

TANZANIA / JUDGMENT

TWAHA SALIMU 1

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24 January 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM MISC. LAND CASE APPLICATION NO.29631 OF 2025 TWAHA SALIMU
ISSA.....1ST APPLICANT SHABANI KISSOKY.....2ND
APPLICANT VERSUS THE COMMISSIONER FOR LANDS.....1ST RESPONDENT THE
REGISTRAR OF TITLES.....2ND RESPONDENT KIGAMBONI MUNICIPAL
COUNCIL.....3RD RESPONDENT ATTORNEY GENERAL.....4TH
RESPONDENT AMANA BANK TANZANIA.....5TH RESPONDENT NUTMEG
AUCTIONEERS & PROPERTY MANAGERS CO. LTD.....6TH
RESPONDENT ISAACK LUTHER MLINGI.....7TH RESPONDENT ISAMI
GENERAL SUPPLY LIMITED.....8TH RESPONDENT SALUM DADI
SHIGU.....9TH RESPONDENT 1

RULING

8th & 24th January, 2025 L.HEMED,J There is a pending application for Mareva injunction which was instituted by the applicants seeking for restraint orders against the 6th Respondent under the instruction of the 5th Respondent from disposing of by public auction the suit landed property located at Plot No.12 Block C, Kibugumo, Area within Kigamboni Municipality pending determination of the intended suit to be filed after expiration of 90 days' statutory notice. When the matter was called for necessary orders on 28th November 2025, Mr. Urso Luoga, learned state attorney who appeared to represent the 1st up to 4th respondents raised orally a point of law that the application is incompetent as the statutory notice to sue has not been addressed to the 3rd Respondent. Due to time constraints, I directed the point to be addressed by way of written submissions. Mr. Luoga, acted for the 1st up to 4th respondents. The applicants were represented by Mr. Benjamin Mwangagamba, learned advocate while the 5th Respondent enjoyed the legal service of Mr. Haji Sama, learned counsel. 2 I have keenly read the rival submissions pertaining to the preliminary objection which the learned counsel for the 1st up to the 4th respondents had raised. Before delving into the merit of the preliminary objection, let me point out at the outset that, the general rule is that a person cannot apply for injunctive orders unless he/she has a pending suit in court. However, there is an exception to that general rule which was developed by courts in England where a party who is encountered by legal impediments to institute a suit may apply for injunctive orders pending compliance of such legal requirements. The exception was developed in the case of *Mareva Compania Naviera SA v. International Bulkcarriers SA* [1980]1All

ER 213 and has been applicable in Tanzania through section 2(3) of the Judicature and Application of Laws [Cap.358 R.E 2019] which permit the application of common law. This application has been preferred without the pendency of the main suit because under section 6 (2) of the Government Proceedings Act [Cap.5 R.E 2019], a ninety (90) days' notice has to be served to the Government institution concerned and to the Attorney General, prior to instituting a suit. As previously pointed out, the learned state attorney asserts that the application is defective as the notice to sue the Government 3 has not been addressed to the 3rd Respondent, that is, the Kigamboni Municipal Council. In *Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd* (1969) EA 696, Sir Charles Newbold, JA observed thus in respect to preliminary objections: - "So far as I am aware, a Preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit." The learned Judge pointed out further that: - "It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion." In the light of the above authority, whether the objection raised by the learned counsel for the 1st up to 4th respondent is pure a point of law that after being argued may dispose of the entire application. The learned counsel appears to challenge the legality of the statutory notice of the applicants' 4 intention to sue the Government, the Commissioner for Lands in particular for not being copied to the Kigamboni Municipal Council, the 3rd Respondent. The next questions are, does the said notice become invalid by failure to be copied or served to the Kigamboni Municipal Council; and does the matter at hand become incompetent for want of valid notice to sue? To begin, let me point out that there is no law that makes a statutory notice to sue the Government a mandatory requirement in instituting an application for Mareva injunction, like the one at hand. In other words, the statutory notice is never a determinant factor on the validity of the application for Mareva injunction. The requirement of ninety (90) notice to sue the Government is mandatory only when instituting a main suit against the Government as per section 6(2) of the Government Proceedings Act (supra). It provides thus: - "No suit against the Government shall be instituted and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim against the Government, and he shall send a copy of his claim 5 to the Attorney- General and the Solicitor General." [Emphasis added] From the above provision, the requirement of notice is only in main suits against the Government. Likewise, the legality or validity of the notice is discussable in those main suits as one of the determinant factors of the competence of the suit against the Government is the notice of intention to sue. I am aware that, notice of intention to sue is useful when determining the merit of the application, especially when ascertain the intention of the applicants to institute a suit against the Government which is one of the conditions in granting Mareva injunction. However, the absence or invalidity of the notice of intention to sue cannot defeat the application for Mareva injunction. My take as regard the instant matter is that, since the notice to sue the Government is not a prerequisite for filing applications for Mareva injunction, the point on the validity of the said notice has been prematurely raised. In my firm view, it would have been properly raised if this court was determining the main suit which is not

yet before the court. I have also thought that, failure to copy or serve the 3rd Respondent with the said impugned notice of intention to sue may not render the notice invalid 6 because at this stage, it is not known who will be the defendants in the said intended suit. From the foregoing, I find no merit in the preliminary objection as the same has been raised prematurely. The same is overruled with no orders as to costs. Order accordingly. DATED at DAR ES SALAAM this 24th January, 2025. L. HEMED JUDGE 7

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