

TANZANIA / JUDGMENT

# malik juma kirendemo versus kinondoni municipal council another 2023 tzhclandd 16617 30 june 2023

COURT  
TANZLIIDECIDED  
30 June 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND CASE APPLICATION NO.300 OF 2023 MALIK JUMA KIRENDEMO APPLICANT VERSUS KINONDONI MUNICIPAL COUNCIL RESPONDENT THE ATTORNEY GENERAL 2<sup>nd</sup> RESPONDENT ■Vi. ■ ■ : f;::' RULING.. Date of Last Order: 14.06.2023 Date of Ruling: 30.06.2022 . •t. i T.N. MWENEGOHA, J . . . . AFP; :■/. This application came under section 2(3) of the Judicature and u' Application of Laws Act, Cap 384, R.E 2019 and sections 68 (e) of the Civil Procedure Code, Cap 33 R.E 2019. The applicant sought for an iniuctlon order, against the respondents and any person^vyprking under their instructions. She wants this Court to restrain them from demolishing a building belonging to the applicant pending the hearing of an application for temporary injuction to be filed after expiry of 90 days' Notice of intention to sue the government. It was supported the affidavit of Malik Juma Kirendemo, the applicant above named. The same was heard by way of written subrhissions and r> -.•.p ' ex-parte against the 2<sup>nd</sup> and respond^t. , ! K, - , A'Ork 1

- c. \ le , ,, .o/s' ■ In her submissions, the applicant's counsel, Stella Simkoko, cited the case of Atilio versus Mbowe,(1967) HCD 287 and argued briefly that, there Is a prima facie case between the applicant and the respondents which need Courts' intervention to prevent irreparable loss on part of the applicant. That, the applicant is being penalized for building without a building permit while he has paid the required fine for the said mistake. That if the order of injuction Is not given, the applicant will suffer injuries that cannot be atoned by way of monetary damages. The applicant's counsel went on to insist that, on balance of convenience, the applicant will suffer greater harm than the respondents Ifthlsrapplcatlbnus.denied. In reply, the learned State Attorney for the and 2<sup>nd</sup> respondents, I ' . - '• -ir-ii J' Stanley Mahenge, Insisted that, the applicant has not met the conditions -.oqi ' pn ' 1, necessary for granting Injunction as stated in Atilib versus Mbdwe case, supra and the case of T.A Kaare versus General Manager Mara Cooperative Union (1984), LTD (1987) TLR! 17. That, there is no

- 'i. Siifk ■ prima facie case to be tried by this Court. That, the applicant even after being penalised for building without a building permit, he continued to do so without applying for a permit and has never applied for it. After all, he is building on a public area, therefore, there is no chance that he will succeed in the case. - ; for n, ^ respon. ^ e . . rr • . '- vfp r>t- r'!"; f- - ■ tne {"C ' " As for the 2<sup>nd</sup> ground that the applicant will not suffer irreparable loss if the application is denied. That, the real question has been planned for public use, therefore, the applicant cannot be allowed to build on that .9ri \* • '0' h. ■ , li■ • ' - ■ area. Lastly, as for who will suffer greater harm if the injunction is not granted, the learned State Attorney for the respondents insisted that. It is ■ • ■ iPo the general public that will suffer for loss of the property if the order is ' ■ " i i ^ Al'i ' ■ given. They will be deprived of their rights to use the land in question.
- y. ' pic: "I y' • ■ ' Aghi ' --i. ■ i. ind in « . therefore respondents on behalf of the public, are the ones who will suffer irreparable than the applicant. Having gone through the submissions of parties in line with the affidavit in support of the application as well as the counter affidavit against it. The issue for determination is whether the application has merits or not. For a Mareva Injunction to succeed, two issues are considered. Firstly, the applicant's affidavit must show expressly, the intention to institute a case against the government and further that, some steps have been taken to do so, see Salyato iYToyi; & S pthers yei; sus Uvinza District Council & Another, Misc. Land Application No.72 of 2020, High Court of Tanzania at Kigoma, (unreported). I have gone through the affidavit by the applicant. At paragraph 11, the deponent has stated that, a 90 days' notice has been served to the respondents (the 1<sup>st</sup> & 2<sup>nd</sup> respondent), as shown by annexure MJK 7. This fact proves that, the applicant has taken some steps towards suing the government. Therefore, the condition has been fulfilled. ^ . : r. ^ ' inr. i''' ' • .. " 'Li/Oi-. . jjv"-ij ■ Secondly, the Court will see if it is justifiable and convenient to allow the -- "vO i O sO- I 1. - ■ ' ' application as stated in Abdallah Mi Maliki & 545 Others versus Attorney General & Another, Misc. Land Application No.119 of 2017, High Court of Tanzania at Dar Es Salaam, (unreported). i1 , ■ iv.'ji • This shows that, granting or allowing an application for Mareva Injunction Cc". i.i'l' '• L' " " "ritiBfi ' is a discretion of the Court. Like in other cases where the decision falls 1 - • . > i ll , jy ( (f . . U.I (I, I . • p pi ( • ' 'i. within the use of discretionary powers by the court, the rule is that, the
- i. . . . . -p.y, . said powers be used judiciously. Hence, basing on the fact that, the ! • S ' I. ! I ' ' I 11 n I! 5." ' applicant has fulfilled of the condition, it is my view that, I should exercise my discretion in his favour, lifable e; b r-- . . ant to I.,. . a -. r>' . ,T'ji%0> 0 ; .oova ; 0. I find therefore, find the application to have merits and the same is hereby allowed. No order as to costs. o TjiPMWENEGOHA, JUDGE, i\* 30/06/2023

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      [https://media.tanzlii.org/media/judgment/187839/source\\_file/malik-juma-kirendemo-versus-kinondoni-municipal-council-another-2023-tzhclandd-16617-30-june-2023.pdf](https://media.tanzlii.org/media/judgment/187839/source_file/malik-juma-kirendemo-versus-kinondoni-municipal-council-another-2023-tzhclandd-16617-30-june-2023.pdf)

**CASE PAGE**              <https://chat.esheria.ai/case-law/tanzania/malik-juma-kirendemo-v-kinondoni-municipal-council-marevainjunction-tanzlii-2023>

Prepared on 14 October 2026 · Esheria