

IN THE HIGH COURT OF TANZANIA

AT MTWARA

MISC. LAND APPLICATION NO. 35 OF 2013

INVOCAVIT ZAKAYO MUSHI ----- APPLICANT

VERSUS

1. MOHAMED ABDALLAH WADI } ----- RESPONDENTS
2. WENER GABRIEL MPILI }

R U L I N G

28th April, 2014 and 30th May, 2014

M. G. MZUNA, J.:

Invocavit Zakayo Mushi, the applicant, filed an application praying this court to issue a temporary injunction to prevent the 2nd respondent and his agents from continuing with any activity on the suit land pending the determination and disposal of the Land Case No. 5 of 2013. The application was brought under Order XXXVII Rule 1 (a) of the Civil Procedure Code Cap 33 R.E. 2002, and it is accompanied by his affidavit sworn by himself.

The facts of the case is that, on July 1993, the applicant own lawfully Plot No. 147 Shangani Low Density, Mtwara Municipality. The first respondent owned legally Plots No. 3 – 8 Block 9 Commercial Area, Mtwara. That on 16th July 1993, the Applicant entered into an oral agreement with the first respondent in which he agreed to surrender Plot No.147 Shangani Low Density to the 1st respondent. It was in agreement

further that, in return the 1st respondent shall surrender his plot No. 3 – 8 Commercial Area in Mtwara to him. While the agreement was still not completely executed, the respondent sold both Plots that is Plot No. 147 Shangani Low Density and Plots No. 3 – 8 Block 9 Commercial Area. The applicant filed the Land case No. 5 of 2013 which is pending before this honorable court for recovery of Plot No. 147 Shangani Low Density. That the suit Plot was accordingly sold to the 2nd Respondent who has currently developed a structure on it. And that he prays this court to issue a temporary injunction to prevent 2nd respondent and his agents from continuing with any activities on the suit Land pending the determination and disposal of the Land case No. 5 of 2013.

During the hearing of this application, the applicant appeared in person to argue his application while the respondents were represented by Mr. Mkapa Advocate.

The issue is whether the order of temporary injunction should be granted or not.

The applicant argued that, he prayed for temporary injunction to restrain the respondent from further developing the suit land pending the hearing of the suit. He said that will assist to know who is the real owner of the disputed Plot.

In reply, Mr. Mkapa Advocate objected for this application for the reason that the applicant has not given any reason. He said the mere contention that there is a pending suit is not enough. That the applicant

has not shown the loss or injury he is likely to suffer if that plot is developed. He said even his affidavit never touched on that aspect.

That the application for temporary injunction is not automatic. That he has failed to point out who of the two respondents is developing the suit plots. He further argued that the applicant has failed to say which specific plot he prays the temporary injunction should cover as the main suits covers Plot No. 147 Shangani Low Density and Plot No. 3 – 8 Block 9 Commercial Area Mtwara, which then he was referring to, and that he has not given sufficient reasons.

In rejoinder the applicant stated that he claimed against Mr. Wadi, the 1st defendant. The second defendant got the plot from Mr. Wadi. The Plot in dispute is No. 147 Shangani Low Density. That they started to build while knowing it was in dispute and that it is a Plot which the temporary injunction covers. He said the injury he will suffer is that if they will develop it then there will be problems after the final suit is determined. And that he insisted that they should wait until the main suit is determined.

The Law under Order XXXVII Rule 1 (a) of the Civil Procedure Code Cap 33 R.E. 2002 provides

" where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit of or suffering loss of value by reason of its continued use by any party to the suit, or wrongly sold in execution of a

decree the court may by order grant a temporary injunction to restrain such act or make such order for the purpose of staying and preventing wasting, damaging, alienation, sale, loss in value, removal or disposition of the property as the court think fit, until the disposal of the suit or until further orders....."

It was held in **T.A. Kaare V. General Manager Mara Co-operative Union** (1984) Ltd [1987] T.L.R. 17 (HC), that; "Before granting a discretionary interlocutory injunction the court should consider;

- (a) Which side in the event of the Plaintiff's success will be the balance of inconvenience if the injunction does not issue, bearing in mind the principle of retaining immovable property in status quo.
- (b) Whether there is an occasion to protect either of the parties from injury known as irreparable before his right can be established. Irreparable injury means that the injury will be material i.e. one that could not be adequately remedied by damages."

Mr. Mkapa the learned Advocate argued that the applicant does not show the loss or injury he is likely to suffer if that Plot is developed while the applicant argued that the injury he will suffer is that if it will be developed then there will be problems after the final suit is determined.

From the above authorities especially in **T.A. Kaare's** case I'm in agreement with the applicant that there will be an irreparable loss.

Therefore in order to maintain the status quo justice demands that an order for temporary injunction should be granted.

Having said the above, this court accordingly grants orders for temporary injunction for six months.

The applicant's application is granted. No order for costs.


**M. G. Mzuna,
Judge
30/5/2014**

Applicant: Present

Respondent: Mkapa Advocate for

Court: Ruling delivered.




**M. G. Mzuna,
Judge
30/5/2014**