IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

MISC. LAND APPLICATION NO. 11 OF 2013

1. HASSAN LOAN NAMAGONO	]	
2. HAJI AJILI MAKOLOKO	]	
3. SAIDI MAGOMBO MTAKA	]	
4. ADIJA MATIKIKA KANJABA	]	
5. GEORGE RAPAHEL BINALI	]	**..... APPLICANTS**
6. ATHMANI MASUDI MTANDO	]	
7. MOHAMED BUSHIRU MAULIDI	]	
8. MAWAZO AHMADI CHAMBALI	]	
9. NAMELE MAHAMUDU BUSHIRI	]	
10. ANTHONY OMARI SANANE	]	

Versus

1. THE ATTORNEY GENERAL	]	
2. THE REGIONAL MANAGER, TANZANIA NATIONAL ROADS AGENCY	]	**..... DEFENDANT**

Date of last Order: 03/12/2015
Date of Ruling: 14/12/2015

RULING

Twaib, J:

The applicants are the plaintiffs in Land Case No. 5 of 2015 ("the main case"), in which they are seeking for orders against the respondents (defendants therein),

essentially in the nature of fair and adequate compensation for their properties, consisting of buildings and crops sought to be demolished by the 2nd respondent to give way to the construction and upgrading of a 65.6 kilometer Mangaka-Nanyumbu-Mtambaswala Road to bitumen standard. Their cause of action, stated in paragraph 3 of their affidavit in support of this application, is:

> *...the 2nd respondent failure to accord a procedure law on compensating the plaintiffs in the course of acquiring their land as set out by law governing the land acquisition and that of the Land Act...*

The applicants further state that the compensation paid by the 2nd respondent was unfair and inadequate, and that immediately after paying the "unfair" compensation, the 2nd respondent began demolishing their properties and uprooting their permanent crops. In their view, if this continues, it would result in irreparable loss. They are also concerned that once the buildings are demolished and the crops uprooted, it would not be possible to do a re-valuation, as the properties would no longer exist. In their written submissions, filed by Ms Lucy Matem, learned counsel from Msalya & Co. Advocates, the applicants essentially reiterate what I have already captured above.

In addition, Ms Matem cites section 3 of the Land Act, Cap 113 (R.E. 2002), which mentions one of the fundamental principles of the National Land Policy, which Policy is the objective of the Act to promote and to which all persons exercising powers under, applying or interpreting the Act are to have regard to. This particular principle is in clause (g) of the sub-section, which is:

> *(g) to pay full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing*

occupation or customary use of land is revoked or otherwise interfered with to their detriment by the State under this Act or is acquired under the Land Acquisition Act:

Provided that in assessing compensation land acquired in the manner provided for in this Act, the concept of opportunity shall be based on the following–

(i) market value of the real property;
(ii) disturbance allowance;
(iii) transport allowance;
(iv) loss of profits or accommodation;
(v) cost of acquiring or getting the subject land;
(vi) any other cost loss or capital expenditure incurred to the development of the subject land; and
(vii) interest at market rate will be charged;

Learned counsel further argued that the main case is a serious and triable one, which will collapse because there will no longer be any property to be evaluated for purposes of compensation if they win the case, thus denying her clients their constitutional right to fair compensation. Counsel thus prayed to the court to exercise its jurisdiction under Order XXXVII rule 1 (a) and (b) of the Civil Procedure Code, Cap 33 (R.E. 2002), and grant the injunction sought.

Counsel further submitted that her clients have homes and economic activities on the land the subject matter of the dispute. They would thus be rendered homeless and jobless if the properties are demolished. She cited the cases of *Suryakant Ramji v Saving & Finance Ltd. & Others*, Civil

Case No. 31 of 2001 (HC Commercial Div., DSM, TLR [2002]. Unfortunately, counsel did not provide the page in the Law Report on which this decision is published, and did not avail the court with a copy of the decision except for a quotation which in essence repeats the principles governing the grant of injunction in our civil litigation. These principles were laid down in 1969 by the then Chief Justice Georges in the case of *Atilio v Mbowe* (1969) HCD 284. They are the following:

(i) There must be a serious question to be tried on the facts alleged, and a probability that the plaintiff will be entitled to the relief prayed;

(ii) That the Court's interference is necessary to protect the plaintiff from the kind of injury which may be irreparable before his legal right is established; and

(iii) That on the balance there will be greater hardship and mischief suffered by the plaintiff from the withholding of the injunction than will be suffered by the defendant from the granting of it.

These principles have been religiously followed in subsequent decisions of this court as well as the Court of Appeal, Have the applicants fulfilled all these conditions? It would appear that the main bone of contention is in relation to the last two conditions, relating to the irreparability of the injury likely to be suffered by the applicants if injunction is not granted, and the balance of convenience. The applicants allege that they will suffer irreparable damage if injunction is not granted due to loss of their properties, loss of use thereof, and loss of the evidence for any re-