

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPLICATION NO. 159 OF 2017

(Original Land Case Number 65 of 2017 in the High Court of the United Republic of Tanzania at Arusha)

ANA GODWIN MASANGWA.....PLAINTIFF

VERSUS

1. GODWIN LENGINA MASANGWA.....1ST DEFENDANT

2. TAMBAZA AUCTION MART

AND GENERALBROKER.....2ND DEFENDANT

RULING

DR. OPIYO, J.

The applicant named above filed an application before this court made under the provision of section 68 (e), Order XXXVII Rule 1 (a) and (b) of the Civil Procedure Code, Cap. 33 R.E 2002 and any other enabling provision (s) of the law applying for the following orders;

- a) That, temporary injunction order be issued against the respondents, their agents, servants, any other person working under instruction legal person or natural person or in any capacity and or workmen from interfering, entering or dealing in any manner with the land in dispute in Block no JJ plot no 391, CT no. 21449, Oloirien Arusha pending determination of the main suit pending before this suit.
- b) Any other relief (s) that this Honourable court may deem fit and equitable to grant.

This application is supported by the affidavit of the applicant, Anna Godwin Masangwa. In this matter, the applicant was represented by edna Mndeme. While the first respondent appeared in person and the second respondent appeared once through its office attendant. This court ordered the hearing of the application to proceed by way of written submission whereby the applicant was ordered to file his submission by 20/11/2017, the respondent to file reply by 11/12/2017 and rejoinder if any to be filed by 13/2/2018. However, only the applicant filed their written submission, both respondents never filed their respective submissions.

In her submission, the applicant's counsel prayed to adopt the applicant's affidavit and proceeded to submit that, the house that is in the process of being sold is a matrimonial house of the applicant which she constructed from her retirement benefits and if the same is sold, the applicant has no any alternative place to stay and it will lead to destruction on his household appliances if she is evicted. She continued

to submit that there is no reason whatsoever given by the respondents as to why they want to sale the disputed property apart from contemplating political reasons of thinking that the first respondent is a CHADEMA supporter while he is not. She thus argued that, if the disputed house is allowed to pass hands then, then it will cause irreparable loss to the applicant not capable of being quantified.

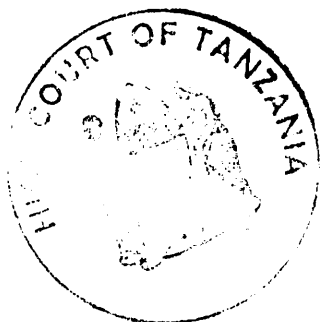
In the affidavit in support of the application, the deponent averred that on 30th September there was inspection of her house by the clients of the 2nd respondent that the second respondent was in the process of auctioning the house on what they termed as order from the unknown superior powers alleging 1st respondent having debts without any concrete proof. It is therefore her prayer that the prayer be granted as prayed.

I have considered the submission of the applicant and gone through her application. The only issue to determine in this application is whether her application for injunctive order has merits. The purpose of granting orders for temporary injunction is to maintain the status quo by preventing the respondents from dealing with the property in such a way to make the subsequent judgment useless as well as to prevent the applicant from suffering irreparable injuries should the court not grant the same. Although granting such application is within discretion of the court, but the court is guided by certain principles or criteria which need to be satisfied before the same is granted. The case of **Attilio vs. Mbowe**(1969) HCD 284, provides those guiding principles in granting an application for temporary injunction. The said principles are as follows, as agreed by both parties.

- (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 rights is established, and*
- (iii) That, on the balance of probabilities there will be hardship and mischief suffered by the plaintiff from the withholding of the injunction than will suffered by the defendant from the granting of it.*

Now at this juncture, the court has to determine whether those principles exist in this application. Starting with the first principle that there must be a serious question which need determination by the court and a probability that the plaintiff/applicant will be entitled to the relief prayed. The facts in place is that there were allegedly second respondents clients who went to inspect the disputed property which is about to be sold for unknown reason and by the unknown people on political reasons as per the counsels submission or alleged loan by the 1st respondent as per applicants averment in the supporting affidavit. However, no any proof has been given on the intention to sell the disputed property or inspection by the whoever or whatsoever clients, as the second respondent is a mere auctioneer, who always acts on behalf of someone else in such circumstances. This other person for whom the 2nd respondent could possibly work is not has not been mentioned. This leaves the applicants claim very vague to establish any cause of action capable of been protected by

ordering injunction. This is even worsened by the fact that applicant sued the 1st respondent whom she at the same time defend by declaring she is aware that he is not indebted to any one, to pose any threat to her interest in the disputed property. In the circumstances, one wonders as to her cause of action against him in the first place worth of being protected by restraining him from doing. If he is not the one intending to dispose the house, then what is the validity of prayer for an order to restrain him from doing what is not intending to do to the knowledge of the applicant? The 1st respondent has not file counter affidavit or even written statement of defence to the main suit to enable the court to determine triable issue. If at all, in my considered view, these are mere apprehension of unknown danger of sustaining irreparable loss, as she put it, from the acts of the unknown. In other words, the applicant is contemplating suffering irreparable injury from the person he does not know and for thereasons not yet known to her. In the circumstances, the court have failed to find the first principle that must be a serious question which need its determination has not at all been proved by the applicant. Failure to fulfil this first and paramount principle inevitably leads to the collapse of the whole application. I therefore proceed to dismiss application for lack of merits. I make no order as to costs as the respondents did not argue the application.



A handwritten signature in black ink, appearing to be "M. Opiyo", written over a horizontal line.

DR. M. OPIYO,
JUDGE
18/5/2018