

TANZANIA / JUDGMENT

nazareno makilika another vs hamisa abdallah muhsin administratrix of the estate of the late salum mohamed muhsin 2021 tzhclandd 6923 30 december 2021

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30 December 2021

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM MISC. LAND CASE APPLICATION NO. 705 OF 2020 NAZARENO MAKILIKA..... 1st APPLICANT AVELINA MAKILIKA..... 2nd APPLICANT Versus HAMISA ABDALLAH MUHSIN..... 1st RESPONDENT (Administratrix of the Estate of the Late SALUM MOHAMED HASSAN MOHSIN) NYANYA MOHAMED MUHSIN..... 2ndRESPONDENT (Administratrix of the Estate of the Late SALUM MOHAMED HASSAN MOHSIN) NAJEEB YESLAM SAEED.....3rd RESPONDENT

RULING

22/12/2021 & 30/12/2021 Masoud J, There is a Land Case No. 200 of 2020 which was ordered to proceed exparte against the applicants herein on 24/02/2022. In the said Land Case, the applicants are the first and second defendants against whom an exparte hearing was ordered, while the first and second respondents are the plaintiffs. The third respondent herein is not a party in the above mentioned land case. The applicants applied (i.e. Misc. Land Application No. 369 of 2020) for an order of the court setting aside the exparte hearing and an order for i extension of time to file written statement of defence in respect of the said land case. The application is still yet to be determined by the time the present application was filed and was coming up for ruling. When the applicants filed the present application and the respondents filed their respective counter affidavits to oppose the application which were accompanied with notice of preliminary points of objection, the court ordered the hearing of the objection and the application to be conducted simultaneously by filing written submissions within the schedule set by the court. I am grateful that the filing schedule was dutifully complied with by the counsel for both sides. To be clear, Mr Mluge Fabian, learned advocate represented the applicants, while Mr Ahmed Mwita and Mr Abdul Azizi learned, advocates respectively, represented the first and second respondents, and the third respondent. The points of objection raised were in a nutshell that the applicants' affidavit is defective for contravening Order VI, Rule 14 of the Civil Procedure Code, Cap. 33 R.E 2019; the application is incompetent for contravening section 68(c) and Order

XXVII, rule 1(a) of the Civil Procedure Code; and that the application is premature. 2 I will just in a nutshell portray the arguments in each point of the objection. On the first point, the argument was that the application was incompetent as it was not supported by affidavit of both applicants but only the affidavit of the first applicant. If the orders sought were to be granted, they would cater for both applicants. I was for such irregularity asked to struck out the application with costs. On the second point, the argument was that the applicants are not parties in Land case No. 200 of 2020 which proceeds exparte and nowhere in the affidavit it is shown that the exparte order has already been set aside. The provision of Order XXVII, rule 1(a) of the Civil Procedure Code was thus inapplicable. On the last point, it was argued that the application is premature as the applicants filed application to set aside exparte hearing and extension of time to file written statement of defence which application is still yet to be determined. As to the submissions in reply by the counsel for the applicants, it was in nutshell argued and shown that the application is competent for it can very well be supported by one affidavit, for the applicants do not cease to be parties because the matter is ordered to proceed exparte, for the third 3 respondent has been joined as he is the buyer of the suit property who is in actual possession, and thus not a stranger to the Land Case No. 200 of 2020. The application is therefore properly brought under section 68(

- c) and Order XXXVII of the Civil Procedure Code. It is thus not premature as alleged because the exparte order is yet to be set aside. The objection based on Order VI, rule 14 of the Civil Procedure Code is baseless as the provision is not applicable to affidavits but pleadings. I have considered the application in the light of the objections raised. The applicants are seeking temporary injunction order pending determination of the Land Case No. 200 of 2020 which is scheduled to proceed exparte. I think this is the gist of the argument that the application is premature as the application for setting aside the exparte hearing order and granting of extension of time to file written statement of defence is not shown to have already been granted. The applicants are just silent as to the pending application on top of that the third respondent is agreeably not a party in the Land Case No. 200 of 2020 which proceeds exparte against the applicants and the applicants. The above findings suffice to dispose of the application for being incompetent. There would with such findings therefore no need to dwell on the merits of the application. 4 In the results, I struck out the application with costs. It is so ordered. Dated and Delivered at Dar es Salaam this 30th day of December 2021. 5

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CASE PAGE <https://chat.esheria.ai/case-law/tanzania/nazareno-makilika-v-hamisa-abdallah-muhsin-temporaryinjunction-tanzlii-2021>

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