the respondents' counsel, this application is not tenable, not because of the enabling provision used by the applicant in moving this court, that is section 95 of the Civil Procedure Code, Cap 33. However, the main reason for not allowing this is that, the application will be as good as a premature determination of the main case. Since the application was made by the applicants in favour of the respondent, it is clear that the court cannot grant the prayer which is not prayed, or outside the pleadings. Therefore, I find that this application is not unsustainable. In the event of the circumstances of this case and for the reasons discussed above, I find that this application is bound to fail. It is therefore dismissed for want of merit. The costs to follow events. It is so ordered. this 23th December, 2022. G.N. BARTHY JUDGE 23/12/2022 Delivered in the presence of the appellant in person and Mr. Abdallah Kilogwa the counsel for the first, second, third and fifth applicants, also holding brief of Mr. Raymond Kim the counsel for the fourth applicant and Mr. Kalori Chami for the respondent and the parties in person. Page 9 of 9

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