

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF ARUSHA)**

**AT ARUSHA**

**LAND REVISION NO. 07 OF 2019**

*(C/F Misc. Application No. 37 of 2019 before the District Land and Housing Tribunal  
for Karatu based on Land Application No 19 of 2019)*

**BLANKA MICHAEL DIONIS .....1<sup>ST</sup> APPLICANT**

**REGINA ALBANI KANSO .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**LUCAS ABRAHAM LEKOLELE ..... RESPONDENT**

**RULING**

**Last order.....07/02/2020**

**Ruling delivery...26/03/2020**

**GWAE, J**

In the District Land and Housing Tribunal for Karatu at Karatu, the respondent instituted a dispute which was registered as Land Application No. 19 of 2019 claiming inter alia that, the 1<sup>st</sup> applicant acting under the instruction of the 2<sup>nd</sup> applicant herein interfered with his right of peaceful enjoyment of eight (8) acres which he bought in the Public Auction on 5<sup>th</sup> May 2018. The public auction was due to an allegation that there was a default of repayment of loan by the previous owners of the disputed farm namely; Siptim Michael, Blanka Michael (1<sup>st</sup> applicant) and Michael Dionis now deceased.

The trial tribunal record further reveals that the suit farm was mortgaged by the previous owners to the K.K.K.T Mbulumbulu Saccos to secure a loan.

During pendency of the main case in the tribunal, subsequent to his filing of the land dispute, the respondent filed an application for an injunctive order restraining the applicants or their agents from entering or interfering with respondent's use and occupation of the disputed farm. The respondent's application for the injunction order pending hearing and determination of the main case was duly registered as Misc. Application No. 37 of 2019.

The Trial tribunal through its ruling and drawn order dated 13<sup>th</sup> day of September 2019 granted the sought injunctive order in favour of the respondent. The applicants felt not satisfied by the order restraining them from use and occupation of the suit land. Hence this application for revision preferred under section 43 (1) (b) of the Land Disputes Courts' Act, Cap 216 Revised Edition, 2002.

The main ground or reason for this application is that the trial tribunal order is tainted with material irregularity as the applicant who are in actual possession and use will suffer irreparable loss if the injunctive order is not revised and set aside. The respondent resisted this application vide his counter affidavit by stating that the injunction order was issued on the basis of sufficient reasons and facts.

On 7<sup>th</sup> February 2020 the matter was called on for hearing however the respondent defaulted appearance, the matter was consequently heard

ex-parte. The 1<sup>st</sup> applicant who appeared in person verbally added that the trial tribunal wrongly issued the injunctive order since the applicants have been using the same since Operation Vijijini and denied indebtedness on the part of his late father to the said Saccos.

As was the case before the learned chairperson of the trial tribunal, I find it apposite to adhere to the principles enunciated in **Atilio v. Mbowe (1969) HCD 284** where conditions were set requiring applicant seeking temporary injunction to meet before the court exercises its statutory discretion to grant to grant an order of temporary injunction, these are;

- a) Existence of serious question to be tried on the facts alleged with the probability of success in the suit.
- b) Demonstration that, the applicant stands to suffer irreparable loss requiring the courts intervention before the applicant's legal right is established.
- c) Proof of greater hardship and mischief suffered by the applicant if injunction is not granted than the respondent will suffer if the order is granted (Balance of convenience).

It is also the requirement of the law that the conditions set out herein above must all be met, hence meeting one or two of the conditions will not be sufficient for the purpose of the court to exercise its discretion to grant sought injunction order (s). See: **Christopher P. Chale v. Commercial Bank of Africa Misc.** Civil application No. 635 of 2017 (Unreported).

From the joint affidavit of the applicants, the applicants' complaints is that, they are the rightful owners of the suit land since Operation Vijiji in which they have been in possession and use of the suit land. The trial tribunal chairperson held that the applicant now respondent had bought the suit land and that being the case the respondent would suffer more irreparable loss than applicants unless they could have agreed that they are indebted.

To my considered view, the learned chairperson misdirected himself by considering the facts which would be fit for determination of the main case for instance by holding that, the respondent bought the piece of the land in the public auction while this fact is a contentious in the main case as the applicants are found seriously contending that the auction was not legal and that the 1<sup>st</sup> applicant's late father was not indebted to the K.K.K.T Mbululmbulu Saccos.

Looking at the nature of the main case and the applicants' assertion that they had been in possession and use of the suit farm since Operation Vijiji and taking into account that the respondent is a mere purchaser of the suit farm, I think if the trial tribunal assessed carefully the requirement of meeting all the conditions propounded in the case of **Atilio v. Mbowe** (supra), it would not arrive at that decision and even if one would look at the balance of convenience, he or she would find the balance of convenience to be in favour of the applicants. In the foreign decision of **American Cyanamid Co. V. Ethicon Ltd** [1975] 1All.ER 504 at Pg 509 where Lord Diplock stated the following;

“The object of the temporary injunction is to protect the plaintiff against injury by violation of his right for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour on the trial”

In the matter at hand it is clear that the applicants are to suffer more hardships than the respondent, a bonafide purchaser of the land in dispute and in the event they win the main, the applicants will not be in a better position to look for payment of damages sustained following dispossession of the disputed farm by the respondent. Before granting or refusing an application for injunction the trial tribunal ought to have decided on whether the applicant now respondent will suffer greater injury if the application is refused than the respondents now applicants will suffer if it is granted.

In view of the above reasons, I am satisfied that the applicants’ application is meritorious, the same is hereby granted. The trial tribunal order granting injunction order in favour of the respondent is quashed and set aside. The status quo of the suit farm be maintained till determination of the parties’ main case as was prior to the alleged purchase of the disputed farm by the respondent. The applicants’ will resume possession immediately after harvest of crops as current crops in the suit land were planted by the respondent, Lucas Abraham Lekolele. The parties’ main case be heard expeditiously. Each party shall bear its costs.

It is ordered.



**M. GWAE**  
**JUDGE**  
**26/03/2020**

