

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

MISCELLANEOUS LAND APPLICATION No. 54 OF 2019

(Originating from Land Case No.4 of 2019).

HAMIS ISMAIL KAPONDA.....1st APPLICANT
FREEMAN NJAU.....2nd APPLICANT
ELIAS NCHOLE.....3rd APPLICANT
EUFEMIA WILLIAM DESOKIA.....4th APPLICANT
ANGELISTA ELIAS MREMI.....5th APPLICANT
ALOYCE L. KESSY.....6th APPLICANT
TISHI SALUM.....7th APPLICANT
DEUSDETITI MURUNDI.....8th APPLICANT
FRIDA TOBIASI MAKOI.....9th APPLICANT
GASTON MASIKA.....10th APPLICANT
THADEO KATUSHIBILA KATABAZI.....11th APPLICANT
LYDIA WAKUKU LYARUU.....12th APPLICANT
AGNESS MCHAU NJAU.....13th APPLICANT
SALUM UKWAMA.....14th APPLICANT
K.N. SHAYO.....15th APPLICANT
DR. EMIL LEBABU WOISO.....16th APPLICANT
ELIZABETH G. TIMASI.....17th APPLICANT
MARY MWAIMU.....18th APPLICANT
AMIN H MINJA.....19th APPLICANT
FELISTA THADEI MAKOI.....20th APPLICANT
NEEMA MVUNGI.....21th APPLICANT
BETTY WANGWE.....22th APPLICANT

Versus

KINONDONI MUNICIPAL COUNCIL.....RESPONDENT

RULING

4th December, 2019 -13th February, 2020

J. A. DE-MELLO J;

The Applicants have moved the Court vide **Chamber Summons** under **section 68 (c) and (e), Order XXXVII Rule 2(1) and (2)** of the **Civil Procedure Code Cap. 33 R.E 2002]** for the following prayers;

- 1. The Honorable Court be pleased to grant an injunctive order against the Respondent, its Employees workmen and Agents restraining them entering the premises situated at Plot No. 573 Block 43 and collecting any monies from the Applicants in any matter pending the determination of this suit.**
- 2. The Court prevent the Respondent, its agents employee and workmen from demanding in whatever manner purported rentals or manse profits and instituting and or continuing with any proceedings instituted elsewhere or at Kinondoni Land and Housing Tribunal pending the determination of this suit.**
- 3. The Respondent may be condemned to pay the costs of this Application.**

Affidavit by **Salum Ukwama** the **14th Applicant** who Affirmed on behalf of the others Applicants as well as Counter Affidavit for the Respondent are both on record. Hearing was conducted by way of written submissions, with, the Applicants, fended by Counsel **Gabriel Simon Mnye**, whereas; the Respondent was represented by **Municipal Solicitor's Office**. Since I don't intend to reproduce the Parties' respective submissions, it suffices to say that, the Respondent herein has seriously opposed the Application through their Counter Affidavit as well as in their written submissions.

Gabriel Simon Mnye, Counsel, for Applicants repeating what **section 68(c) and (e), Order XXXVII Rule 2(1) and (2) of the Civil Procedure Code R.E 2002**]. He went further to refer the case of **Giella vs. Cassman Brown (1973) E. A 358, Attilio vs. Mbowe (1969) HC No. 289, American Cyanamid Co. vs Ethicon Ltd (1975) ALL E.R 504, General Tyre East Africa Ltd vs HSBC Bank PLC [2006] TLR 60** and, **Murungu Sisal Estate Limited vs George Nicholas Efstathiou** and, **Two Others, Commercial Case No. 27 of 2000** (unreported). These cases provide for condition of temporary injunction. First, is the condition that, there is a **Prima Facie case**, that exhibits, Parties are at very serious issues with regard to the status of the **Plot No. 573 Block 43, Kijitonyama**, the legality of acquisitions by the Respondents and, collecting rents directly from the Tenants at the detriment of the Applicants. Second, is whether they will be occasioned of **irreparable damages and, losses** that, it cannot be atoned by way of damages, and, which the Court is called not to be detained. There is no dispute that, the Applicants attempts to demonstrates fear of been deprived of their income by the Respondent as they believe unwillingness by the Respondent to

compensate the Applicants the losses of income that the Applicants are to suffer due to the Respondent's conduct. The case, the categorically state is fit for maintenance of **Status Quo** until the rights of the parties are determined. They are the ones to suffer more due to deprivation of their income pending determination. The Respondent, they asserts, has not demonstrated anything to show that it is going to suffer anything due to having multiple sources of income unlike the marginalized Applicants. Their prayers are for the Court to grant restraining orders.

On their part, the Respondent, the Republic, in care of **Stanley Mahenge State Counsel**, submits that, the prayer inter alia, is for a declaratory order that the Plaintiffs are lawful, notwithstanding the fact that, the Respondent has acquired the same without compensation. Applicant's averments under their respective Affidavit and, paragraphs in support of the Application, 3, 4 and 5 of the Applicant's Affidavit in support of the Application.

The paragraphs read as follows:-

"On the 8th February 2019 the Applicants filed a suit against the Respondent contesting the act of acquisition of their building over plot No. Block 43 Kijitonyama Dar es Salaam of which they were invited to construct as licensees for value. The Respondent is now collecting all rents from the building. The Applicants have suddenly lost their income and sources of livelihood. Since the legality of the Respondents action is being disputed they should be restricted to enter the property in dispute and collecting rents until the dispute is determine."

Adopting what the Counter Affidavit has deponed, Counsel brings to light, that the matter has been overtaken by events, having been possessed and, already leased to **119 vendors**. It is thus the source of income he notifies. Alluding to discretionary powers by Courts as well as **Balance of Convenience** for injunctions, the case of **T.A. Kaare vs. GM Mara Cooperative Union [1987] TLR 17** to contend the position. As to Irreparable Loss, Counsel referred the cases of **Christopher P. Chale vs. Commercial Bank of Africa, Misc. Civil Appl. No. 635 of 2017**, unless compensation for awarding General Damages adequately.

These conditions are:

- 1. That on the facts alleged, there must be a serious question to be tried by the Court and a probability that the plaintiff/Applicant will be entitled to the relief prayed.**
- 2. That the Court's interferences is necessary to protect the Applicant from the kind of injury which may be irreparable before his legal right is established.**
- 3. That, on the balance of convenience there will be greater hardship and mischief suffered by the Applicant from the withholding of the injunction than will be suffered by the defendants from granting it.**

That, in consideration of the status of the suit property to be in the hands of the Respondent, Courts interference is not only necessary but, obvious based on the injury likely to occur, if otherwise. He finds no justification for the Applicant being trespassers who have no right of protection under the law. As shown above, all three conditions ~~and~~ in its totality, must be met

before a Temporary Injunction can be granted. The Respondent prays to dismiss the Application with costs.

Going by the matter at hand and, considering the nature of the order sought, it is one of the Court's discretionary powers as to whether not to grant. The three conditions as were set out in the landmark case of **Attilio vs. Mbowe (1969) HC No. 289**, which merely summaries the general powers of the Court in regarding to grant interlocutory orders. From the above view, the question to be determined now is whether the facts disclosed in the Application satisfies the conditions for granting the injunction, as prayed. There are huge numbers of the authorities restating the principles above just to mention a few of relevant cases, are as below;

- **Attilio vs. Mbowe (1969) HC No. 289.**
- **Suryakant D. Ramji vs. Savings and Finance LTD and 3 Others, High Court Commercial Division, Dar Es Salaam, Civil Case No. 30 of 200 (Unreported)**
- **E.A Industries Ltd. vs. Trufood Limited (1972) E.A 420.**
- **Giella vs. Cassman Brown [1973] E.A 358**
- **Colgate Palmolive Company vs. Zakaria Provisional Stores and 3 others, High Court, Dar es Salaam, Civil Case No 1 of 1997.**
- **CPC International Inc. vs. Zainabu Grain Millers Ltd. Civil Appeal No 49 of 1999 CA.**

With regard to Ta **Prima Facie Case** and **Probability of Success**, it is suffices to say that, the facts disclosed in the Applicant's Affidavit and, in the written submissions in support of the Application, raises a serious

questions to be determined by the Court and in the main Suit which in his opening remark Counsel for the Respondent stated. It is for that, forum as opposed to this stage. As to the danger of suffering irreparable injury, and, considering the fact deponed that acquisition has been effected by the Respondent, while taking into account it is wise to preserve the Status Quo of the Parties. See the case of **Noormohamed Janmohamed vs. Kassail Virji Madahni (1952)19 EACA 8**. The Respondent is currently in occupation of the suit property, secondly, lease agreements with various Tenants and collecting rent as earlier stated thereof is in existence, likely to occasion loss of Revenue for public consumption. Comparatively and, on Balance of Convenience, it is the Respondent, one to suffer much. In the premises this last condition is hereby lacking in merit.

At this juncture therefore, having weighed the facts in totality, it is the Respondent, a Public institution, who will suffer more in the event the prayers are granted, I will hold that, this is not a fit case for grant of Temporary Injunction, because all the conditions prerequisite not have been cumulatively met accordingly. Therefore, this Application has no merit, it is hereby dismissed with costs, the substantive suit be heard on its merit.



J. A. DE-MELLO

JUDGE

13th February, 2020