

TANZANIA / JUDGMENT

SULafa TANZLII

COURT
TANZLII

DECIDED
2 October 2024

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

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA DODOMA SUB REGISTRY AT
DODOMA MISCELLANEOUS LAND APPLICATION NO. 15311 OF 2024 SULafa MOHAMED
ABDALLA (Administratrix of the Estate of the late Abdallah Makbel
Omani)..... APPLICANT VERSUS AHMED ABDALLAH
MAKBEL 1st RESPONDENT OMARY ABDALLA
MAKBEL..... 2ndRESPONDE ABDULATIF AHMED
ABDALLAH..... 3rdRESPOND

RULING

Last Order: 02nd October 2024 Ruling: 13th November 2024 MASABO, J:- This application has been instituted under Order XXXVII Rule 1(a) and (b) of the Civil Procedure Code Cap. 33 R.E 2019. It is beseeching this court for a temporary injunction restraining the respondents and their agents from disposing, damaging and developing the suit property identified as plot No. 8, Block M Kikuyu North within Dodoma City pending the hearing and final determination of Land Case No. 30 of 2023 now pending before this court. The application is supported by an affidavit affirmed by the applicant, Sulafa Mohamed Abdalla, which has expounded the grounds of the application. It is deponed in this affidavit that, the applicant is the administratrix of the estate of the late Abdallah Makbel Omari who was the rightful owner of the Page 1 of 6 disputed plot. Upon being appointed as administratrix, she has recently discovered that the 2nd respondent, who previously held the role of administrator, had improperly divided the suit land, merging portions and allocating plots in a manner that disregarded the lawful interests of the estate. And, as a result of such unlawful distribution, the 1st respondent who is among the beneficiaries of the estate, is currently developing part of the estate's land in spite of the pending dispute. After being served with the application, the respondents objected it. Hence, the hearing of the application which proceeded by way of written submissions. Both parties had representation. The submissions for the applicant were filed by Mr. Ezekiel Amon Mwakapeje, learned counsel whereas those of the respondents were drawn and filed by Mr. Masinde Chisumo, learned counsel. In support of the application, Mr. Mwakapeje narrated the background above and submitted that the unlawful merger and the ongoing development are injurious to the applicant's interests in the estate and the interests of the beneficiaries. Hence, they should be restrained because the land in question is essential, not only as part of the estate but also because it serves as a residence for the applicant and other beneficiaries of the estate. Thus, its continued

development and disposal by the respondents pose a severe risk of an irreversible harm, as any further alterations to the land will make it impossible to restore its original condition. He submitted further that the applicant stands to suffer an irreparable loss if the respondents are allowed to proceed unchecked because the estate's Page 2 of 6 rightful ownership and management are still subject to this court's determination in Land Case No. 30/2023. Further, it was submitted that the balance of convenience in this case favors the applicant. Restraining the respondents from developing or disposing of the land will not cause undue hardship to the respondents as the dispute over ownership must first be resolved by the court. On the other hand, allowing the respondents to continue their activities would undermine the very essence of the ongoing litigation, rendering any future court decision ineffectual. Thus, it is in the interest of justice that the status quo of the property be safeguarded pending the outcome of the main suit. In his reply submission, Mr. Chisumo cited the case of *Alio vs Mbowe* 1

(1969) HCD 284 and he proceeded to submit that, three conditions must be satisfied for an application for a temporary injunction to be granted. Expounding on the three conditions, he submitted that the applicant has not managed to prove any of them hence, her application should be dismissed for want of merit. She has not proved that there exist a serious question to be tried in the main case as she has failed to demonstrate how the distribution was illegally made and the suit premise unlawfully allocated to the first respondent. He cited the case of *Abdi Alisa Leh Salah versus Asak Kare Unit Limited and Others*, Land Case No. 71 of 2011 HC - unreported in fortification of the argument that there is no serious triable issue. He argued that in that case it was held that, a triable issue is said to exist where the issue is genuine which is not the case here because the applicant has rendered no evidence to support her allegations. Page 3 of 6 On the issue of irreparable loss, it was submitted that the applicant has similarly failed to demonstrate that she is likely to suffer an irreparable loss because apart from alleging that she stands to suffer an irreparable loss she did not state in her affidavit the actual loss that she is likely to suffer. Lastly, he submitted that the discretion to grant a temporary injunction is a judicial discretion hence must be excised judicially. Having carefully considered the submissions filed in this court by the parties and after going through the chamber summons, the affidavit in support of the application, the counter affidavit in resistance thereof and the laws applicable, I am fortified that, the issue for determination is whether the application has merits or put otherwise, whether the circumstances of the present application warrant the restraint order sought. The provision of Order XXXVII, Rule 1 (a) (b) of the Civil Procedure Code, Cap 33 R.E 2019 has been extensively interpreted and its obtaining principles are, therefore, well settled. As held in the landmark case of *Attilio vs. Mbowe* (supra) which has been consistently followed and applied by this court and the apex Court in numerous decisions, for a temporary injunction to be granted, it must be demonstrated to the satisfaction of the court that, one: there is a serious issue to be tried, second, that the interference is necessary to protect the applicant from irreparable loss and third, that on the balance of convenience, there will be greater hardship and mischief that will be suffered by the applicant if the prayer is not granted. Starting with the first

question, it has been demonstrated through paragraphs 2 to 9 of the applicant's affidavit that there is a pending case in Page 4 of 6 respect of the suit property which is yet to be determined by the court, that is, Land Case No. 30 of 2023. That, in the said case, the parties contend over ownership and distribution of plot No. 52 Block D Kikuyu North and its merger with Plot 8 Block M Kikuyu North. The applicant who is the plaintiff therein is alleging that the said plot was unlawfully merged with Plot 8 Block M Kikuyu North in disregard of the fact that the deceased had relinquished his ownership of the said plot after he gave it to Jamal Mohamed Abdallah as a gift inter vivos. Hence, it was not part of the estate. The respondents who are the defendants therein have sternly refuted the allegations. Therefore, there is indeed a serious triable issue between them and it is now pending the determination of this court. As for the second condition, it has to be demonstrated that if the injunction is withheld, the applicant will suffer an irreparable loss that is generally understood as a loss which cannot be adequately compensated by an award of general damages (see *Hotel Tilapia Ltd v. Tanzania Revenue Authority*, Commercial Case No. 2 of 2000 HC (unreported) and *Christopher P Chale v Commercial Bank of Africa*, Misc. Civil Application No 635 Of 2017 HC (Dar es Salaam)). In the present case, none of the 11 paragraphs of the affidavit alludes to the irreparable loss that the applicant is likely to suffer if the present application is not granted. There is similarly no statement of the greater hardship or mischief that she is likely to suffer if the application is not decided in her favour. All she did in her affidavit was to narrate the background of the dispute and the developments allegedly done by the respondents and she concluded in the last two paragraphs by praying that her application be granted. The submission by Mr. Mwakapeje that the applicant and the beneficiaries of the estate are Page 5 of 6 domiciled in the suit premise, are mere submissions from the bar as they have no support from the affidavit which is conspicuously silent on these facts. They cannot therefore be relied upon. Needless to emphasize, it is trite that, for the application of this nature to succeed all three conditions must exist (see *Christopher P. Chale vs. Commercial Bank of Africa* (supra)). Accordingly, the applicant had to demonstrate all the three conditions and since she demonstrated just one, the application cannot sail. That said and done the application fails and it is dismissed with costs. DATED and DELIVERED at Dodoma this 13th day of November 2024 J. L. MASABO JUDGE Page 6 of 6

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/323762/source_file/ad1442995d6e422d/SULAFATANZLII.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/sulafa-mohamed-abdalla-TemporaryInjunction-tanzlii-2024--6a3ea5243b1caa912981a1c9>

Prepared on 13 October 2026 · Esheria