

TANZANIA / JUDGMENT

MISC

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IN THE HIGH COURT OF TANZANIA MUSOMA SUB-REGISTRY AT MUSOMA MISC. LAND APPLICATION NO. 000013953 OF 2024 REFERENCE NO. 202406121000013953 BETWEEN MARTIN MANYAMA MABUSI @ MARTINE MABUSI MITENGA..... APPLICANT VERSUS BUNDATOWN COUNCIL..... 1st RESPONDENT THE ATTORNEY GENERAL OF TANZANIA..... 2nd RESPONDENT

RULING

& 12th July, 2024 M, L, KO MBA. J.; In this application the applicant via chamber summons is praying for the following;

- (a) That, the mandatory requirement of notice to the respondent be dispensed with; and
- (b) That, the Honorable High Court be pleased to make an order that ante status quo be issued in respect of the applicants' residential house situate at Bunda Township, Mtaa wa Ukerewe Road (Mtaa wa Barabara ya Ukerewe), Nyamakokoto Ward, within Bunda Page 1 of 6 Township, pending the hearing and final determination of an application for temporary injunction to be Hied after expiration of 90 (Ninety) days statutory Notice of intention to sue the 1st respondent which has been served to the 2fd respondent and the Solicitor General of the United Republic of Tanzania.
- (c) That, the honorable court be pleased to make an order ofmareva injunction in respect of the 1st respondent's notice of the 24h day ofApril, 2024 through the authorized land officer of the respective 1st respondent which ordered the applicant to remove his house on the located area on the ground that, it is an obstruct to the public way, till the hearing and final determination of the pending application for temporary injunction to be filed after expiration of 90 days statutory notice of intention to sue the respondents.
- (d) Costs to be provided for. The applicant moved this court under section 2(3) of the Judicature and application of laws Act, Cap 358 R.E. 2022 and Section 95 of the Civil Procedure Code, Cap 33 R.E 2022. Further there is affidavit sworn by the applicant, martin manyama mabusi@ martine mabusi mitenga. When this matter came up for hearing today morning, respondents were represented by Mr. Stamili Ndalo, State Attorney while the applicant had a legal service of Mr. Leonard Magwayega. Mr. Ndalo informed this court that Page 2 of 6 they filed counter affidavit with PO but he prayed to withdraw the PO so that the matter be heard

on merit. The prayer was granted. When given time to make his case, Mr. Magwayega was very brief, he prayed his chamber summons together with affidavit to be adopted and this court grant his prayers. On the other side, State Attorney Ndalo submitted that there is no need for the applicant to worry as respondent has no intention to demolish the applicant's suit property which is a house situated at Nyamakokoto area, Ukerewe Road Street in Bunda within the Musoma Region. He went on submitting that so far there is no such intention, even if the prayer will be granted respondent won't complain. In rejoinder Mr. Magwayega informed this court that his client was threatened by notices from the 1st respondent and basing on the submission made by State Attorney he prayed his prayer be granted. I have carefully and dispassionately considered the contents of the application and the prayers thereto, the affidavit filed in support of the application and the counter affidavit filed by 1st respondent and oral submissions. From these documents and submissions, it is common ground Page 3 of 6 that the interim injunction is sought before institution of the suit. The issue for determination, therefore, is whether the application for interim injunction can succeed. An interim injunction order preceding the institution of a suit or *mareva* injunction as it is commonly known, is a common law remedy developed by the courts of England. It derives its name from the case of *Mareva Compania Naviera SA vs International Bulkcarriers SA* [1980] All ER 213. In our jurisdiction, it is a settled principle of law that, this court has jurisdiction to grant such injunction under section 2(3) of the Judicature and Application of Laws Act, Cap 358 which braces the application of common law and equity in our jurisdiction. This position has been stated in plethora of authorities, including *Abdallah M. Malik & 545 Others vs AG Misc Land Appl. No. 119 of 2017*, *Jitesh Ladwa vs Yono Auction Mart and Co. Ltd & Others Misc. Civil Land Application No. 26 of 2020*, *Ugumba Igembe & Machanya Nemba Singu vs The Trustees of The Tanzania National Parks & The Attorney General, Miscellaneous Civil Application No. 1 of 2021* and *Daud Mkwaya Mwita vs Butiama Municipal Council and Attorney General Council (Misc. Land Application 69 of 2020)* [2020] TZHC 4174 (11th December, 2020). However, a *mareva* injunction cannot be applied or granted pending a suit. It is an application pending obtaining a legal standing to institute a suit. A *mareva* injunction may be applied where an applicant cannot institute a law suit because of an existing legal impediment for instance where law requires that a statutory notice be issued before a potential plaintiff can institute a suit. See *Daud Mkwaya Mwita vs Butiama Municipal Council and Attorney General Council* (supra). On 24th April, 2024 the applicant was given written notice to demolish the suit property which is a residential house and all applicant family members are accommodated therein. It is gathered from the affidavit that the applicant is lawful owner of the suit property since 1987 and it was just in 2019 respondents showed interest over the land to be used for public interest. Applicant claim for legal procedures to be followed on whatever is intended by respondents, he has given respondents 90 days' notice as required but he has to wait for the expiration of notice that's, why he /- - ■ knocked the door of this court with his prayer. He finds he will suffer irreparable loss if respondent will proceed with their' Jriteritidm. V..■■■■ / Page 5 of 6 Since the instant application is applied pending the expiry of the 90 days' notice to sue respondents which impends the institution of a suit by the applicant,

there is no doubt that the application falls within the realm of mareva injunction and can be issued if the conditions for grant of injunction are demonstrated which are arguable issue and serious question to be tried, court interference is necessary to protect the applicant and balance of convenience. From submission by parties, I find all the conditions were met and the respondent did not oppose the prayer. I therefore grant the prayer, mareva injunction is hereby issued in respect of the 1st Respondent's Notice issued on 24th April, 2024 on removal/demolition of the applicant suit property pending determination of intended application. Due to the nature of this application, I make no order as to costs. DATED at MUSOMA this 12th day of July, 2024. M. L. KO MBA JUDGE Page 6 of 6

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/martin-manyama-mabusi-martine-mabusi-mitenga-Marevainjunction-tanzlii-2020--6a3ea5243b1caa9129819906

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