

20030711 TZHC Arusha

COURT
TZHC

DECIDED
11 July 2003

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

IN THE HIGH COURT OF TANZANIA AT ARUSHA . MISC. CIVIL APPLICATION NO.122/2002
MGENI RAMADHANI APPLICANT

- Versus-

1. THE ASSISTANT REGISTRAR OF TITLES 1st RESPONDENT
2. RAMADHANI JUMANNE... .. 2No RESPONDENT

RULING

MSOFFE, J. This is an application which is apparently brought under the provisions of S.78(4) of The Land Registration Ordinance Cap 334 and Order XLIII Rule 2 of The Civil Procedure Code, 1966. This Court is being moved for an Order:-

- (a) To grant an ex parte interim Order restraining the Assistant Registrar of Titles, Moshi from removing the caveat filed in respect of land under Certificate of Title No.7247, Plot No.9 Block "21" Kaloleni and register the disposition of that land.
- (b) To grant the permanent stay of the disposition of the said land. The application is supported by the applicant's affidavit. In the affidavit it is clear that the applicant's case is that the house on the above plot was on 6/8/2002 unlawfully sold by the second respondent. According to the applicant, the sale was unlawful because the house is family property which could not be sold without the knowledge and consent of the family members. On learning of the sale, the applicant had since filed a caveat with the first respondent. On the other hand, the respondents have filed Counter Affidavits - the contents of which are not particularly relevant for purposes of determination of the application at this stage. Further to the Counter Affidavits, the 1st respondent has filed and argued a Notice of Objection with two limbs thus:-
 1. That the application is premature since there is no pending suit supporting the said application.
 2. That the application is bad in law for non-joinder of necessary party to wit, Cyprian Majura Mwizarubi who is a bonafide purchaser. In my reading and understanding of the record, the clear impression I am getting is that in its contents and demands this is nothing but an

application for a temporary injunction. Essentially, the applicant is saying that no further action should be taken in the house in question because she too has an interest in it. She is thus aware that to stop such action then an application, such as this one, in the nature of a temporary injunction would be ideal. If so, my view will be similar to that of the 1st respondent as clearly amplified in the written submission filed by Mr. Materu, learned State Attorney. Under Order XXXVII Rule 1 of The Civil Procedure Code 1966, an application of this nature could only be granted where there is a suit. In the instant matter, it is common ground that no such suit has ever been filed. It will, therefore, follow that in the absence of a suit an application of this nature will have no legs to stand on. The second objection will also have merit in the sense that ideally the said Cyprian Majura Mwizarubi - the purchaser of the house in issue - should be joined not only in the application but in a suit if one was to be filed. As a purchaser, he would no doubt have an interest in the property and hence a necessary party in the proceedings. I will, and I hereby, uphold the 1st respondent on the Notice of Objection. The application is accordingly dismissed with costs. • 3 . J.H.~ JUDGE 11/7/2003 11/7/2003 Coram: P. B. KHADAY- DR For Applicant:- Present in person For 1st Respondent: Miss Sarakikya - State Attorney!. For 2nd Respondent: Present in person!. Ruling read out today in the presence of the applicant and both respondents. P.B.~ DISTRICT R&STRAR ARUSHA 11/7/2003

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/335476/source_file/12229a4e35d30f8c/20030711_TZHC_Arusha.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/mgeni-ramadhani-temporaryinjunctions-tzhc-2003>

Prepared on 14 October 2026 · Esheria