

TANZANIA / JUDGMENT

Mathayo

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA BUKOBA-SUB REGISTRY AT
BUKOKA MISCELLANEOUS LAND APPLICATION NO. 23265 OF 2024 MATH AYO BRASIO BU
DIGOMA..... APPLICANT VERSUS NATIONAL RANCHING
COMPANY..... 1st RESPONDENT DISTRICT COMMISSIONER FOR KARAGWE
DISTRICT...2nd RESPONDENT THE ATTORNEY GENERAL..... 3rd
RESPONDENT

RULING

04 & 15/10/2024 KIWONDE, J. The applicant, Mathayo Brasio Budigoma, filed an application by way of chamber summons supported by his affidavit praying for the court orders below:

- 1) Ex parte interim order that this court be pleased to issue injunction order restraining the first and second respondents and all of their agents and assignees from evicting the applicant from Block No. 288/1 Kitengule ranch or doing any act whatsoever in the Block till hearing of this application inter partes. i
- 2) Inter parties, that this court be pleased to make an order that status quo in respect of Block No. 288/1 Kitengule ranch within Karagwe District in Kagera Region be maintained pending hearing and determination of an application for temporary injunction to be filed upon maturity of 90 days statutory notice to sue the respondents.
- 3) Cost of this application.
- 4) Any other orders this honourable court may deem fit to grant. This court ordered the respondents be served for them to be heard since they are within reach. Upon service on them, they filed counter affidavit refuting the facts deposed in the affidavit of the applicant. Therefore, the application was heard inter partes. During hearing of the application, the applicant was represented by Mr. Peter Matete, learned counsel, while the respondents were represented by Mr. Saidi Seni, Principal State Attorney and Mr. Nestory Lutambi, State Attorney. In his submissions in-chief, Mr. Peter Matete, advocate submitted that the application is filed under section 2(1)(3) of the Judicature and Application of Laws Act, Cap 358 (R. E 2019) and section 95 of the Civil Procedure Code, Cap 33 (R. E 2019) praying before this court to issue an order of maintaining status quo in respect of Block 288/1 at Kitengule Ranch in Karagwe District in Kagera Region pending maturity of statutory 90 days'

notice so that they can sue all the respondents. The counsel said the applicant entered into the mentioned block above via Kiteto Agro Business who was the tenant in that block and the land lord charged TZS 60, 000/= per head of cattle per year. But the first respondent discerned that he did not get anything, so he terminated lease agreement between him and Kiteto Agro Business who had sub-leased it. The block was put under supervision of the second respondent. Apart from that, the learned counsel said the second respondent wrote a letter to the applicant informing him about rescission of the contract and appointed the applicant to be there in the land in dispute and to oversee it. He was given some matters to ensure they are met, for example to safeguard the area against trespass, preventing illegal business, not to allow other peoples' cattle to get in there nor charge other people for feeding cattle therein, and if there are cattle found there not his, he had to report to the second respondent, construct infrastructures for animal keeping and if they get a new tenant, the applicant would vacate therefrom, but if he qualifies he would proceed to be a tenant. 3 According to the counsel, the applicant performed his obligations given to him in respect of the area, and later on, the first respondent gave him offer to be a tenant in the ranch, it was 700 hectares at block No. 291/6 of Kagoma Ranch. He applied for it. The applicant agreed the offer, wrote a letter to accept it. The counsel argued further that later on, the first respondent required him to vacate from the Block when the applicant asked for the control number to deposit or pay the required amount. That from August 2021, the applicant has been in the area, fulfilled his obligation. He was not given the control number to pay for it. Thus, the counsel prayed for interim order to maintain status quo so that the applicant can proceed to stay in the area, and if he is evicted, he will suffer irreparable loss. It is the second respondent who allowed the applicant to stay there. The applicant has some cattle and has nowhere to send them. Besides that, the counsel submitted that temporary injunctions are issued if there is a pending case, that is, there must be a prima facie case. But in this matter, the law requires issuance of the 90 days' notice before suing the Government. The notice has been issued but has not matured. In Abdallah Maliki and 545 others Versus Attorney General and another, Miscellaneous Land Application No. 119 of 2017, High Court, 4 temporary injunction was issued using the sections of the law cited in the chamber summons to protect the right of the applicant before institution of the main suit. Also, the counsel argued that if the order is refused, the applicant will suffer damages. He is keeping cattle there and as to the balance of convenience, he said, the applicant will suffer loss. The applicant was ready to lease the block but he was not given control number. The first respondent is actuated by malice. He referred to the case of Abdi Ally Salehe Versus Asaki Care Unit Ltd and others, Civil Revision No.3/2012) [2013] TZCA 179 (30 July 2023), in which the Court of Appeal gave important matters to consider before granting temporary injunction; one, if there is a pending case and there is a serious question to be determined, two, loss the applicant can suffer if the order is refused, in this matter, the applicant will have nowhere to send 600 cattle if he is suddenly evicted therefrom, three, balance of convenience, it is the applicant who will suffer irreparable loss. He added that in the counter affidavit, the respondents said the applicant is there illegally. The one who did so is Kiteto Agro Business and was evicted. The first respondent ordered the second respondent to allow

the applicant to be in that land, so, that act legalized the presence. The first 5 respondent has never said the applicant is there illegally. However, he said this will be determined in the main case to see the legality or otherwise. The counsel prayed the status quo be maintained and the respondents leave the applicant to proceed with keeping his animals in the area pending maturity of the 90 days' notice to sue the respondents which notice was served on the respondents on 4th September 2024 and it will mature in November 2024. In reply, Mr. Nestory Lutambi, State Attorney said the respondents resist the application. The learned State Attorney argued that in mareva injunction, the applicant has to prove three elements, one, that there is a prima facie case/ arguable case, he referred to the case of Atiio V. Mbowe [1969] HCD 635. He submitted that these elements are mandatory. Second, the applicant must show irreparable loss and three, balance of inconvenience. Also, the learned state Attorney referred this court to Ukurwa Limited Versus National Ranching Company Limited and another, Miscellaneous Land Application No. 60 of 2023, High Court Bukoba, in which the matter was discussed. As to the first element of existence of the prima facie case, he said the applicant agrees that he has no right to stay in the ranching block. He 6 said the applicant relies most on annexure ORBA-2, but in that letter, the applicant was allowed to stay in the land but to vacate immediately if the second respondent so requires. The applicant has ever been given a letter to require him vacate from the land and he was given 30 days to do so. Moreover, he insisted that the applicant illegally stayed in the land. So, the lease agreement with Kiteto Agro Business was broken. Thus, the applicant is there illegally. The letter given to him by the District Commissioner does not make him a tenant in the land. From 4th April 2023 after the second respondent revoked the letter, the applicant became a trespasser and once a trespasser is always a trespasser. The learned State Attorney said no notice is required to be issued to the applicant before evicting him. The State Attorney cited the cases of Lawrence Magesa t/a Jopen Pharmacy Versus Fatuma Omary and another, Civil Appeal No. 333 of 2019 and National Housing Corporation versus Deepan Premji Dusara and 2 others, Civil Appeal No. 222 of 2022 (25th Sept. 2024). He argued that, the offer given to the applicant to go to Kagoma ranching is different from that of Kitengule Block. Also, the offer was conditional that he had to pay the debt for staying there from 2021. The applicant 7 refused it. The applicant seeks to use the court as a shield to continue being there. Thus, there is no arguable case shown for mareva injunction. The other element is likelihood of suffering irreparable loss. He argued that the applicant will suffer no such loss because the applicant has been aware of the eviction for a long time, so, he would have left. On the balance of convenience, he submitted that the respondents will suffer more loss since above TZS 42, 000, 000/= which the applicant was to pay has not. Also, he argued that the area has been allocated for Building Better Tomorrow (BBT) and the youths are given it. So, they are suffering irreparable loss. He prayed the application be dismissed with cost for it is frivolous. On his part, Mr. Saidi Seni, Principal State Attorney said that the second respondent could not be authorized to hand over the land to the applicant since the first respondent is an entity registered under Companies Act, Cap 212, which acts under resolutions. As to the irreparable loss, he said the applicant was clearly notified that he would be evicted at any time if other tenant is found and if he made any improvements, they

are in his own peril. He asked the application be dismissed. 8 In rejoinder submissions, Mr. Peter Matete, advocate said nowhere it is mentioned that the youths are given the area for Building Better Tomorrow, rather, they are submissions from the bar which are not maintainable in law. He argued that whether the applicant is a trespasser or not, it is a matter of evidence to be determined in the main suit. In law, the applicant cannot file a main suit without first giving 90 days' notice to sue the Government. Thus, he was barred by the law. The applicant is an invitee and not trespasser. In addition to that, he said the applicant was to pay TZS 42, 669, 720.67 for use of Block 288/1 as a condition. But he was not given control number, he is barred by the first respondent. He is no longer trespasser. He said it is true that the first respondent is a company, but it is still the Government Authority. The counsel said the cattle need to have kraal to stay and be treated, if not, they can die and the applicant will suffer irreparable loss. As to the balance of convenience, the respondents cannot suffer loss. The first respondent has to just give control number. Under the circumstances, the applicant has managed to establish elements of mareva injunction. The case laws cited by the respondents supports the application. 9 From the pleadings and the oral submissions of both sides, the main issue for determination is whether the application is meritorious. I, at the outset, agree with the counsel for the applicant that matters not deponed in the affidavit cannot be entertained by the court. The learned State Attorney made submissions from the bar that the block of the said ranch in question is for the youths for the Building Better Tomorrow project. In *Elfaz Nyatega and 3 others Versus Caspian Mining Limited*, Civil Application No.44/8 of 2017 [2018] TZCA 231 (9th October

- 2018) it was stated that matters not deponed in the affidavit cannot be considered. Also, in so far, the application has been heard inter partes, the first prayer for ex parte interim restraint order dies naturally. Reverting to the main issue, it is now settled legal principle that this court has jurisdiction to grant mareva injunction even in the absence of the pending main suit. In *Magreth Nuhu halimeshi Versus Kigoma Ujiji Municipal council and 2 others*, Civil Application No. 17 of 2022 [2022] TZHC 1273 (19th August 2022) it was held that mareva injunction is granted if the applicant can establish that the main suit has not been instituted due to legal impediments. In this application, the applicant is seeking an order to maintain status quo pending expiry of the 90 days'statutory notice to sue the respondents 10 and the respondents did not dispute this fact. Thus, it is a fit case to apply for mareva injunction order maintaining status quo ante. However, for the mareva injunction to be granted, the counsels agree that the applicant must establish that there exists prima facies or arguable case, that the applicant is likely to suffer irreparable loss if the order is withheld and the balance of inconvenience. The counsel for the applicant said the first element cannot be determined at this stage because the issue of illegality or otherwise of the presence of the applicant in the block in the ranch, will be decided in the main case to see if he is a trespasser or not. But this court, as rightly argued by the State Attorney, is bound to decide the application based on the facts deponed by the parties in the affidavit and counter affidavit. The applicant, under paragraph 4 of the affidavit clearly admits that he was sub-leased the land, Block 288/1 Kitengule Ranch by another tenant, Kiteto Agro

Business. In law, the tenant cannot sub-lease the land to another person and the applicant was informed that the lease agreement with Kiteto Agro Business was terminated for breach of terms and conditions. This means the applicant could not be legally leased by Kiteto Agro Business. In simple words, the applicant was not lawfully leased to occupy the ranching block. 11 It has been argued that the applicant was allowed by the second respondent to occupy, oversee the block and from there, he made some improvements and fulfilled all conditions given to him. But it is apparent that the said second respondent had no mandate to do so, this is why in the extraordinary meeting with the District Security Committee of April 2024, the said letter authorizing the applicant to stay in the block was revoked and the applicant was ordered to vacate therefrom. Besides that, it is deponed that in the letter, it was said that at any time, the applicant was to vacate if he is required so to do. Apart from that, the applicant was promised and notified that if he would qualify, he could be leased the block of the ranch by the first respondent (NARCO). Then the applicant was given an offer of 700 hectares in Block No.291/6 at Kagoma Ranch and he was told to give his acceptance within seven (7) days and with a condition that he had to pay TZS 42, 699,720.17 debt for the continued use of Block 288/1. The counsel for the applicant said the first respondent is reluctant to give the applicant the control number for such payment. To the contrary, the State Attorney said the acceptance of the offer was not complete for the applicant was not willing to pay. Under paragraph 16 of the applicant's affidavit, he said the conditions of the offer of Block No. 291/6 at Kagoma Ranch was 12 impracticable because he used to pay Kiteto Agro Business TZS 60, 000/= per cattle. From these facts, it can be depicted that the applicant found the condition of the offer to lease Kagoma ranch was impracticable to him. This turns to a belief that it is not a problem of control number but inability of the applicant to pay. So, the applicant has no arguable case. As to whether the applicant will suffer irreparable loss, it was argued that he has nowhere to send his 600 heads of cattle and he made improvements in the ranch. But he was offered to go to Kagoma Ranch as an alternative to Block 288/1 Kitengule Ranch. The offer and acceptance were not completed due to his inability to meet the stipulated conditions. So, the applicant's inability to lease another place cannot be used to bless his continued use of the land which he is not the lawful tenant. Finally, as to the balance of convenience, the applicant was informed that he would have to vacate at time if he is required to do so. That is not enough, he was told to vacate the land within 30 days but he has not. Therefore, I am in one accord with the State Attorney that the applicant seeks to use the court as a shield to continue using the land at the detriment of the first respondent. 13 Consequently, the application lacks merits and it hereby dismissed with cost. Dated at Bukoba this 15th October 2024. F. H. k: ONDE JUDGE 15/10/2024 Court: Ruling is delivered in chamber in the presence of the applicant in person, Mr. Saidi Seni, Principal State Attorney, Nestory Lutambi State Attorney for the respondents and Grace Mutoka (RMA) this 15th October 2024 and the right of appeal is explained. JUDGE 15/10/2024 14

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