

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISCELLANEOUS CIVIL APPLICATION NO. 37 OF 2021

(Matrimonial Appeal No. 4 of 2021 in the High Court of Dodoma at Dodoma)

AKSA MASIMAAPPLICANT

VERSUS

PETRO MASIMA.....RESPONDENT

RULING

13/09/2021 & 21/09/2021

KAGOMBA, J.

This is an application for temporary injunction filed by AKSA MASIMA ("the applicant") against PETRO MASIMA, ("the respondent") as well as his agent (s), or any person acting under his authority from interfering with the matrimonial properties located at Hombolo, within Dodoma City as decided by the Resident Magistrate's Court of Dodoma (the "trial Court") in Matrimonial Cause No. 7 of 2020 before Hon. P. F. Mayumba, RM on 9/10/2020, pending hearing and final determination of the applicant's appeal which is before this Court.

The application is made Under Order XXXVII Rule 1, and Section 68 (c) & (e) and S. 95 of the Civil Procedure Code, [Cap 33 R. E 2019] together with any other enabling provision of the law. As required by law, the application is supported by an affidavit. In this case it is the affidavit of Godliver Joseph, the applicant's advocate, which states the grounds for the Court to consider in granting the orders sought by the applicant.

This matter is very simple to grasp. The parties herein have been husband and wife until 9/10/2020 when the trial Court declared that their marriage had irreparably broken down and granted a decree of divorce after the applicant had petitioned the trial Court to grant such an order. The applicant also prayed for custody of issues of marriage to be granted to her, as well as an order of division of matrimonial assets and any other relief(s) the trial Court could deem fit to grant.

The trial Court in its Judgment ordered, inter alia, that;

"..... one house located at Hombolo is hereby handover(sic) to the petitioner as part of her share and two frames out of 10 frames is declared as share of the petitioner".

It is in safeguarding her interest in the above quoted order of the Court that the applicant filed this application as a matter of utmost urgency. She argued that the respondent has started selling some of the matrimonial properties knowing verily that an appeal has been filed by this Court.

In his counter affidavit, the respondent conceded that he has sold one shamba in order to get school fees and other costs for their child of marriage, one Irene Anderson Masima, who is a student at El-Shaddai Primary School. He stated further that he had no any alternative means of getting school fees and other family expenditure apart from selling the shamba which was given to him by the Court.

During hearing of the application, Godliver Joseph, learned advocate, represented the applicant while Maria Ntui, learned advocate represented the respondent.

Ms. Godliver Joseph told the Court that after the decision of the trial Court in Matrimonial Cause No. 7 of 2020, the applicant was aggrieved by the decision of the trial Court, hence she filed an appeal to this Court which is pending for determination. She added that during the pendency of the hearing and determination of the appeal, the respondent has started using and even selling some of the matrimonial assets knowing that there was a pending appeal by applicant challenging the decision of the trial Court.

The learned advocate for the applicant specified that one of the assets allocated to the applicant was the business rooms "commonly known as "frames" of which the respondent has started selling it surrounding land to other people. She said it was for this reason, the applicant seeks injunctive order of this Court Under Order XXXVII Rule 1 of the Civil Procedure Code, [Cap 33 R. E. 2019]. To support her submission, the learned advocate cited the case of **Atilio V. Mbowe** [1969] HCD 284 which set three conditions to guide courts in granting of order for temporary injunction. She submitted further that the cited case as well as the facts adduced and the fact that the applicant was at high risk of losing the assets, supported her prayer that the application be allowed with costs.

Ms. Maria Ntui repeated what was averred in the respondent's counter-affidavit in which the respondent did not object the facts submitted by the applicant. The respondent conceded selling of one farm which was given to

him by the trial Court in the Judgment which is being challenged by the applicant.

Ms. Maria Ntui stated that the respondent had no alternative source of income to pay school fee for the parties' joint issue and to meet family needs. She said that when the trial Court granted the decree of divorce, it was ordered that the child should stay with her father, the respondent and for that reason the respondent had a duty of taking care of the child in respect of all her needs. Thus, without selling the farm the child would have been affected by failure to get her important needs and could be chased from school. She also stated that the respondent had grand children at home who also needed to be taken care of in terms of food and medical attention.

Ms. Maria Ntui submitted further that, in a further show of humanity, the respondent gave the applicant five business rooms/frames instead of her share of two frames which were awarded to her by the trial Court. She thus prayed the Court to find that the sale of the farm was not intended to deprive the applicant of her right but was intended to take care of the family welfare. For that reason, she prayed for dismissal of the application with costs.

In her rejoinder, Ms. Godliver Joseph told this Court that the respondent had actually sold the entire farm for reasons stated by his advocate. She argued that there was no evidence that the respondent had actually paid the school fees as alleged. She maintained the client's prayer for a temporary injunction for reason that the respondent had shown bad intention of using the assets for his own needs. She said the farm that the

applicant wanted to be protected was a grapes farm and not the 9 acres farm.

Having heard both parties carefully, I formed an opinion that there is not much controversy between them with regard to the application in hand. As stated in the cited case of **Atilio V. Mbowe** (Supra) there are factors to consider in granting this application. One such factor is the risk of the applicant to lose the assets whose division she is contesting in her appeal which was pending before this Court.

Order XXXVII Rule 1 of the Civil Procedure Code, [Cap 33 R.E 2019] under which this application is preferred provides;

"1. Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit 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; or

*(b) **Not applicable,***

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

Since the respondent has conceded selling a farm whose division is being contested by the applicant in her appeal pending in this Court, I find a danger of further disposal by the respondent of the remaining matrimonial assets as submitted by applicant's advocate. Therefore, in order to avoid

defeating the end of justice in the pending appeal, I hereby allow this application.

Accordingly, I grant a temporary injunction to restrain the respondent, his agent(s), or any person acting under his authority from interfering with the matrimonial properties located at Hombolo within Dodoma City as decided in Matrimonial Cause No. 07 of 2020 by Hon. P. F. Mayumba, RM on 9/10/2020 pending the hearing and final determination of the Matrimonial Appeal No. 4 of 2021 appeal between Aksa Masima V. Peter Masima filed in this Court. Since the parties have been husband and wife until recently, I make no order as to costs.

Dated at Dodoma this 21st day of September, 2021.



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba", is written over the printed name.

ABDI S. KAGOMBA

JUDGE