

TANZANIA / JUDGMENT

SHEDRACK JEROBOAM MINJA VS CHRISTINA JEROBOAM MINJA

COURT
TANZLIIDECIDED
17 July 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOSHI DISTRICT REGISTRY AT
MOSHI. MISC. CIVIL APPLICATION NO 19756 OF 2023 (C/F Probate Cause No. 10 of 2023)
SHEDRACK JEROBOAM MINJA (As administrator of the late JEROBOAM ABRAHAM MINJA)
..... APPLICANT VERSUS CHRISTINA JEROBOAM MINJA
RESPONDENT

RULING

09/10/2024 & 30/10/2024 SIMFUKWE, J. In this application, the court has been moved to grant temporary injunction pending the administration and distribution of estates of the deceased to the beneficiaries of the late Jeroboam Abraham Minja. The 1 application has been brought under certificate of urgency under Order XXXVII rule 1(a) of the Civil Procedure Code [CAP 33 R.E 2019] and any other enabling provision of the law. The applicant prayed for ex parte and inter parties order as follows: EX PARTE

1. That this Honourable Court may be pleased to issue an interim injunction order restraining the respondent, their agents or anyone acting on their behalf from entering and conduct any activity and or disposition or construction and collecting rent from tenants on the deceased property described as Plot No. 4,5,6 and 7 Marangu Mtoni, Samanga Village, Mauo hamlet within Moshi District Council (the deceased property) by construction anything pending the administration of the probate and the distribution of the properties to the beneficiaries of the late Jeroboam Abraham Minja (deceased) (sic).
 2. Costs for the application
 3. For any other orders as this honourable court may deem fit and just to grant. 2 INTER PARTES
1. That this Honourable Court may be pleased to issue an interim injunction order restraining the respondent, their agents or anyone acting on their behalf from entering and conduct any activity and or disposition or construction and collecting any rents from tenants on the deceased property described as Plot of land located at Plot No. 4, 5, 6 and 7 Marangu Mtoni, Samanga Village, Mauo hamlet within Moshi District Council (the deceased property) by

construction anything pending the administration of the probate and the distribution of the properties to the beneficiaries of the late Jeroboam Abraham Minja (deceased). (sic)

2. Costs for the application
3. For any other orders as this honourable court may deem fit and just to grant. The application was supported by an affidavit sworn by the applicant, which was contested by the counter-affidavit of the respondent. Briefly, the pleadings reveal that, on 17th July 2024, this Court, in Probate Cause No. 10 of 2023, appointed the applicant as administrator of the estate of the late Jeroboam Abraham Minja. In the course of administration, the applicant alleges that the respondent trespassed upon certain properties belonging to the deceased that are under administration. The applicant contends that the respondent's acts of trespass will impede the proper administration of the estate. Consequently, the applicant seeks an order for a temporary injunction to restrain the respondent, pending the administration and distribution of the deceased's estate to the beneficiaries. At the hearing, the applicant was represented by Mr. Idris Muhidin Msemo, learned counsel, while the respondent was represented by Mr. Elikunda Kipoko, learned counsel. At the outset, Mr. Idris prayed to adopt the affidavit of the applicant to form part of his submission in chief. Then, he cited the case of *East African Cable (T) Limited v. Spencon Services Limited*, Misc. Application No. 61 of 2016 (HC), and *Jackson Sifael Mtares & 3 Others v. The Director of Public Prosecution*, Civil Appeal No. 180 of 2019 (CAT), arguing that paragraphs 4, 5, 7, 8, 9, 10, 11, and 12 of the respondent's counter-affidavit contain evasive and general denials, which, in law, amount to an admission of the facts stated in the applicant's affidavit. 4 Without prejudice to his earlier submission, Mr. Idris averred that the court has discretion to grant a temporary injunction if sufficient reasons are advanced. The learned counsel referred to the landmark case of *Atilio v. Mbowe* (supra) which established the principles for granting temporary injunction: first, whether there is a serious issue to be tried; second, whether the court's intervention is necessary to protect the applicant from irreparable loss; and third, whether, on the balance of convenience, the applicant would suffer greater hardship and mischief from the denial of the injunction than the respondent would from its issuance. Concerning the first condition of existence of a serious issue to be tried, Mr. Idris submitted that there is a pending Probate Cause No. 10 of 2021, which is yet to be concluded by the appointed administrator. The fact was deposed in the applicant's affidavit and remained unchallenged in the respondent's counter-affidavit, as the respondent neither disputed nor addressed it therein. Regarding the second condition, on whether the court's intervention is necessary to protect the applicant from irreparable loss, Mr. Idris submitted that interference is indeed warranted since the respondent has 5 intentionally begun constructing, and continues to construct, her house on the disputed property without the consent of the beneficiaries. He emphasized that the court's intervention is crucial to protect the estate and the interests of the beneficiaries. On the issue of balance of convenience, Mr. Idris stated that the applicant and other beneficiaries of the deceased have right over the property, the subject of this application. He contended that the respondent's actions in constructing a house on the property infringe the

rights of other beneficiaries. Since the probate matter remains unresolved, the applicant will suffer greater irreparable harm if the application is not granted, compared to any inconvenience the respondent might face if the application is granted. He reinforced this argument by citing the case of Elizabeth Maro Minde (As Administrator of the estate of the late Pascal Joseph Mlay alias Paschal Joseph Mlay) vs. Rosemary Paschal Mlay and 3 Others, Misc. Land Application No. 11180 of 2024 (HC). In conclusion, the learned counsel for the applicant submitted that the applicant has clearly furnished this court with sufficient reasons to warrant the granting of the orders sought. He implored the court to be pleased to grant the application with costs. In his reply Mr. Kipoko first drew the court's attention to discrepancies in the names of the applicant and the deceased. He noted that the name of the deceased as mentioned in the application differs from the name in the appointment order, being termed as 'JEROBOAM ABRAHAM MINJA' in one instance and 'JEROBOAMU ABRAHAM MINJA' in another instance. That, the applicant's name is recorded as 'SHEDRACK JEROBOAMU MINJA' in the chamber summons, while in Probate Cause No. 10 of 2023, it appears as 'SHEDRACK JEROBOAMU MINJA.' He supported his submission by citing the case of Christina Mrimi vs Coca Cola Kanza Bottlers Ltd, Civil Appeal No. 12 of 2008, and concluded that the discrepancies in names are substantive defects that undermine the competence of the application, thus warranting its dismissal. Mr. Kipoko submitted further that the application is defective for failing to properly describe the disputed land, as it lacks the title number, contrary to the requirements under Order VII Rule 3 of the Civil Procedure Act (supra). He argued that if the plots are unsurveyed, they should instead be described by reference to physical features and neighbouring properties to distinguish them from other plots. He supported his submission with the case of Fereji Said Fereji v. Jaluna General Supplies Ltd and Others, Land Case No. 86 of 2020 (Unreported). The learned counsel contended that such anomalies render this application incompetent and therefore prayed for its dismissal with costs. Regarding the issue whether the applicant has met the conditions for granting of an injunction, Mr. Kipoko argued that the critical issues for consideration are whether there is a pending suit between the parties and whether the applicant has met the conditions for granting injunctions as established by this Court. He cited Order XXXVII, Rule 1(a) of the Civil Procedure Code, asserting that for this provision to be applicable, there must be a pending suit between the parties. In the present matter, he contended that there is no any pending suit. Furthermore, even if Probate Cause No. 10 of 2021 was to be regarded as a pending suit, the respondent is not a party to it. The learned counsel went on to state that the section invoked by the applicant is procedurally improper, as it only specifies conditions under which an injunction may be granted but does not empower the Court to issue an injunction. Hence, the application suffers another fatal defect of non-citation of relevant provision. He cited the case of Joseph John vs Chandrakant Shamji Shah, Civil Application No. 7 of 2001, CAT at Arusha and commented that since the court was not properly moved, the application should be dismissed with costs. Mr. Kipoko added that even if the proper provision was cited, still the conditions for granting injunction are not met. He buttressed his allegation by referring the case of Kibo Match Group Ltd [2001] TLR 152 in which the Court held that: "For an order for temporary

injunction to be granted the applicant has to prove there must be a serious issue to be tried on the facts alleged and a probability that the plaintiff will be entitled to the relief prayed in the main suit.” On the question whether the applicant has met the conditions for the grant of the injunction, the learned counsel for the respondent contended that in our jurisdiction this court has set forward factors to be considered when granting temporary injunction. He said the principles were provided in the case of ATILIO VS MBOWE (1969) HCD 284; which are:

1. Whether there are serious issues to be tried in the main case.
2. Whether the court’s interference is necessary to protect the applicant from irreparable loss.
9
3. Whether on balance of convenience, there will be greater hardship and mischief that will be suffered by the applicant from withholding the injunction than will be suffered by the respondent from granting it. On the first condition whether there are serious issues to be tried in the main case, Mr. Kipoko noted that the condition takes its roots from section 68 of the Civil Procedure Code. He reiterated that since Probate Cause No. 10 of 2021 was determined there is no any pending suit between the parties to be determined by this court. The learned counsel was of the opinion that even if it is assumed that Probate Cause No. 10 of 2021 is pending before this court for the purpose of filing of inventory and accounts, then it is obvious the respondent is not a party to it and the said probate cause is not pending for issues in it to be determined. Thus, it is an obligation of the administrator to file inventory and accounts of the estate. That obligation cannot be taken as a pending issue for the purpose of granting injunction. On the second condition whether court’s intervention is necessary to protect the applicant from irreparable loss; on the outset Mr. Kipoko cited the case of Noormohamed Janmohamed v. Kassamali Virji 10 Madhani (1952) 19 EACA at page 8 where it was held that the purpose of granting temporary injunction is to prevent irreparable injury befalling on the applicant. The learned counsel submitted that since the applicant has not proved ownership of the disputed land or interest by the deceased over the suit land, he cannot obtain any court order to unspecified property. It was submitted further that the applicant has failed to show that he will suffer irreparable damage if injunction is not granted. The learned counsel was of the view that an injury capable of being compensated by money is not an irreparable one. He said that, in the case at hand, the main complaint is construction of the house which is not causing injury let alone irreparable injury. He cemented his argument with the case of Christopher P. Chale vs Commercial Bank of Africa (Misc. Civil Application No 635 of 2017 [2018] TZHC 2538 (13 March 2018) in which this court stated the meaning of the phrase “irreparable loss” to mean loss which cannot be adequately compensated by award of general damages. Mr. Kipoko went on to submit that there are no injuries stated by the applicant except that the respondent is building a house and collecting rent all of which are not injurious and if so, they can be remedied by 11 payment of damages. Hence, the second condition has not been met for temporary injunction to be granted. On the last condition of balance of convenience; Mr.

Kipoko submitted that, it is the respondent who has occupation and construction activities going on which envisage materials and labourers on site. It is the respondent who has ongoing business and tenants as such injunction will injure the business goodwill of the respondent which is irreparable. Concerning the raised anomalies, Mr. Kipoko submitted that the applicant cannot seek remedy by invoking the overriding objective blindly. That the procedure is mandatory as it was held in the case of Mondorosi Village Council and 2 Others vs Tanzania Breweries Limited and 4 Others, Civil Appeal No. 66 of 2017 and SGS Societe Generate De Surveillance SA & Another vs VIP Engineering and Marketing Limited and Another, Civil Appeal No 124 of 2017. In conclusion, Mr Kipoko prayed that this court finds in totality, that the applicant has failed to meet the conditions for granting temporary injunction and dismiss the application with costs. 12 Having gone through the submissions of both parties, the affidavit and counter affidavit, the issue is Whether the applicant has established sufficient grounds for the temporary injunction to be granted. section 68 (e) of the CPC provides that: "In order to prevent the ends of justice from being defeated the court may, subject to any rules in that behalf-

- (e) make such other interlocutory orders as may appear to the court to be just and convenient." Order XXXVII Rule 1 (a) of the Civil Procedure Code, provides that:
1. Where in any suit it is proved by affidavit or otherwise-
 - (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit or suffering loss of value by a reason of its continued use by any party to the suit, or wrongly sold in execution of a decree; or.... the court may order temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, 13 damaging, alienating, sale, loss in value, removal or disposition of the property as the court thinks fit, until the disposal of the suit or until further orders;" Guided by the above cited provisions, it is a considered opinion of this court that conditions set in the landmark case of Atilio (supra) are not met. As rightly submitted by Mr. Kipoko, the pending probate cause is at the stage of filing inventory and accounts. It is trite law that where in the cause of collecting the properties of the deceased the administrator faces a dispute in the landed property of the deceased, the same ought to be determined as a land dispute in a separate suit. Thus, according to the facts on record, the complaints of the applicant may be resolved in a normal land matter and not through temporary injunction. Moreover, if it will be proved that the suit land forms part of the estate of the late Jeroboam Abraham Minja, the collected rent can be repaid back and the suit land will still be there. Thus, I agree that the loss to be suffered by the applicant if any, is reparable Based on the nature of this application, I will not discuss the anomalies raised by Mr. Kipoko. The same is for the sake of dealing with the application substantively for the sake of justice. 14 That said and done, I hereby dismiss this application without costs. It is so ordered. Dated and delivered at Moshi, this 30th day of October 2024. X S. H. SIMFUKWE JUDGE Signed by: S. H. SIMFUKWE 30/10/2024 15

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