

TANZANIA / JUDGMENT

JEROME COSMAS MROSO

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13 February 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC. LAND APPLICATION NO.25989 OF 2024 (Arising from Land Case No.24595 of
2024) JEROME COSMAS MROSO.....APPLICANT VERSUS KIGAMBONI
MUNICIPAL COUNCIL.....1ST RESPONDENT THE HONOURABLE ATTORNEY
GENERAL.....2NDRESPONDENT

RULING

16th January & 13th February, 2025 L.HEMED,J The background of the matter as grasped from the affidavits is such that the Applicant herein Jerome Cosmas Mroso, claims to be the owner of Plot No. P4345, located at Ungindoni, Kigamboni Municipality, registered through Certificate of Title. No. DSMT 1008679 in his name. After acquiring the said plot, he constructed a fence and gate in preparation for further development. He remained in peaceful occupation until on the 14th of March 2024, when the 1st Respondent, herein Kigamboni Municipal Council 1 entered into it, demolished the fence and gate, and proceeded to erect the structures in the said suit landed property. Aggrieved by the said acts, the Applicant preferred the instant application under sections 68(e), 95 and Order XXXVII Rule 1(a)&(b) of the Civil Procedure Code [Cap.33 R.E 2019] against the 1st Respondent and the Attorney General, (the 2nd Respondent), seeking for the following orders: - "... Inter-partes

1. That this Honorable Court be pleased to grant temporary injunction orders restraining the 1st Respondent, his agents, employees, or any person acting under his authority from continuing with any further construction, transaction, or activities on the disputed land described as plot CT. No.DSMT1008679, Plot No.P4345, located in Ungindoni, Kigamboni Municipality, pending determination of the main suit.
2. That, the Honorable Court may be pleased to issue a temporary injunction against the 1st Respondent with immediate effect and restraining the 1st Respondent and/or their agents, servants, assignees, employees, contributories, assistants or any other person(sic) acting 2 on his (sic) behalf, jointly and severally from interfering with the suit property by way of attachment, sale or any other kind of disposition pending hearing and final determination of the main suit.
3. Any other order that this Honorable Court may deem fit, just fair and equitable to grant.

4. That the cost of this application be borne by the respondents.” The Application was supported by the affidavit of the Applicant and resisted by the respondents through the counter affidavit of one Charles John Masedoya, Principal officer of the 1st Respondent. Hearing was done by way of written submissions. In arguing for and or against the application, the Applicant was represented by Mr. Richard Mathias Kinawari, learned advocate, while the respondents enjoyed the legal service of Ms. Jesca Joseph Shengena, the learned Principal State Attorney. In determining the merit of the application, I will be guided by the conditions laid down in the case of Atilio vs Mbowe [1969] HCD 284. In the said case, the court laid down the following conditions: - 3
 1. There are must be a serious question to be tried on the fact alleged, and the probability that the plaintiff will be entitled to the relief prayed;
 2. The Applicant stands to suffer irreparable loss requiring the court’s intervention before the Applicants legal right is established;
 3. That on balance of convenience, there will be greater hardship and mischief suffered by the plaintiff from withholding of injunction than will be suffered by the defendant from granting it. I have read the affidavit and the rival submissions and found that the Applicant asserts that the said demolition and constructions have occasioned the loss of opportunity to him for failure to continue with construction for personal and economic gain. He also claims to have suffered mental agony and psychological torture due to the said demolition and construction. From the affidavit and the submission that support the application, the Applicant appears to seek injunctive orders to prevent the already completed action. The question is whether, in the circumstance, the application is worth to be granted. Let me answer the said question by pegging the circumstance 4 of the matter at hand to the conditions stated in Atilio vs Mbowe’s case (supra). Starting with the 1st condition on the existence of prima facie case, it is obvious that the Applicant has a pending Land Case No. 24595 of 2024 in which he seeks to be declared the lawful owner of the suit landed property. He also prays for an order inter alia compelling the 1st Respondent to demolish her structures erected on the disputed land. In fact, it is the dispute on ownership and the legality of the structures on the disputed land. This connotes the existence of prima facie case regarding the suit landed property. The 2nd condition according to Atilio vs Mbowe (supra) is the possibility of the Applicant to suffer irreparable loss which demands intervention of the court. The High Court of Delhi at New Delhi -India in Planet M Retail Ltd vs Select Infrastructure Pvt Ltd, OMP No. 488/2013, which is persuasive to our jurisdiction, defined irreparable loss to be injuries which cannot be compensated in terms of money. I do subscribe to the said position taken by the High Court of New Delhi. I have gone through all fourteen (14) paragraphs and found the Applicant to have not stated irreparable loss which he may suffer in case the 5 court withhold the injunctive order. What I have observed from the submissions and the affidavit supporting the application, the Applicant has stated that the 1st Respondent has already demolished his fence and the gate he had constructed. According to the Applicant, the 1st Respondent has already constructed structures thereon

the suit landed property. Principally, injunctive orders are designed to prevent future or ongoing injury. In other words, the court can only give injunctive orders against an ongoing act which is causing harm or an intended act that may cause future injury. As aforesaid, in the present matter, the act to demolish the Applicant's fence wall and the gate has already been committed. If at all there are injuries emanating from the said act, the Applicant must have already suffered the same. The court cannot in any way stop an act that has already been done and or prevent an injury that has occurred. In the present matter the action which the Applicant tries to move the court to prevent has already been done and thus there is nothing for this court to intervene. The only remedy for the injury that has already occurred is to sue for damages. 6 From the foregoing, I find no merits of the application at hand. I proceed to dismiss the entire application with no orders as to costs. Order accordingly. DATED at DAR ES SALAAM this 13th February, 2025. L. HEMED JUDGE 7

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