

**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... ..2ND RESPONDENT**

R U L I N G

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 exparte 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 sccond 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.



J. H. MSOFFE

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. KHADAY

DISTRICT REGISTRAR

ARUSHA

11/7/2003