

TANZANIA / JUDGMENT

diana jassony rwezaura vs kashebo general traders company limited 6 others 2024 tzhclandd 4 24 january 2024

COURT
TANZLIIDECIDED
24 January 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND CIVIL
APPLICATION NO. 27239 OF 2023. BETWEEN DIANA JASSONY
RWEZAURA APPLICANT VERSUS KASHEBO GENERAL TRADERS
COMPANY LIMITED..... 1st RESPONDENT KASHEBO JASSONY
RWEZAURA..... 2ndRESPONDEN PRUDENT MUKURASI
KASHEBO.....3rdRESPONDEN CRDB BANK
PLC.....4thRESPONDEN ADILI AUCTION MART
LIMITED..... 5thRESPONDEN NUTMEG AUCTIONERS &
PROPERTY MANAGERS CO. LTD..... 6thRESPONDEN
ALFONCE DEABUSHA..... 7thRESPONDEN

RULING

Date of last Order: 08/01/2024 Date of Ruling: 24/01/2024 A. MSAFIRI, J. The applicant Diana Jassony Rwezaura has filed this Application against the above named seven respondents, seeking for the order that this Court may be pleased to issue an order for maintenance of status quo and restraining the 6th & 7th respondents from evicting the applicant from matrimonial home located at Savei Area Kinondoni, pending the institution, i hearing and determination of Application for challenging the mortgage and sale of the said property by the applicant. In her affidavit, the applicant stated that she is aggrieved by the mortgage transaction and the process of sale by auction which she believes are tainted with irregularities and illegalities as they are contrary to laws governing mortgage and sale by auction, and she is in the process of initiating legal proceedings against the respondents in the District Land and Housing Tribunal (herein the District Tribunal). However, the applicant believes that, as a matter of law, the applicant and her opponents must attend compulsory mediation for not more than 30 days in order to institute legal proceedings before the said District Tribunal hence, she is seeking before this Court, an order of maintenance of status quo to restrain the 6th & 7th respondents from evicting her from the suit premises. She prayed for this order to be issued pending the institution and hearing of the suit she intends to file at the District Tribunal. On 08/01/2024, this Court summoned the parties to appear on 24/01/2024 to address it on the issue on whether this Application is

competent before this Court. The parties had also filed written submissions based on the objection which was raised by the 4th respondents also on the competency of this Application. fJ H q * 2 The applicant was represented by Mr. Tenzi Anthony, learned advocate while Mr. Nafikile Mwamboma, learned advocate represented the 4th & 6th respondents. The 1st, 2nd, 3rd, 5th and 7th respondents were absent. Addressing the Court, Mr. Tenzi submitted that the Application is brought under Sections 2(3) and 5 of the Judicature and Application of the Laws Act (JALA). That Section 2 of JALA provides for the application of Common Law whereby the High Court has exclusive and inherent jurisdiction to issue orders for Mareva injunction. That the subordinate courts have no such inherent jurisdiction. He submitted further that the Application is also brought under sections 68(e) and 95 of the Civil Procedure Court (the CPC). That these provisions gives inherent power to this to do any act which might further the interest of justice. That the subordinate courts have no such powers. He argued that the applicant could not have instituted this Application in the Tribunal because the same has no such inherent jurisdiction as the High Court. He insisted that this Application is competent before this Court. Mr Nafikile Mwamboma, counsel for the 4th and 6th respondents responded and argued vehemently that the High Court has no exclusive jurisdiction to entertain this Application seeking for Mareva injunction. That the District Tribunal have jurisdiction to entertain this Application under Section 180 of the Land Act, Cap 113 of the Laws hence the Application could 3 have been filed at the said District Tribunal where the applicant intends to institute the main Application. Mr Mwamboma added that the applicant was not barred to seek for the orders of injunction at the District Tribunal hence this Application is incompetent before this Court. He prayed for the same to be struck out with costs. In rejoinder, Mr. Tenzi mostly reiterated his submission in chief and added that this Application was not brought on original jurisdiction on land matters but on inherent jurisdiction of this Court. That this inherent jurisdiction is not found in Land Act but in JALA. He reiterated that the Application is competent and can be entertained by this Court. After hearing both parties and considering both oral and written submissions, the issue is whether this Application is properly filed before this Court, while the applicant intends to file the suit before the District Tribunal. I have considered the submissions by Mr. Tenzi, counsel for the applicant that this Court has inherent and exclusive jurisdiction to entertain this Application as it has been filed under JALA, the Applications of this nature famously known as Mareva injunctions. This is a common law practice which allows the court to grant temporary injunction where there is a legal impediment which bars the applicant to institute the main case at that particular time to seek for the particular orders. -/Vi I x. 4 I am not in dispute with the practice of this Court of granting injunctions famously known as Mareva injunctions. However, I find the Application at hand to be different as the applicant intends to institute the suit in the District Tribunal and not this Court. The major question is whether the applicant could not have filed this Application and sought the orders of maintenance of status quo before the District Tribunal. According to Mr. Tenzi, counsel for the applicant, the applicant's hands are tied by the law, such that she is barred from instituting any suit before the District Tribunal until mandatory 30 days of mediation before the Ward Tribunal have lapsed and the applicant granted the certificate of mediation, that is only when the applicant can institute a suit before the District Tribunal. According to the counsel, this is as per the amendments brought by Written Laws (Miscellaneous Amendments) No.3, Act of

2021 under Section 45(c). However, reading the provisions of the cited law, I agree with the submission by the counsel for the 4th & 6th respondents that they does not bar the applicant to seek for the temporary orders before the District Tribunal pending 30 days of mediation at Ward Tribunal. In the circumstances, the Applicant can seek the current sought order of maintenance of status quo before the District Tribunal and not this Court 5 as she intends to file the main Application not in this Court but at the District Tribunal. In addition, I have read the provisions of Sections 2(3) and 5 of JALA and I am satisfied that the cited provisions does not provide exclusive jurisdiction to the High Court only to issue the sought temporary orders as Mr Tenzi has submitted before the Court. For the above reason, I find that this Application is incompetent before this Court as it should have been instituted at the District Tribunal. I hereby struck out the Application with costs. It is so ordered. A. MSAFIRE JUDGE ' , v 24/01/2022 * 6

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